

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

AGREEMENT FOR CONSTRUCTION

CHAPTER 1
BUILDER'S AGREEMENT
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AGREEMENT FOR CONSTRUCTION

**CHAPTER 1
BUILDER’S AGREEMENT**

This Agreement for Construction (hereinafter the “Agreement”) is made this ____ day of _____, 2008, between THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA, located at 817 Bill Beck Boulevard, Kissimmee, FL 34744 (hereinafter “Owner”) and _____, located at _____ (hereinafter “Construction Manager”).

WHEREAS, the Owner owns that certain parcel of land (hereinafter referred to as the “Site”) having a street address of _____ [_____], Osceola County, Florida;

WHEREAS, the Owner has retained the services of _____ (hereinafter referred to as the “Architect”) to furnish architectural and/or engineering services for the _____ Project (hereinafter referred to as the “Project”);

WHEREAS, the Owner intends to construct the Project and is engaging the Construction Manager to furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Agreement For Construction to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Agreement For Construction to successfully plan, construct and complete the Project.

WHEREAS, the Owner and Construction Manager each acknowledges that it will act in good faith in carrying out its duties and obligations; and

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

WHEREAS, the Owner and Construction Manager each acknowledges that it has reviewed and familiarized itself with this Agreement For Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.

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

**ARTICLE 1
GENERAL AGREEMENT PROVISIONS**

1.1 Recitals. The recitals set forth in the Whereas clauses are incorporated by reference and made a part of this Agreement.

1.2 The “Contract For Construction” is comprised of the following documents:

This “Chapter 1 - Builder’s Agreement” (hereafter “Chapter 1”), including the foregoing recitals, and all attached documents, appendices and addenda;

“Chapter 2 – Construction Manager’s Required Services (At-Risk Construction Management Guaranteed Maximum Price Form)” (hereafter “Chapter 2”), and all attached documents, appendices and addenda;

“Chapter 3 – General Terms and Conditions of Builder’s Contracts” (hereafter “Chapter 3”) and all attached documents, appendices and addenda;

Special Conditions, if any;

Proposal(s) submitted by the Construction Manager and accepted by the Owner, if any;

The Construction Documents, now existing or issued hereafter;

Any amendments or addenda executed by the Owner and the Construction Manager hereafter; and

Approved Change Order(s) or field orders.

1.3 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Agreement For Construction.

1.4 The Owner shall: (a) furnish the Construction Manager with _____ copies and one reproducible copy of the Construction Documents; and (b) furnish the Construction Manager electronically formatted Construction Documents.

**ARTICLE 2
NOTICES**

2.1 Unless otherwise provided, all notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, by (i) personal delivery, or (ii) overnight courier, or (c) telecopy or facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). All notices shall be given to the

addresses set forth below. Notices delivered personally, by overnight courier or delivered by facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

If to School Board: Attention: Eric Shawn Houston
Assistant Superintendent
Maintenance and Facilities
School District of Osceola County, Florida
809 Bill Beck Boulevard
Kissimmee, FL 34744
Telecopy: (407) 343-8603

If to Construction Manger: Attention:

Telecopy:

ARTICLE 3
SCOPE OF CONSTRUCTION MANAGER’S SERVICES

3.1 **General Scope Of Services.** Upon execution of this Agreement For Construction, the Construction Manager shall commence performance of Pre-Construction Services and upon execution of Appendix E and issuance of a Notice To Proceed by the Owner, the Construction Manager shall commence provision of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

3.1.1 **Scope Of Pre-Construction Services.** The Construction Manager shall furnish and pay for out of the Pre-Construction Services Fee, all Pre-Construction Services required by:

- (i) Chapter 1;
- (ii) Chapter 2, Articles 1, 2 and 4; and
- (iii) Chapter 3.

3.1.2 **Scope Of Construction Services.** Upon execution of Appendix E, the Construction Manager shall furnish and pay for out of the Construction Price all Construction Services required by:

- (i) Chapter 1;
- (ii) Chapter 2, Articles 1, 3 and 4; and
- (iii) Chapter 3.

3.2 Self-Performance By The Construction Manager.

3.2.1 The Construction Manager shall not be allowed to self-perform any category of the Work without prior written approval of the Owner.

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

ARTICLE 4

COMPENSATION OF CONSTRUCTION MANAGER; LIQUIDATED DAMAGES

4.1 **Compensation For Pre-Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Manager's timely and complete performance of Pre-Construction Services, the Pre-Construction Services Fee.

4.1.1 **Pre-Construction Services Fee – Amount.** The Pre-Construction Services Fee shall be: The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fixed fee of _____ (\$ _____) Dollars. If the scope of the Pre-Construction Services is materially increased through no fault of

the Construction Manager, the Pre-Construction Services Fee shall be equitably adjusted.

4.1.2 **Pre-Construction Services Fee – Payment.**

4.1.2.1 The lump sum fixed Pre-Construction Services Fee shall be paid monthly and proportionate to the actual Pre-Construction Services rendered, and in accordance with Appendix A.

4.2 **Guaranteed Maximum Price.** Prior to performance of Construction Services and in accordance with the requirements set forth in Chapter 2, Article 2, the Construction Manager shall prepare and deliver to the Owner, with a copy to the designated Professional, a Guaranteed Maximum Price (“GMP”) proposal upon completion of ninety-eight percent (98%) of the Construction Documents. If the GMP proposal is finalized in accordance with Chapter 2, Paragraph 2.4 and Appendix E hereto is executed by the parties, the Owner shall issue a written notice to the Construction Manager (“Notice To Proceed”) establishing the date construction is to commence (the “Commencement Date”).

4.3 **Compensation For Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for Construction Services, the Construction Price (“the Construction Price”) which shall not exceed the Guaranteed Maximum Price (“GMP”).

4.3.1 **Construction Price – Amount.** The Construction Price shall include, and is limited to, the total of:

- (i) the aggregate net cost of the Construction Manager’s General Conditions (“General Conditions Cost”), as defined in Chapter 2, Subparagraph 2.4.2, not to exceed the General Conditions Guaranteed Maximum Cost set forth in Appendix E;
- (ii) the aggregate net cost directly paid, or to be paid, by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work (“Subcontracts Cost”); and
- (iii) the compensation for the Construction Manager’s provision of management services pursuant to Chapter 2, Articles 1, 3 and 4 (“Management Fee”), as defined in Chapter 2, Subparagraph 2.4.3, which is:

The Owner shall pay, and the Construction Manager shall accept as its Management Fee, _____ (%) percent of the sum total of the Subcontracts Cost.

4.4 Payment.

- 4.4.1 Based upon the approved application of progress payment, Owner shall make payment to Construction Manager in the amount approved subject to the provisions of paragraphs below. The payment of any application for progress payment by the Owner including the final application does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Construction Manager of any of its obligations hereunder with respect hereto.
- 4.4.2 Progress Payments. Based upon applications for payment submitted to the Architect by the Construction Manager and certificates for payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.
- 4.4.3 At the time or times established in this Agreement, the Construction Manager shall submit to the Architect an itemized application for payment for Work completed in accordance with the previously submitted schedule of values. The application for payment shall be signed by the Construction Manager, and notarized, and shall be supported by sufficient data which serves to establish the Construction Manager's right to the payment, such as requisitions from subcontractors or material suppliers, and reflecting retainage of 10% which may be withheld until substantial completion or final completion. If agreed to by the Owner, the amount of retainage withheld may be reduced to 5% upon 50% completion of the Agreement value. The period covered by each application for payment shall be one calendar month ending on the last day of the month. The format and number of copies of such applications for payment shall be in a format as requested by the Owner. Retainage withheld may be reduced upon substantial completion of the Work to 150% of the estimated cost of all outstanding punch list items, upon approval by the Owner.
- 4.4.4 The application for payment shall reflect the amount of Work completed each month separated by materials stored and labor, inclusive of Construction Manager's Fee, as a percent complete of each line item within the schedule of values for the Project. The Construction Manager shall, upon request from the Owner, provide all required invoices, payrolls, petty cash accounts and any other evidence required by the Owner to verify the values indicated as percent complete in the application for payment.
- 4.4.5 Applications for payment may also include requests for payment for changes in the work which have been authorized by construction change directives, but not yet documented in a change order, only when such construction change directives have documented an adjustment to the Contract Sum. Further, applications for payment shall not include any requests for payment of amounts the Construction

Manager does not intend to pay to a subcontractor or material supplier, for any reason.

- 4.4.6 Applications for payment shall only be made on account of materials and equipment delivered and suitably stored at the Site for incorporation into the Work. Payments shall not be made for materials which are not suitably stored at the Site.
- 4.4.7 By submitting an application for payment, the Construction Manager warrants that full and complete title will vest in the Owner with regard to all Work covered by an application for payment, no later than the time of such payment. Additionally, all Work represented by a submitted application for payment shall be free and clear of any and all liens, claims, security interests or encumbrances in favor of any person or entity. Each application for payment shall be accompanied, at the Owner's option, by a waiver of lien from each subcontractor or a certificate from each subcontractor stating that the subcontractor has been paid all amounts due the subcontractor from previous applications.
- 4.4.8 Upon receipt of the Architect's certificate for payment, the Owner shall make payment to the Construction Manager. The Construction Manager shall promptly pay each subcontractor out of the amounts paid to the Construction Manager on account of such subcontractor's portion of the Work, minus any percentages retained as retainage from payments made to the Construction Manager on account of such subcontractor's portion of the Work. The Construction Manager shall, by appropriate written agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors and material suppliers in a similar manner. However, neither the Owner nor the Architect shall have an obligation to pay or to see the payment of money to a subcontractor, sub-subcontractor or material supplier.
- 4.4.9 Any certificate for payment, progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of any work not in accordance with the Agreement or Contract Documents.
- 4.4.10 All Applications for Payment are subject to Owner's review and approval. Owner shall have the right to refuse to approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, or rescind any amount previously approved for payment, and Owner may withhold any payments otherwise due Construction Manager under this Contract or any other agreement between Owner and Construction Manager, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subconsultants, subcontractors and suppliers;

(d) reasonable evidence that the remaining Work cannot be completed for the unpaid Construction Price balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Manager's expense, if such items are not cured by Construction Manager to Owner's reasonable satisfaction within three (3) business days after Construction Manager's receipt of written notice from Owner.

4.4.11 If the Owner so desires, the Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of final payment have been met, the Architect will, within seven business days after receipt of the written report of the Owner's accountants, either issue to the Owner a final certificate for payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reason for withholding a certificate.

4.4.12 The Owner may, at its discretion, occupy or use any completed or substantially completed portion of the Work, prior to the final completion of the Project. Prior to such Owner partial occupancy or use, the Owner, Construction Manager and Architect shall inspect the area to be occupied in order to document the condition of the Work. However, in no event, shall the Owner's partial occupancy or use of the Work constitute acceptance of any Work not in compliance with the requirements of the Contract Documents.

4.4.13 Final payment by the Owner to the Construction Manager shall not constitute a waiver of any claim the Owner may have against the Construction Manager for Work not in compliance with the Construction Documents. However, acceptance of final payment by the Construction Manager, a subcontractor or material supplier shall constitute a waiver of any claims by that entity or individual, except those previously made in writing and clearly identified as unsettled at the time of final application for payment and payment thereon.

4.5 Compensation For Change Orders.

4.5.1 For change orders directed by Architect to be performed by the Construction Manager on a time and materials basis pursuant to Subparagraph 9.5.1 of Chapter 3, the Construction Manager shall be reimbursed the actual incurred cost and expense plus a markup of _____ percent (___%) for the change order Work performed by its forces.

- 4.5.2 When additional Work by the Construction Manager's subcontractors and suppliers is required and approved pursuant to Subparagraph 9.5.3 of Chapter 3, the Construction Manager shall be reimbursed the actual incurred costs and expenses paid to those subcontractors and suppliers, plus a markup of _____ percent (___%).
- 4.5.3 If the Construction Manager disputes a change order decision pursuant to Paragraph 9.7 of Chapter 3, it must give the Owner its written notice of dispute, including the reasons therefor, within _____ calendar days of the disputed decision.
- 4.5.4 For the purposes of this Agreement, a change order is a written document prepared by the Architect, and executed by the Owner, Construction Manager, and Architect, setting out in detail the specific change in the Work, the dollar amount of any adjustment to the GMP, if any, and any adjustment to the contract time.
- 4.5.5 For the purposes of this Agreement, a construction change directive is a written document prepared by the Architect and executed by the Owner, which serves to change the work and provides for any proposed adjustment in the GMP or contract time. A construction change directive shall be used in the event the parties to this Agreement cannot reach an agreement on the terms of a change order.
- 4.5.5.1 Upon request of the Owner or the Architect, the Construction Manager shall, without any increase in the GMP, submit to the Architect within 15 days, in such form as the Architect may require, an accurate written estimate of the cost of any proposed Work set forth in the construction change directive.
- 4.5.5.2 The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other cost chargeable under the terms of this subparagraph. Unit labor costs for the installation of each item of materials shall be shown if required by the Architect. The Construction Manager shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirement of this Article, or that it contains errors of fact or mathematical errors. If required by the Architect, in order to establish the exact cost of new work added or of previously required work omitted, the Construction Manager shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Construction Manager's expense. The Construction Manager shall state in the estimate any extension of time required for the completion of the Work if the

change or extra work is ordered. Notwithstanding any other provision of this Agreement, and without limitation, the Construction Manager shall obtain and maintain: (i) documentation that clearly identifies, and permits evaluation by School Board of, the mark up on change orders; (ii) supporting documentation for change orders that reports detailed and specific amounts for labor, materials and equipment charges; and (iii) supporting documentation showing labor burden percentages, if applicable and if specifically provided for in writing by School Board.

4.5.5.3 If the construction change directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as selected by the Owner.

- (a) By unit prices stated in the Contract Documents or otherwise mutually agreed upon.
- (b) By cost and percentages estimated by the Construction Manager as define in this subparagraph and accepted by the Owner. The Construction Manager's estimate shall become a fixed price which shall not be changed by any variation in the actual cost of executing the Work covered by the change.
- (c) By actual cost determined after the Work covered by the change is completed, plus percentage.
- (d) By submission to a Court, which shall determine the fair value of the work covered by the change.

As used in this subparagraph, "cost" shall mean the estimated or actual net increase or decrease in cost to the Construction Manager, subcontractor, or sub-subcontractor for performing the work covered by the change, including actual payments for materials, equipment rentals, expendable items, wages and associated benefits to workmen and to supervisors employed full time at the site, insurance bonds and other provable direct costs, but not including any administrative, accounting, or other indirect or overhead costs, or any wages or benefits of supervisory personnel not assigned full time to the site, or any amount of profit or fee to the Construction Manager, subcontractor or sub-subcontractor.

As used in this subparagraph, "percentage" shall mean an allowance to be added to or subtracted from the cost in lieu of overhead and profit and of any other expense which is not included in the cost of the Work covered by the change, as defined above. Percentage for the Construction Manager, a subcontractor, a sub-subcontractor or any other lower tier subcontractors for any work performed by their own forces shall be a maximum of 15% of any net increase, and 5% of any net decrease when the decrease results in a reduction of overhead requirements. The

maximum percentage of 15% as applied to subcontractors shall be a cumulative percentage, inclusive of sub-contractor, sub-subcontractors and other subordinate contracting parties. In the event the Construction Manager does not perform any of the Work with its own forces, the percentage for the Construction manager shall be the same percentage increase or decrease as the Construction Manager Fee set out in paragraph 3.10.5 above.

- 4.6 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be calculated at the rate of _____ (\$_____) Dollars per calendar day for failure to meet the required date of Substantial Completion, or fifteen (15%) per cent thereof for failure to meet the required date of Final Completion.

ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS

- 5.1 The Construction Manager shall deliver the required proofs of insurance to the Owner prior to the commencement of any Work, and in no event any later than 7 calendar days after the execution of this Agreement.
- 5.2 The Construction Manager shall, throughout the performance of its services under this Agreement and throughout the term of this Agreement maintain and provide to the Owner the insurance coverages listed in this Article. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Construction Manager shall provide insurance that may not be reduced, terminated, or cancelled unless 30 calendar days prior written notice thereof is furnished to the Owner. Certificates of insurance and copies of all policies (if required by the Owner) shall be furnished to the Owner within 7 calendar days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Construction Manager shall obtain substitute coverage, without any lapse of coverage whatsoever. The insurance policies shall name the Owner, the Owner's representatives, and the officers, directors, agents, employees and assigns of the Owner as additional insureds (except for the professional liability and worker's compensation insurance).
- 5.3 The insurance required by in this Article shall include all major divisions of coverage, and shall be on a commercial general basis including premises and operations (including X-C-U), Independent Contractor Hired Products and Completed Operations, and Owned, Nonowned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or others set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from

date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.

- 5.4 The Construction Manager shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.
- 5.5 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 1. Premises Operation (including X-C-U as applicable)
 2. Independent Contractor's Hired
 3. Products and Completed Operations
 4. Personal Injury Liability
 5. Construction Manager Liability including the provision for Construction Manager's obligation of indemnification and hold harmless
 6. Owned, non-owned and hired motor vehicles
 7. Broad Form Property Damage including Completed Operations
- 5.6 The insurance required by this Article shall be written for not less than the following, or greater if required by law.
 1. Workers' Compensation:
 - (a) State: As required by Chapter 440, Florida Statutes
 - (b) Applicable Federal (e.g. Longshoremen's Statutory)
 - (c) Employer's Liability: \$500,000.00
 2. Commercial General Liability (including Premises Operations; Independent Contractor Hired; Products and Completed Operations; Broad Form Property Damage):
 - (a) Bodily Injury:
\$1,000,000.00 per incident or occurrence
 - (b) Property Damage:
\$1,000,000.00 per incident or occurrence
 - (c) Products and Completed Operations to be maintained for one year after final payment
 - (d) Property Damage Liability Insurance shall provide S, C or U Coverage as applicable
 - (e) Per project aggregate limit in the amount of \$2,000,000.00
 3. Contractual Liability:

- (a) Bodily Injury:
\$1,000,000.00 per incident or occurrence
 - (b) Property Damage:
\$1,000,000.00 per incident or occurrence
4. Personal Injury, \$1,000,000.00 per claimant
5. Commercial Automobile Liability: The State of Florida has no-fault automobile insurance requirements. The Contractor shall be certain coverage is provided which conforms to any specific stipulation in the law.
- (a) \$1,000,000.00 per incident or occurrence combined single limit for bodily injury and property damage.
6. Builder's Risk:
- (a) The Construction Manager shall purchase and maintain "ALL RISKS" coverage, including flood and earthquake damage, fire and extended coverage upon the Project to the full and completed value thereof (a minimum acceptable is the amount of the Construction Price). This coverage should also include automatic permission to occupy and shall cover the insurable interest of the Owner, Architect, Construction Manager and subcontractor in the Work.
 - (b) The Owner and Construction Manager waive all rights against each other for damages caused by fire or other perils to the extent payment is actually made under insurance provided under this paragraph.
- 5.7 The Construction Manager shall procure property insurance for any portion of the Work stored off Site or in transit, and the cost for such shall be borne by the Construction Manager.
- 5.8 Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Construction Manager, its subcontractors, sub-subcontractors, material suppliers, employees, or agents to the Owner or others. Any remedy provided to the Owner, or the Owner's officers, employees, agents or assigns, by the insurance shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.
- 5.9 No Waiver by Approval/Disapproval. Neither approval by the Owner nor failure to disapprove the insurance furnished by the Construction Manager shall relieve the Construction Manager of its full responsibility to provide the insurance as required by this Agreement.

- 5.10 The term “The School Board of Osceola County, Florida” shall include The School Board of Osceola County, Florida, a body corporate, the School District of Osceola County and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of The School Board of Osceola County, Florida.
- 5.11 All insurance policies provided by Construction Manager to meet the requirements of this Agreement shall name The School Board of Osceola County, Florida, as that name is defined in section 5.10, above, as an additional insured (except for professional liability and workers’ compensation insurance) as to the operations of Construction Manager under the Contract Documents and shall contain a severability of interests provisions.
- 5.12 Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager.
- 5.13 All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement, and the “Other Insurance” provisions of any policies obtained by Construction Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to this Agreement.
- 5.14 The Certificates of Insurance, which are to be provided pursuant to paragraph 5.2 above, must identify this Contract.
- 5.15 All insurance policies shall be fully performable in Osceola County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 5.16 All insurance policies to be provided by Construction Manager pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Osceola County, Florida and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in Osceola County, Florida.
- 5.17 The acceptance by Owner of any Certificate of Insurance pursuant to the terms of this Agreement evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.
- 5.18 Construction Manager shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant’s or subcontractor’s work or services, insurance of the types and to the limits specified for Construction Manager in this Agreement, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.
- 5.19 If any insurance provided pursuant to this Agreement expires prior to the completion of the Work required hereunder, renewal Certificates of Insurance and, if requested by

Owner, certified, true copies of the renewal policies, shall be furnished to Owner 30 calendar days prior to the date of expiration.

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

ARTICLE 6

PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

- 6.1 The Construction Manager shall prepare and attach as Appendix B to this Chapter the Construction Manager's Personnel Chart which lists by name, job category, responsibility and hourly rate, the Construction Manager's primary employees who will work on the Project. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.2 At the conclusion of Bidding and Negotiation Services contained in Chapter 2, Article 3, the Construction Manager (i) shall prepare and attach as Appendix C to this Chapter the Construction Manager's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.3 The Owner shall prepare and attach as Appendix D to this Chapter the Owner's Consultants Chart which lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project. The Owner reserves the right to engage any other consultants which it may deem necessary or desirable.

ARTICLE 7

CONSTRUCTION SCHEDULE,

SPECIFIC BOND REQUIREMENTS, AND QUALITY CONTROL AND TESTING

7.1 Time For Performance.

7.1.1 **Delivery Of Pre-Construction Services.** The Construction Manager shall commence delivery of its Pre-Construction Services on _____ and shall deliver such services in a prompt and expeditious manner so as not to delay the Owner or the Professional(s).

7.1.2 **Commencement Of Construction.** The Construction Manager shall commence construction on the date set forth in a written Notice to Proceed issued by the Owner. (the “Commencement Date”).

7.1.3 **Substantial Completion.** The Construction Manager shall accomplish Substantial Completion of the Work on or before a date to be agreed upon and set forth in Appendix E to this Chapter (the required “Date of Substantial Completion”).

7.1.4 **Final Completion.** The Construction Manager shall accomplish Final Completion of the Work on or before thirty days following Substantial Completion of the Work (the “required date of Final Completion”).

7.2 **Construction Schedule.** The Construction Manager shall not less than _____ calendar days after execution of Appendix E prepare and submit a final Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 2, Subparagraph 2.3.1 and Chapter 3, Paragraph 16.1 of this Contract For Construction.

7.3 **Schedule Of Values.** Within _____ calendar days after execution of Appendix E to this Chapter, the Construction Manager shall prepare and present to the Owner and the designated Professional Appendix F to this Chapter, the Construction Manager’s Compensation Schedule which includes the schedule of values for payment of the Subcontracts Cost, General Conditions Cost and the Management Fee;

7.4 **Quality Control And Testing.** The Owner shall select the quality control and testing agencies.

7.5 Bond Requirements.

7.5.1 **Performance and Payment Bonds.** The Construction Manager shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law. Upon request, the Construction Manager shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with sec.

255.05, Florida Statutes, and shall contain the information and provisions set forth in the referenced section.

- 7.5.2 Within 10 calendar days after the execution of Appendix E by Owner and Construction Manager, Construction Manager shall provide Owner with Payment and Performance Bonds, in the form prescribed in **Exhibits A and B**, in the amount of 100% of the GMP, the costs of which are to be paid by Construction Manager. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:
- 7.5.2.1 The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
 - 7.5.2.2 The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
 - 7.5.2.3 The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
 - 7.5.2.4 The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time this Agreement is executed.
 - 7.5.2.5 The Bonds must be fully performable in Florida, with service and venue in Osceola County, Florida.
- 7.5.3 If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Manager shall, within 5 calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval. The cost of any such replacement bond shall be paid by Construction Manager
- 7.5.4 In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Construction Manager shall record within 5 calendar days after execution of Appendix E by Owner and Construction Manager in the Public Records of Osceola County, Florida, a copy of the Performance and Payment Bonds. Construction Manager shall deliver within 10 calendar days after execution of this Agreement by Owner and Construction Manager to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds along with recording data. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Manager hereunder. Construction Manager shall deliver the original, recorded Performance and Payment Bonds to

Owner within 2 business days after receipt of same from the Osceola County Clerk of the Circuit Court.

**ARTICLE 8
TAX EXEMPT
OWNER DIRECT MATERIAL/EQUIPMENT PURCHASE PROGRAM**

8.1 The Owner shall appoint the Construction Manager as the Owner's authorized representative with respect to any matter arising out of the purchase orders under this program. The Construction Manager will cooperate fully with the Owner with respect to the implementation of a tax exempt direct material/equipment purchase program involving the direct purchase of various construction materials, supplies and equipment that is currently part of this Contract. The Owner shall obtain, with the assistance of the Construction Manager, the proper authorization from the State of Florida in the form of a Technical Assistance Advisement (TAA).

The Owner Direct Purchase Program is attached hereto as **Exhibit "C,"** controls the Direct Purchase Program for the Project. The Direct Purchase Program will be operated in accordance with the following provisions:

8.1.(a) The Owner will issue its own purchase orders directly to the third party vendor or supplier of material and equipment purchased under the Direct Purchase Program. The purchase order will be accompanied by the Owner's Exemption Certificate which includes its name, address, and the exemption number with issuance and expiration date.

8.1. (b) All material and equipment purchased under the Direct Purchase Program is sold directly to the Owner and is directly invoiced by the vendor or supplier.

8.1. (c) The Owner takes title and possession of all materials and equipment purchased under the Direct Purchase Program from the vendor or seller before they are incorporated into the Project.

8.1. (d) The Owner assumes all risk of loss on all material and equipment purchased under the Direct Purchase Program. The Construction Manager cannot be held liable for damage or loss to the material or equipment.

8.1. (e) The Owner is responsible for and pays the premiums on all insurance and/or bonding on materials or equipment purchased under the Direct Purchase Program. The Construction Manager does not share any economic benefits of proceeds from bond or insurance covering risk of damage or loss of the material or equipment.

8.1. (f) The Owner makes direct payment to the third party vendor or seller for all purchases from its own funds or accounts for all purchases under the Direct Purchase Program.

- 8.2 The Owner agrees to process its purchase orders so that the progress of construction is not jeopardized. Should the Owner fail to process the purchase orders within a time frame so as not to delay the construction, the Construction Manager shall, at its sole discretion, void the Owner purchase order and purchase the item direct thereby waiving any rights the Owner may have for a direct purchase tax savings. Should the items included in the purchase order represent any materials, supplies or equipment that is part of a subcontractor's scope of Work, any terms and conditions that the subcontractor deems to be warranted to protect their interest, shall also be included and/or substituted. Vendors and suppliers must be approved by the Owner prior to the processing of purchase orders.
- 8.3 The items being purchased shall be purchased from the vendors and suppliers selected by the Construction Manager and/or the subcontractor for prices negotiated by the Construction Manager and/or subcontractor.
- 8.4 The Construction Manager is responsible for establishing an accounting system that will adequately track and monitor the direct purchases made by the Owner. The determination of the adequacy of the accounting system shall be mutually agreed upon between the Construction Manager and the Owner. The system developed by the Construction Manager shall track and monitor that materials purchased (and shall adequately identify the same), costs, tax savings, and such other charts of accounts or information as may be reasonable requested by the Owner. The Construction Manager shall submit a monthly accounting report of this information with the Construction Manager's application for payment.
- 8.5 The Construction Manager shall provide all rough drafts of purchase orders to the Owner for processing in such time and sequence that the Work will not be impeded or delayed in any manner. Notwithstanding anything in this Article 10.3 to the contrary, the Construction Manager remains fully responsible under it's Contract with the Owner, and the implementation of this direct purchase program shall not be used in any manner by the Construction Manager to justify any delay unless such delay is a direct result of the Owner's failure to comply with the terms of the Direct Owner Purchase Program through no fault of the Construction Manager. Should a delay be incurred that is not the result of the Owner's failure, as stated above, the Construction Manager shall be held accountable for such a delay. The Construction Manager, for \$10.00 and other valuable consideration, the adequacy of receipt of which is hereby acknowledged and deemed to be sufficient, does hereby release, waive and hold harmless the Owner from and against any claim for damages, acceleration damages, or any other matter, claim or damage that may arise from or be related to in any way the Owner's Direct Purchase Program to the extent stated herein.
- 8.6 The Construction Manager shall be responsible for all purchases in the same manner as if the Construction Manager had purchased the items, inclusive of managing the warranties for the Owner. The Construction Manager shall cooperate with the Owner and take all action necessary to assure that all warranties with respect to any materials or equipment which may be available from any vendor are passed-through to the Owner.

- 8.7 Modification of the Contract Sum will be made by one (1) change order (or additional change orders in the sole discretion of the Owner) prior to final payment unless the Contract period crosses the Owner's fiscal year, in which case, one (1) change order will occur for each fiscal year, one prior to the close of the first year, and the other during the second fiscal year.
- 8.8 The Construction Manager and its surety hereby agree that the performance bond penal amount shall be unaffected by any direct purchase deductive change order which is made pursuant to this program.
- 8.9 The Construction Manager agrees that its builder's risk insurance coverage amount shall be unaffected by any direct purchase deductive change order implemented pursuant to this program.
- 8.10 Payment shall be directly made by the Owner to the vendor for any Direct Purchases.
- 8.11 To the extent authorized under Florida law, Owner agrees to indemnify and hold harmless Contractor, its subcontractors and suppliers of and from any claims, liability, or responsibility to the State of Florida for any action the State may take against any of them for the payment of any sales or use taxes as a result of Owner's direct purchase of such materials, supplies or equipment.
- 8.12 The Owner shall have the sole option to require the vendor to include a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and Construction Manager. The cost of the supply bond shall be included in Construction Manager's GMP.
- 8.13 The Owner agrees to make payments by the 15th of the month providing the Construction Manager processes the invoices and delivers same to the Facilities Department by the 20th of the preceding month.
- 8.14 Owner shall not withhold retainage on any payments made to the vendor.

ARTICLE 9 MISCELLANEOUS

- 9.1 Conduct While on School Property. The Construction Manager acknowledges that its employees and agents must behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with School Board policies and subject to the administrator or designee. It will be considered a breach of this Agreement for any agent or employee of the Construction Manager to behave in a manner which is inconsistent with good conduct or decorum, or to behave in any manner which will disrupt the educational program or constitute any level of threat to safety, health, and well being of any student or employee of the School Board. The

Construction Manager agrees to immediately remove any agent or employee if directed to do so by the building administrator or designee.

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

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

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a federal department or agency.

(b) Have not, within a five-year period preceding the issuance of RFQ #SDOC-_____FPC been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).

(d) Have not within a five-year period preceding the issuance of RFQ #SDOC-_____FPC had one or more public transactions (federal, state or local) terminated for cause or default.

Construction Manager agrees to notify School Board within 30 calendar days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs 9.2 (a) – (d) above, with respect to Construction Manager or its principals.

- 9.3 **Background Check.** The Construction Manager agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct

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

- 9.4. **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
- 9.5 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
- 9.6 **Compliance with Federal Grant Requirements.** If made applicable by the use of federal grant funds in the Project or any other requirement as set out below, Construction Manager and its subcontractors shall comply with the following enactments, rules, regulations and orders:

Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).

Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

ARTICLE 10 CONSTRUCTION MANAGER'S SAFETY PROGRAM

- 10.1 The Construction Manager shall be responsible for initiating, maintaining and supervising a safety program in connection with its Work under the Agreement and Construction Documents.
- 10.2 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. Construction Manager may require Owner to furnish copies of reports of tests conducted by a qualified testing laboratory verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The contract time may be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith, pursuant to the procedure for making a claim set forth in Article 4.
- 10.3 The Construction Manager shall not be required pursuant to the changes clause herein to perform without consent any work relating to hazardous waste.

- 10.4 The Construction Manager shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to employees and other persons on the Work Site, the Work and all materials and equipment to be incorporated into the Work, other property at the Work Site or adjacent thereto, and any other property of the Owner, whether or not forming part of the Work located at the Site or adjacent thereto and areas to which the Construction Manager has access.
- 10.5 The Construction Manager shall erect and maintain all reasonable safeguards for safety and protection, including signs and other warnings as appropriate, in its performance of the Agreement. In the event the Work requires the use or storage of explosives or other hazardous materials, equipment, or means or methods, the Construction Manager shall exercise the utmost care and carry on such activities under the continuous supervision of properly qualified individuals.
- 10.6 The Construction Manager shall promptly remedy any and all damage and loss to property referred to above. In the event the damage or loss is due in whole to the Construction Manager's negligence, the Construction Manager shall bear the entire cost of the loss or damage, if the damage or loss is due in part to the Construction Managers negligence, the Construction Manager shall bear the cost that is determined, by the Owner, to be their portion of the loss or damage.
- 10.7 The Construction Manager shall designate its superintendent on the Project as its safety program representative.
- 10.8 The Construction Manager shall provide and maintain in good, operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.
- 10.9 The Construction Manager shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Construction Manager shall provide and operate all pumps, piping and other equipment necessary to this end.
- 10.10 During the progress of the Work and at all times prior to the date of substantial completion or occupancy of the Work by the Owner, whichever is earlier, the Construction Manager shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents.

10.11 In the event of an emergency affecting the safety of persons or property, the Construction Manager shall utilize its judgment and discretion to prevent any threatened damage, injury or loss. In the event of such an emergency, the Construction Manager shall immediately notify the Owner and Architect, and coordinate and cooperate in the resolution of all such emergencies.

INTENDING TO BE BOUND, the parties have executed this Agreement as of the date first written above.

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

CONSTRUCTION MANAGER

By: _____
John McKay, Chairman

By: _____

Name: _____
Print Name

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Michael A. Grego, Ed.D
Superintendent

By: _____

Name: _____

Title: _____

EXHIBIT A
FORM OF PAYMENT BOND

BOND NO. _____

PUBLIC PAYMENT BOND

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

WHEREAS, Principal has entered into an Agreement for Construction dated as of the ____
day of _____, 200__, with Obligee for the construction of:

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

THE CONDITION OF THIS BOND is that if Principal:

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

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

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

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

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

Witnesses as to Principal

By: _____

Name: _____

Its: _____

STATE OF _____
COUNTY OF _____

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

My Commission Expires: _____

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

Witnesses as to Surety

Witnesses

STATE OF _____
COUNTY OF _____

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

My Commission Expires:

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

EXHIBIT B
FORM OF PERFORMANCE BOND

BOND
NO. _____

PERFORMANCE BOND

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

WHEREAS, Principal has entered into an Agreement for Construction dated as of the
_____ day of _____, 20____, with Oblige
e for the construction of

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

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the
Contract; and
2. Pays Oblige
e any and all losses, damages, expenses, costs and attorneys'
fees, including appellate proceedings, that Oblige
e sustains because of any
default by Principal under the Contract, including, but not limited to, all
delay damages, whether liquidated or actual, incurred by Oblige
e; and
3. Performs the guarantee of all Work and materials furnished under the
Contract for the time specified in the Contract,

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

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

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

extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

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

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

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

By: _____

Witnesses as to Principal

Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

Notary Public (Signature)

(AFFIX NOTARY SEAL)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

SURETY:

Witnesses as to Surety

Witnesses

(Printed Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

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

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

My Commission Expires:

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

The School District of Osceola County, Florida
Exhibit C
Owner Direct Material/Equipment Purchase Program

1. The Subcontractor has included Florida State Sales and other applicable taxes in his bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.

Any equipment, materials or supplies directly purchased by the Owner that are included in the Subcontractor's contract shall be referred to as Owner-Purchased Materials and the responsibilities of both Owner and Subcontractor relating to such Owner-Purchased Materials shall be governed by the terms and conditions of the procedures. The Owner will own and hold full title to all Owner-Purchased Materials.

2. Material suppliers shall be selected by the Subcontractor awarded the subcontract.

The Subcontractor has included the price for all construction materials in his bid. Owner Purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

3. Subcontractor shall provide Construction Manager a list of all intended suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
4. Upon request from Construction Manager, and in a timely manner, Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials which Owner had, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
 - A. The name, address, telephone number and contact person for the material supplier.
 - B. Manufacturer or brand, model or specification number of the item.
 - C. Quantity needed as estimated by the Subcontractor.

- D. The price quoted by the supplier for the materials identified therein.
- E. Any sales tax associated, with such quote.
- F. Delivery dates as established by Subcontractor.
 Subcontractor shall include reference to any terms and conditions which have been negotiated with the vendors; i.e., payment terms, warranties, retainage, etc.

Such Purchase Order Requisition Forms are to be submitted to Construction Manager's designated representative no less than fifteen (15) days prior to the need for ordering such Owner-Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that, such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

5. After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Orders for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. Owners Purchasing Director or his designated representative shall be the approving authority for the Owner on Purchase Orders in conjunction with Owner-Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner-Purchased Materials on the delivery dates provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite.
6. In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through the Construction Manager, one or more deductive Change Orders, referencing the full value of all Owner-Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in Subcontractor's bid to Construction Manager.
7. All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.
8. Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by Owner in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties

and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss, or damage to equipment and materials following acceptance of items by the Owner due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor. Owner purchased materials shall be stored at the construction site.

9. As Owner-Purchased Materials are delivered to the jobsite, the Subcontractor and the Construction Manager, as County's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice of material delivered. The Subcontractor shall assure that each delivery of Owner-Purchased materials is accompanied by adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Finance Department for processing and payment in the manner as all other Osceola School District invoices are processed. The Owner shall have the right to assign personnel to verify and audit the accuracy of all Director Purchase Documents.

10. The Subcontractor shall insure that Owner-Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective, and whether such materials are identical to the material ordered and match the description on the bill of lading. If the Subcontractor discovers defective or non-conformities in the Owner-Purchased Material upon such visual inspection, the Subcontractor shall not utilize such non-conforming or defective materials in the work and instead shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the Owner, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporated Owner-Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, Subcontractor shall be responsible for all damages to County resulting from Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or no-conforming, the Subcontractor shall promptly take action to remedy the defect or non-conformance so as not to delay the work.

11. The Subcontractor shall maintain records of all Owner-Purchased Materials it incorporates into the work from the stock of Owner-Purchased Materials in its possession. The Subcontractor shall account monthly to the Owner, through the Construction Manager, for any Owner-Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials which have been incorporated into the work.
12. The Subcontractor, as the Owner's agent, shall be responsible for obtaining and managing all warranties and guarantees for all material and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
13. Notwithstanding the transfer of Owner-Purchased Materials by the Owner to the Subcontractor's possession, the Owner shall retain title to any and all Owner-Purchased Materials.
14. The transfer of possession of Owner-Purchased Materials from the Owner to the Subcontractor shall constitute a bailment for the mutual benefit of the Owner and the Subcontractor. The Owner shall be considered the bailor and the Subcontractor the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for the purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. All Owner-Purchased Materials shall be stored at the construction site.
15. The insurance purchased and maintained by the Construction Manager shall be sufficient to protect against any loss of or damage to Owner-Purchased Equipment, Materials or Supplies. Such insurance shall cover the full value of any Owner-Purchased Materials not yet incorporated into the Project from the time the Owner first takes title. The Owner shall be named as an Additional Insured Party on such policies of insurance. The Owner will bear the costs of all Payment and Performance Bonds and Owner's Insurance including Builder's Risk Insurance as a reimbursable expense to the Construction Manager. The Owner as an additional named insured on the Contractor's Builder's Risk Insurance and, in the event of damage or destruction to the Owner-Purchased Materials, the Owner will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction..
16. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner-Purchased Materials when such delay is a result of the failure of the Subcontractor's performance.

17. On a monthly basis, Subcontractor shall be required to review invoices submitted by all suppliers of Owner-Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon Subcontractor's records of material delivered to the site and any defects in such materials.
18. In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the Owner, through the Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered, and remitted directly to the supplier. The Subcontractor agrees to assist the Owner to immediately obtain a partial or final release of lien waiver as appropriate.
19. Salvage materials shall be the property of the Owner and stored or removed from the site by the Subcontractor at the Owner's direction.
20. The Owner's direct purchase of equipment, materials or supplies, as provided herein does not relieve the Construction Manager or any Subcontractor of any obligation required pursuant to the contract or subcontract pertaining to the performance of work, except as to the Owner's obligation to make direct payments to such vendors and may reduce the bonds to the extent permitted by Section 255.05, F.S.

APPENDIX A
CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE
FOR PRE-CONSTRUCTION SERVICES

Time schedule for payment of the Pre-Construction Services Fee on a lump sum fixed fee basis. The Pre-Construction Services Fee shall be paid monthly and proportionate to the actual work completed. Payments shall begin when Pre-Construction Services have actually commenced and been rendered and properly invoiced.

APPENDIX B
CONSTRUCTION MANAGER'S PERSONNEL CHART

[Insert information as required]

For each of the Construction Manager's primary employees working on the Project, list:

- A. Name
- B. Job category
- C. Responsibility

APPENDIX C
CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIERS
CHART

[Insert information as required]

APPENDIX D
OWNER'S CONSULTANTS CHART

[Insert information as required]

Lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project.

The School District of Osceola County, Florida
Appendix E
GMP Amendment No.1

Pursuant to Paragraph 4.2 of the Agreement between The School Board of Osceola County, Florida (hereinafter "Owner") and _____ (hereinafter referred to as "Construction Manager") for the Project known as _____, the Owner and Construction Manager establish the Guaranteed Maximum Price and Contract Time for the Work as set forth herein below.

I. Guaranteed Maximum Price (GMP)

The Construction Manager's Guaranteed Maximum Price for the Work, including the Cost of the Work (or Subcontracts Cost) and the Construction Manager's Fee (or Management Fee), which is inclusive of General Conditions Cost, is _____.

The Above GMP is for the full and final GMP.

II. Contract Time The date of Substantial Completion for the Work established by this Amendment No.1 shall be on or before _____. Accordingly, the contract period for the Work, or Contract Time, is established as _____ calendar days from the Construction Phase Commencement Date which is hereby established as _____, 20___. The date of Certificate of Final Inspection for the Work established by this Amendment No.1 shall be on or before _____, by which the entire Work shall be fully completed and ready for acceptance. Accordingly, the contract period for the Work is established as ___ calendar days from Substantial Completion to Certificate of Final Inspection.

III. Contract Supplemental General Conditions of the Contract

The GMP amount is inclusive of certain mutual covenants and considerations that were agreed to as a part of the FULL and FINAL GMP amount. The aforementioned covenants and considerations have been itemized as Contract Supplemental General Conditions, affixed to this Amendment No.1 document and incorporated into the Agreement as Exhibit E. These agreed-to Contract Supplemental General Conditions shall be construed as a part of the executed contract agreement between the Owner and the Construction Manager.

IV. Performance Incentives

The Owner and Construction Manager have mutually agreed to certain project objectives, the conditions of which if realized, provide mutual benefit to the Owner and the Project. These objectives are enumerated and included as a part of the Exhibit 12 to this GMP Amendment.

V. Enumeration of GMP Amendment Exhibits/Attachments

Work shall be in conformance with the Contract Documents and the Contract. Exhibits to this Amendment No.1 include the following attachments, which further delineate and itemize pertinent elements of the GMP and the associated project Scope of Work. Said Exhibits are as follows Exhibits 1 through 12 are required at the time of the GMP Amendment; Exhibits 13 through 17 are required within 45 calendar days after the Notice to Proceed Date.

- Exhibit 1 Final GMP Summary of Cost by Division/Trade Package
- Exhibit 2 GMP General Condition Cost Itemization
- Exhibit 3 GMP Cost of Work Exclusions, OH staff and any lump sum costs (include descriptions of Formulas used to allocate the cost to the project, as well as third party evidence for the rates or unit prices used in the allocation).
- Exhibit 4 GMP Construction Manager List of on site staff charged to Cost of Work
- Exhibit 5 GMP Assumptions and Clarifications
- Exhibit 6 GMP Allowances (including unit prices and quantity amounts)
- Exhibit 7 GMP Accepted Cost Savings
- Exhibit 8 Schedule of List of Drawings, as Signed/Dated by A/E of Record and Construction Manager.
- Exhibit 9 Schedule/List of RFI/ASI's (asked and answered during Bid Portion of the Work that is included in the Cost of the Work)
- Exhibit 10 Construction Manager Insurance Provided Affidavit, Bond & Insurance Rate and Cost (include descriptions of formulas used to allocate the cost to the project, as well as third party evidence for the rates used or unit prices in the allocation).
- Exhibit 11 Construction Manager Surety Form of Bond (indicating all language of Bond document)
- Exhibit 12 Project Incentives
- Exhibit 13 Construction Manager List of Sub-contractors and suppliers with License Nos., dated
- Exhibit 14 Construction Manager Affidavit, Attesting to Subcontractor/Vendor Licensure Verification, as dated
- Exhibit 15 Project Master Delivery Schedule (w/ summary milestone delivery items)
- Exhibit 16 Project Schedule (CPM Delivery schedule with itemized breakdown of Work scope by Building, and resource loaded)
- Exhibit 17 Master Schedule (Project Submittals with submittal due dates/responsible Party)

V. Signature

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

**OWNER:
School Board of Osceola County, Florida**

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

By: _____
Dr. Michael A. Grego, Superintendent

CONSTRUCTION MANAGER:

By: _____

Print Name: _____

Duly Authorized

Title: _____

Date: _____

ATTEST:

By: _____
Name/Title: _____

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 1 - Final GMP Summary of Cost by Division/Trade Package

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 2 - GMP General Condition Cost Itemization, the contract documents should include a certified statement that the labor costs represent those amounts that are actually paid to the persons that are to be working on the project. Provide the labor burden for the each of the submitted staffing

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

**Exhibit 3 - GMP Cost of Work Exclusions, OH staff and any lump sum costs
(include descriptions of Formulas used to allocate the cost to the project as well as
third party evidence for the rates or unit prices used in the allocation)**

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 4 - GMP CM List of on site staff charged to Cost of Work, provide the labor burden for the submitted staff.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 5 – GMP Assumptions and Clarifications

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP
)**

Exhibit 6 – GMP Allowances, including unit prices and quantity amounts.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 7 – GMP Accepted Cost Savings.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 8 – Schedule of List of Drawings, as Signed/Dated by A/E of Record and CM.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 9 – Schedule/List of RFI/ASI's asked and answered during Bid Portion of the Work that is included in the Cost of the Work.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

**Exhibit 10 – CM Insurance Provided Affidavit, Bond & Insurance Rate and Cost
(include descriptions of formulas used to allocate the cost to the project as well as
third party evidence for the rates used or unit prices in the allocation).**

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 11 – CM Surety Form of Bond, indicating all language of Bond document.

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 12 – Project Incentives

This Exhibit is due at the time of GMP

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 13 – CM List of Sub-contractors and suppliers with License Nos., dated.

This Exhibit is due within 45 calendar days after Notice to Proceed

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 14 – CM Affidavit, Attesting to Subcontractor/Vendor Licensure Verification, as dated.

This Exhibit is due within 45 calendar days after Notice to Proceed

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 15 – Project Master Delivery Schedule, w/summary milestone delivery items.

This Exhibit is due within 45 calendar days after Notice to Proceed

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 16 – Project Schedule, CPM Delivery schedule with itemized breakdown of Work scope by Building, and resource loaded.

This Exhibit is due within 45 calendar days after Notice to Proceed

**The School District of Osceola County, Florida
Appendix E (Full and Final GMP)**

Exhibit 17 – Master Schedule, Project Submittals with submittal due dates/responsible Party.

This Exhibit is due within 45 calendar days after Notice to Proceed

APPENDIX F
CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE

[Insert information as required]

- A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost
- B. Time Schedule for payment of the Management Fee
- C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis
- D. Rates for compensation for services rendered on a time-and-material basis
- E. Compensation for goods furnished on a time-and-material basis
- F. Allowances

**AGREEMENT FOR CONSTRUCTION
(At-Risk Construction Management
Guaranteed Maximum Price Form)**

**A. CHAPTER 2
BUILDER’S REQUIRED SERVICES**

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**AGREEMENT FOR CONSTRUCTION
(At-Risk Construction Management
Guaranteed Maximum Price Form)**

**B. CHAPTER 2
BUILDER'S REQUIRED SERVICES**

**ARTICLE 1
GENERAL PROJECT SERVICES**

- 1.1 **Essential Services.** The Construction Manager agrees to provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Agreement For Construction and the best interests of the Owner.
- 1.2 **Compliance With Contractual Requirements.** At all times the Construction Manager is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Agreement For Construction.
- 1.3 **Cooperative Effort.** The Construction Manager shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

**ARTICLE 2
PRE-CONSTRUCTION SERVICES**

- 2.1 **Preliminary Design Review.**
 - 2.1.1 The Construction Manager shall actively and jointly participate with the Owner and the Professional(s) in formation of the final Project design.
 - 2.1.2 The Professional is required, in accordance with schedule requirement, to provide preliminary design drawings. The Construction Manager shall promptly and in accordance with schedule requirements:

- (i) familiarize itself with the preliminary design drawings;
- (ii) analyze and evaluate the constructability of the preliminary design drawings; and
- (iii) analyze and evaluate the preliminary design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction.

- A. 2.1.3 The Construction Manager and the Professional(s) shall jointly schedule and attend regular meetings with the Owner to review and evaluate the preliminary design drawings.
- 2.1.4 The Construction Manager shall, in accordance with schedule requirements, notify the designated Professional in writing and assist the Professional(s) with the resolution, of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the preliminary design drawings.
- 2.1.5 Upon completion of the preliminary design drawings, the Professional is required, in accordance with schedule requirement, to prepare and submit a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems.
- 2.1.6 The Construction Manager shall, in accordance with schedule requirements, review the preliminary estimate of Total Project Construction Cost and promptly inform the Owner and Professional of recommended adjustments, if any.

2.2 **Construction Documents Review.**

- 2.2.1 The Professional is required, in accordance with schedule requirements, to provide Review Construction Documents and other information.
- 2.2.2 The Construction Manager shall, in accordance with schedule requirements, review applicable Construction Schedule(s), the estimate of Total Project Construction Cost, the cost of local utilities, fees for permits and licenses, any modifications necessitated by local conditions, other information necessary for a full understanding of the Project, and the review Construction Documents. The Construction Manager shall:
 - (i) examine the review Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness;
 - (ii) identify conflicts, omissions or overlaps in the proposed divisions of the

Work, evaluate the completeness of intended bid categories, and identify unusual design details affecting construction cost and schedules;

- (iii) apply established value engineering principles and practices to reduce the cost of the Project;
- (iv) identify factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;
- (v) evaluate and make suggestions to optimize Site utilization;
- (vi) recommend proposed modifications or alternatives to the review Construction Documents based on its evaluation and review;
- (vii) notify the Owner and the Professional(s) in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and
- (viii) notify the Owner and the Professional(s) in writing of all problems, conflicts, defects or deficiencies in the review Construction Documents of which it is aware or should be aware.

2.2.3 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the review Construction Documents.

2.2.4 Upon completion of the examination of the review Construction Documents, the Professional is required, in accordance with schedule requirements, to prepare and submit a final estimate of Total Project Construction Cost.

2.2.5 Upon completion of the examination of the review Construction Documents, the Construction Manager, in accordance with schedule requirements, shall prepare and submit a final estimate of Total Project Construction Cost.

2.2.6 If the final estimates of Total Project Construction Cost by the Construction Manager and the Professional differ materially, the Construction Manager and Professional shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both the Professional and the Construction Manager agree.

2.3 **Planning And Scheduling.**

2.3.1 **Construction Schedule.** The Construction Manager understands and

acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager shall timely prepare and submit the Construction Schedule for the Owner's review and approval. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

2.3.2 The Construction Manager shall establish and timely submit for Owner review:

- (i) Project cost control procedures;
- (ii) Project reporting procedures;
- (iii) Project Manual;
- (iv) Quality Management Program;
- (v) MBE/WBE participation plan; and
- (vi) Staffing Plan for the Construction period.

2.4 **Guaranteed Maximum Price Proposal.**

2.4.1 **Guaranteed Maximum Price Proposal.** The Construction Manager shall prepare and deliver to the Owner, with copies to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the three elements of the Construction Contract Price, as defined in Chapter 1, Paragraph 4.3, including:
 - a) a General Conditions Guaranteed Maximum Cost, including line item detail of the component parts as defined in Chapter 1, Subparagraph 4.3.1 (i) and Chapter 2, Subparagraph 2.4.2;
 - b) estimated Subcontracts Cost, as defined in Chapter 1, Subparagraph 4.3.1 (ii), detailed by each subcontract, trade or bid division, and including a reasonable, separately stated maximum contingency amount for each subcontract, trade or bid division; and
 - c) the actual or estimated amount of the Management Fee (which shall be inclusive of the General Conditions Guaranteed Maximum

Cost), as applicable, as defined in Chapter 1, Subparagraph 4.3.1 (iii) and Chapter 2, Subparagraph 2.4.3;

- (vi) a description of all other inclusions to or exclusions from the GMP;
- (vii) all assumptions and clarifications;
- (viii) the proposed Date of Substantial Completion upon which the GMP is based;
- (ix) an outline of preliminary Construction Schedule showing proposed start and finish dates of major components of construction; and
- (xi) the date by which the GMP proposal must be accepted by the Owner.

2.4.2 **General Conditions Cost.** Items within the General Conditions Cost for which the Construction Manager is entitled to no additional compensation include, without limitation:

- (i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;
- (ii) costs incurred to provide site safety;
- (iii) costs of removal of debris from the site;
- (iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (v) that portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work;
- (vi) that portion of insurance and bond premiums that can be directly attributed to this Agreement for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (vii) sales, use or similar taxes imposed by a governmental authority and paid

by the Construction Manager, and directly related to the Work;

- (viii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Agreement for Construction to pay;
- (ix) data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing;
- (x) expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner;
- (xi) the cost of obtaining and using all utility services required for the Work;
- (xii) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (xiii) all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services, provided that quantity and rates are subject to Owner's prior written approval;
- (xiv) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (xv) printing and reproduction of the Construction Documents;
- (xvi) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; and
- (xvii) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner.

2.4.3 Management Fee. Items within the Management Fee for which the Construction Manager is entitled to no additional compensation include, without limitation:

- (i) direct costs incurred with the exception of those specifically enumerated compensable as a General Conditions Cost or a Subcontracts Cost;
- (ii) wages, salaries, bonuses and incentive compensation, of the Construction Manager's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project

Site, including all company overhead and expenses

- (iii) the cost of Construction Manager's home or branch office employees or consultants not at the Project Site;
- (iv) cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the Construction Manager's employees referred to in subparagraphs (ii) and (iii) above;
- (v) non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;
- (vi) data-processing costs indirectly related to the Work; including hardware, software, and CAD costs;
- (vii) personnel expenses and temporary living allowances incurred due to relocation of personnel required for the Work;
- (viii) cost of all non-project specific insurance;
- (ix) all general operating expenses;
- (x) all capital expenses, including any interest;
- (xi) all sales, use or similar taxes related to the Project imposed by any governmental authority on the Construction Manager's services and non-reimbursable costs;
- (xii) any costs which would cause the Construction Price to exceed the GMP; and
- (xiii) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement For Construction and the best interests of the Owner.

B.

- 2.4.4 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include payment for Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be

entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by this Agreement For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's stated goals and program objectives, (iv) is consistent with general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work portrayed by the incomplete documents, or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

- 2.4.5 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly so notify the Construction Manager in writing. Within fourteen calendar days of such notification, the Owner, Professional(s) and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.
- 2.4.6 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.
- 2.4.7 If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to the Agreement For Construction.
- 2.4.8 If the Owner accepts a GMP proposal, the parties shall complete and execute Appendix E attached to Chapter 1, and the Owner shall issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

2.5 Price Guarantees.

- 2.5.1. Upon execution of Appendix E, the Construction Manager guarantees that the Construction Price shall not exceed the GMP. All costs or expenses that would cause the Construction Price to exceed the GMP shall be borne by the Construction Manager unless adjusted by change order.
- 2.5.2 Upon execution of Appendix E, the Construction Manager guarantees that the General Conditions Cost shall not exceed the General Conditions Guaranteed-Maximum Cost and that all costs or expenses that would cause the General Conditions Cost to exceed the General Conditions Guaranteed-Maximum Cost shall be borne by the Construction Manager unless adjusted by change order.
- 2.5.3 Upon execution of Appendix E, the Construction Manager guarantees that, (i) unless adjusted by change order, the final cost to the Owner of each individual subcontract, trade or bid division shall not exceed the sum total of the estimated

cost and contingency for that subcontract, trade or bid division as set forth in the GMP; (ii) no unused contingency amount from any subcontract, trade or bid division shall be transferred, carried over or applied to any other subcontract, trade or bid division, but rather such unused contingency shall inure to the Owner's benefit; and (iii) the cost of any subcontract, trade or bid division exceeding the sum total of the estimated cost and contingency for that subcontract, trade or bid division shall be borne by the Construction Manager unless adjusted by change order

- 2.5.4 Upon execution of Appendix E, the Construction Manager guarantees that to the extent the GMP proposal includes contingencies, no unused contingency shall be transferred, carried over or applied to any other GMP line item, but rather such unused contingency shall inure to the Owner's benefit.
- 2.6 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Service are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 3 CONSTRUCTION SERVICES

3.1 Bidding And Negotiation.

- 3.1.1 With the Professional's assistance, the Construction Manager shall prepare and assemble document packets for use in bidding or negotiating the Subcontracts Cost.
- 3.1.2 The Construction Manager shall develop subcontractor and supplier interest for each division of the Work and shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner and Professional.
- 3.1.3 The Construction Manager shall:
- (i) submit to the Professional the proposed list of subcontractors and review and evaluate information received from the Professional regarding proposed subcontractors; and
 - (ii) evaluate the technical competence of all pre-qualified subcontractors.
- 3.1.4 The Construction Manager shall negotiate or competitively bid each trade category only by invitation to pre-qualified subcontractors. In the event a subcontractor does not meet a pre-qualification requirement, the Construction Manager in its best judgment may, with the Owner's prior approval, still allow the subcontractor to bid.

- 3.1.5 The Construction Manager shall review the subcontract breakdowns utilized in the GMP and use its best efforts to obtain bids which are less than the final GMP estimates.
- 3.1.6 The Construction Manager shall conduct bid openings in the presence of the Owner's Representative. The Construction Manager shall communicate bid results to the Owner and Professional, and to no other persons or entities.
- 3.1.7 The Construction Manager shall, for each subcontract, trade or bid division:
- (i) determine the final bid amounts,
 - (ii) prepare and furnish to the Owner a bid tabulation which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount;
 - (iii) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
 - (iv) award and enter into a subcontract between itself and each subcontractor which it has recommended pursuant to Paragraph 3.1.7 (iii) unless otherwise notified by the Owner.

3.2 **Construction Supervision.**

- 3.2.1 Commencing with the award of the first subcontract and terminating on the Date Of Final Completion, the Construction Manager shall provide the services described in Subparagraphs 3.2.1 through 3.2.7.
- 3.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional(s), and provide administration of the Construction Documents.
- 3.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:
- (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Owner's Consultant(s);
 - (ii) coordinate trade contractors and suppliers, and supervise Site construction management services;
 - (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Agreement For Construction;

- (iv) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement For Construction, periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and
- (v) prepare and maintain Project records, process documents, and staff the Site field office.

3.2.4 The Construction Manager shall promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware. The Construction Manager shall immediately notify the Professional(s) and the Owner in writing when it has rejected any Work.

3.2.5 The Construction Manager shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the Construction Manager shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.

3.2.6 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.3 **Construction Manager's On-Site Facilities.**

3.3.1 Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the Construction Manager shall provide a Site field office and toilet facilities at the Project Site.

- .1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.

- .2 The Construction Manager shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
 - .3 The Construction Manager shall provide temporary toilets at the Site for all workers for the duration of the construction period.
- 3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Service are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4 EXTRA SERVICES

- 4.1 **Initiation Of Extra Services.** The Construction Manager shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an “Additional Required Service or Modified Required Service”.
- 4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:
- (i) services performed after the Date Of Final Completion, except when required as Basic Services.
 - (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Construction Manager, or its agents, employees, or consultants.
 - (iii) other services not included in Required Services mutually agreed to by the Owner and the Construction Manager in writing.
- 4.3 **Payment For Extra Services.** Payment of the Construction Manager for Extra Services shall be in accordance with applicable provisions of Chapter 1.

**APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES**

GENERAL PROJECT SERVICES [¶ 1.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

PRE-CONSTRUCTION SERVICES [¶ 2.6]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

CONSTRUCTION SERVICES [¶ 3.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

AGREEMENT FOR CONSTRUCTION

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GENERAL TERMS AND CONDITIONS**

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AGREEMENT FOR CONSTRUCTION

CHAPTER 3 GENERAL TERMS AND CONDITIONS

ARTICLE 1 CONTRACT DOCUMENTS

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

1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;

- 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
- 1.6.3 As between plans and specifications, the requirements of the specifications shall govern;
- 1.6.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.
- 1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Builder or its subcontractors and suppliers do not constitute a part of this Agreement for Construction.
- 1.8 **Contract Changes.** The Builder understands and agrees that this Agreement for Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Agreement for Construction can be accomplished only by written documents signed by the parties.

ARTICLE 2

BUILDER'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency Of Construction Documents And Drawings.** The Builder acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Architect any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the Builder performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Architect and prior to receiving written authorization from the appropriate Architect to proceed, the Builder shall be responsible for the consequences of such performance.
- 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Builder and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or

compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.

2.2 **Sufficiency Of Site.** Prior to signing this Agreement for Construction, the Builder has

(i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and

(ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

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

(iii) reviewed all available as-built and record drawings, plans and specifications; and

(iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Agreement for Construction.

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

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

3.1 **Performance Of Work.** The Builder shall perform and complete its obligations under this Agreement for Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Agreement for Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

- 3.1.1 The Builder shall not be required to provide professional services which constitute the practice of architecture or engineering.
- 3.1.2. All services rendered by the Builder for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.3 The Builder shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.4 The Builder understands and acknowledges that the Work referred to in this Agreement for Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

3.1.5 The Builder shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Builder damage, compromise or destroy any part of the Project or the Site, the Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 **Compliance With Governmental Requirements.** The Builder shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the Builder at all times. The Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

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

jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

3.9 **Hazardous Substances.** The Builder shall immediately notify the Owner and the Architect, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Builder encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Builder shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

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

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

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

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

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

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

3.11.2 The Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize

and train them with respect to maintenance and use of the Project. The appropriate Architect will attend and assist with such familiarization and training.

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

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

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

4.1.2 The Builder shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Builder shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.1.3 The Builder shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.

4.1.4 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

4.1.5 The Builder shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

4.2 Subcontractor / Supplier Contracts. The Builder shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Agreement for Construction. It is the intent of the Owner and the Builder that the obligations of the Builder's subcontractors and suppliers inure to the benefit of the Owner and the Builder, and that the Owner be a third-party beneficiary of the Builder's agreements with its subcontractors and suppliers.

4.2.1 The Builder shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Agreement for Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

4.2.2 The Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Agreement for Construction that are included by reference in its written contract with the Builder, and that it will abide by those terms, conditions and requirements.

4.2.3 The Builder's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Agreement for Construction, and upon request of the Owner, the Builder's subcontractors and suppliers will perform services for the Owner.

- 4.3 **Owner/Architect Approval.** Builder shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment) whether initially or as a substitute against whom the Owner or Architect may have reasonable objection. A subcontractor or other person or organization identified in writing to the Owner and Architect by the Builder prior to the Notice of Award and not objected to in writing by the Owner or Architect prior to the Notice of Award will be deemed acceptable to the Owner and the Architect in most circumstances. Acceptance of any subcontractor, other person or organization by the Owner or the Architect shall not constitute a waiver of any right of the Owner or the Architect to reject defective Work or Work not in conformance with the Contract Documents. If the Owner or the Architect after due investigation has reasonable objections to any subcontractor, other person or organization proposed by Builder after the Notice of Award, the Builder shall submit an acceptable substitute. Builder shall not be required to employ any subcontractor, other person or organization against whom it has reasonable objection. The Builder shall not without the consent of the Owner and Architect, make any substitution of any subcontractor, other person or organization who has been accepted by the Owner and the Architect unless the Owner determines that there is good cause for doing so.
- 4.4 **Resolution Of Trade Disputes.** The Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.
- 4.5 **Licensing.** Builder's subcontractors and suppliers, and all persons performing work on the Project, shall be properly licensed by all applicable regulatory, governmental or administrative authorities having jurisdiction. Builder shall request, collect and retain documentary evidence from such subcontractors, suppliers and other persons before the commencement of the work and provide such evidence to Owner upon request.

*ARTICLE 5***GOODS, PRODUCTS AND MATERIALS**

- 5.1 **Quality Of Materials.** The Builder shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Agreement for Construction;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
 - (v) are merchantable;
 - (vi) are free from defects; and
 - (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Builder shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Builder shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 5.3 **Unsuitable Materials.** The Builder shall inform the Owner of goods, products, materials, equipment or systems which the Builder knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Builder, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Builder furnish any approved goods, products, materials, equipment or

systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Builder shall provide such at no increased cost to the Owner.

- 5.4 **Security For The Project.** The Builder shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 6 DOCUMENTS AND INFORMATION

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

ARTICLE 7 SUBMITTALS

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

7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Builder from complying with this Agreement for Construction, including all plans and specifications, except as changed by Change Order.

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

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Builder shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 8.1.1 The Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

8.1.2 The Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Builder's correction or removal of rejected Work.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Builder shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

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

ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.

9.1.1 With respect to such requests for changes by the Builder, the Builder shall prepare and submit change order requests to the designated Professional.

9.1.2 With respect to requests for changes by parties other than the Builder, the Builder shall promptly review and respond to change order requests submitted by a Professional.

9.1.3 When requested to do so, the Builder shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.

9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.

9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the

general scope of this Agreement for Construction, and the Builder, upon written direction from the Owner, shall proceed with such change.

9.3 Professional-Directed Changes. A Professional, without the Owner's prior approval, may authorize or direct the Builder to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Builder shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Builder.

9.4 Administration Of Changes. A Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.

9.5 Compensation For Changes. With respect to all change order requests involving credit to the Owner or additional compensation to the Builder, the Builder shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Professional.

9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Builder shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

9.5.2 The Builder and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Agreement for Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

9.5.3 It is the responsibility of the Builder to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.6 Performance Of Changes. Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 Disputes Regarding Changes.

9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.

9.8 Necessity For Signed Writing. No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

**ARTICLE 10
FINANCIAL CLAIMS AND LIENS**

10.1 Notification Regarding Liens. The Builder shall immediately notify the Owner and Architect, both orally and in writing, of the nature and details of any claimed mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by anyone against the Owner, the Architect, the Builder or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

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

11.1 Owner's Designated Professional Representative. Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the

effective date of this Agreement for Construction until one year from the date of achievement of Substantial Completion.

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

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

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

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

11.4 **Professional Evaluations.**

11.4.1 The Architect will review and evaluate the results of all inspections, tests and written reports required by this Agreement for Construction and by any governmental entity having or asserting jurisdiction over the Project. The Architect will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Architect. The Architect will promptly reject Work which does not conform to and comply with testing requirements.

11.4.2 The Architect may require inspection or testing of any Work in addition to that required by this Agreement for Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Architect will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Architect.

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

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

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion

inspection, and the required Substantial Completion documentation and items have been produced.

12.1.1 When the Builder believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Builder will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:

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

12.1.3 Upon receipt of notification from the Builder the appropriate Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is substantially complete.

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

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

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

12.1.6 On or prior to the required date of Substantial Completion, the Builder shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The

Professional will obtain and review Substantial Completion documentation and items, and will inform the Builder of any deficiencies.

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

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

12.2.1 When the Builder believes the Work is finally complete, the Builder shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the Builder, the Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is finally complete.

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

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

- (v) determine, in consultation with the Owner, whether the Work is finally complete.

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

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

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of the Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the Builder's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

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

ARTICLE 13 BUILDER'S WARRANTIES AND GUARANTEES

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

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

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

13.2 **Express Warranties And Guarantees – Builder.** In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:

(i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

(ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality

equal to or higher than that required by the Construction Documents; and (c) merchantable; and

(iii) that all management, supervision, labor and services required for the Work shall comply with this Agreement for Construction and shall be and are performed in a workmanlike manner.

- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Builder in a form identical to the warranties, guarantees and other undertakings set forth in this Agreement for Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Builder.
- 13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Builder's obligations under this Agreement for Construction. Paragraph 13.1 relates only to the Builder's specific obligations with respect to the Work, and has no relationship to the time within which the Builder's contractual obligations under this Agreement for Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Builder's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

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

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

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

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

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

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

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

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

- (i) the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Agreement for Construction; and
- (ii) the Owner's financial capacity to pay for the Project, subject to such reasonable confidentiality requirements that the Owner may impose.

ARTICLE 15 BUILDER'S COMPENSATION

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Builder's Compensation Schedule is an estimate only, and the compensation to the Builder shall be determined by the actual number of units incorporated in, or required by, the Work.
- 15.2 **Schedule Of Values.** The Builder shall prepare and present to the Owner and the designated Professional the Builder's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Builder's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Builder's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.
- 15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Builder shall invoice the Owner and the Owner shall pay the Builder the Construction Price.

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

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

and shall also have attached such Release and Affidavit and other documentation verifying the Builder's payment to subcontractors and suppliers as the Owner or a Professional may request. The Release and Affidavit shall be substantially in the form of the Release and Affidavit incorporated in bid solicitation documents of RFQ #SDOC _____-FPC and attached hereto as Exhibit D.

15.4 **Payment Procedures.**

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

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

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

15.4.3 Payments shall be deemed timely if postmarked at least two business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.4.4 Owner agrees to make payments by the 20th of the month providing the Builder processes the invoices and delivers same to the Owner's Facilities Department by the 20th of the preceding month.

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

- (i) the Builder's failure to perform the Work in compliance with the requirements of this Agreement for Construction or any other agreement between the parties;

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

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

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

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

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

(ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

(iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Builder, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder, or its subcontractors or suppliers.

15.9 **Builder's Signature.** The signature of the Builder on any invoice constitutes the Builder's certification to the Owner that (i) the Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by this Agreement for Construction; (ii) the Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.10 **Compensation Of Builder's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Builder shall pay each of its subcontractors and suppliers out of the amount received by the Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Builder on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Builder and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Builder fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.11 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Builder must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Builder within fourteen calendar days of a Professional's execution of a final approval for payment.

ARTICLE 16 SCHEDULE REQUIREMENTS

16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Builder shall prepare the Construction Schedule as a critical path schedule with separate

divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.

16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Builder's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

16.1.4 The Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Builder shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.

16.1.5 The Builder shall periodically and in all instances when the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 Delay In Performance. If at any time the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Builder shall (i) immediately notify

the designated Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

- 16.3 **Modifications To Time For Performance.** The Builder shall determine and promptly notify the Owner and the Architect in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Architect.
- 16.4 **Early Completion.** The Builder may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Builder's sole convenience and shall not create any additional Builder rights or Owner obligations under this Agreement for Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Builder any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Builder any compensation should the Owner cause the Builder not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The Builder may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the Builder's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Agreement for Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The Builder shall provide documents to the Owner and Architect for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Architect reasonable time for review.

ARTICLE 17 LIQUIDATED DAMAGES

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Agreement for Construction and that the Owner will incur damages if the Work is not completed on time. The Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of

Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

- 17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Builder in the completion of the Work. If the Builder inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Agreement for Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Builder is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing builder. If the Builder fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Agreement for Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, fifteen (15%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion.
- 17.3 **Compensable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Architect; (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the Builder for the delay, the Builder's compensation shall be equitably adjusted to cover the Builder's actual and direct increased costs attributable to such delay.
- 17.4 **Excusable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Architect; (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the Builder; (vi) unavoidable casualties; (vii) causes beyond the Builder's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Builder or by any cause which the Builder could reasonably control or circumvent; (b) the Builder would have otherwise been able to timely perform all of its obligations under this Agreement for Construction but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Builder gives notice of its delay claim to the Owner.
- 17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Builder the daily amount

specified for liquidated damages in this Article for each calendar day of the unexcused delay.

17.5.1 If and when the Builder overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Builder those funds withheld, but no longer applicable, as liquidated damages.

17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Builder or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

18.1 Notification Regarding Unusual Conditions. If (i) the Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Builder, the Builder shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the appropriate Architect and the Owner before conditions are disturbed and give the Architect or the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Builder's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.

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

ARTICLE 19 BUILDER'S RECORDS

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

ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Builder; and (v) shall not be used by the Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Builder a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the Builder for the Project are the sole property of the Owner free of any retention rights of the Builder. The Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 20.3 **Disclosure Of Information.** The Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Agreement for Construction.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Builder shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21 GENERAL INSURANCE REQUIREMENTS

- 21.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy:
- (i) shall be issued by an insurance carrier acceptable to the Owner;
 - (ii) shall be kept in force throughout performance of the Builder's services and for one year after the end of such performance;

- (iii) shall be an occurrence policy; and
 - (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight calendar days' prior written notice to the Owner.
- 21.2 **Certificates Of Insurance.** Prior to performance of services on the Project, the Builder shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Builder shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Builder's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Builder or its subcontractors and suppliers. Upon the request of the Owner, the Builder shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.
- 21.3 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Builder of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Agreement for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Builder fails to comply with the contractual provisions of this Agreement for Construction. Indemnity obligations specified elsewhere in this Agreement for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 21.4 **Waiver Of Subrogation.** The Builder hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Builder, and to anyone claiming by, through or under the Builder, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

ARTICLE 22

GENERAL BOND REQUIREMENTS

- 22.1 **General Bond Requirements.** If the Builder is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:
- (i) be in a form approved by the Owner;
 - (ii) incorporate by reference the terms of this Agreement for Construction;

(iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);

(iv) be executed by a company licensed and authorized to do business in the state in which the Project is located; and

(v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.

22.2 **Delivery Of Bonds.** After recordation in the Public Records of Osceola County, the Builder shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

ARTICLE 23 OWNER'S RIGHT TO STOP WORK

23.1 **Cease And Desist Order.** If the Builder fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Agreement for Construction, the Owner may, by written notice, order the Builder to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

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

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

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

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

**ARTICLE 24
TERMINATION OR SUSPENSION OF
AGREEMENT FOR CONSTRUCTION**

24.1 Termination For Cause By Owner.

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

- (i) refusing, failing or being unable to properly manage or perform on any Project;

- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;

- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;

- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Agreement for Construction as determined by the Owner, or as otherwise defined elsewhere herein, or

- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Builder.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Builder setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Builder fails to initiate the cure or if the Builder fails to expeditiously continue such cure until complete, the Owner may give written

notice to the Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

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

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

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

24.2 **Termination For Cause By Builder.**

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

- (i) refusing, failing or being unable to make prompt payment to the Builder without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Agreement for Construction or any other agreement between the Owner and the Builder.

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

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

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

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Builder's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears

that the Builder would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

(ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

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

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

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

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

24.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Builder to exercise that right for the benefit of the Owner, the Builder or any other persons or entities.

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

ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION

25.1 **Applicable State Law.** This Agreement for Construction shall be deemed to be entered into in and shall be interpreted under the laws of the State of Florida.

25.2 **Court Actions.** Except as expressly prohibited by law:

(i) all legal actions hereunder shall be conducted only in the state court having subject matter jurisdiction over the matter in controversy in Osceola County, Florida; except that any final judgment may be enforced in other jurisdictions in any manner provided by law.

(ii) Builder (which term for the purposes of this subparagraph shall include Builder's surety) consents and submits to the exclusive jurisdiction of the state courts in Osceola County, Florida and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court; and Owner and Builder each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the federal court system of the United States or in any United States District Court.

(iii) the choice of jurisdiction and venue described in the preceding paragraphs shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;

(iv) the parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and

(v) **THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL, AND AGREE THAT ALL LEGAL ACTIONS SHALL BE TRIED, BOTH AS TO FACTUAL AND LEGAL ISSUES, ONLY TO THE COURT.**

25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Agreement for Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Agreement for Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

25.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

25.4.5 The Owner, the Architect, the Builder, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Agreement for Construction or an agreement that incorporates this Agreement for Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

- 25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Agreement for Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Agreement for Construction, no party to this Agreement for Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 25.7 **Performance During Dispute Resolution.** The Owner and the Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the Builder shall each continue to perform their respective obligations without interruption or delay, and the Builder shall not stop or delay the performance of the Work.

ARTICLE 26 DAMAGES AND REMEDIES

- 26.1 **Builder's Repair.** The Builder shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Agreement for Construction, or any other applicable warranty or guarantee.
- 26.2 **Builder's Reimbursement.** The Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Builder's failure to substantially perform in accordance with the terms of this Agreement for Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Builder or of which the Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Agreement for Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Builder.
- 26.3 **General Indemnity.** To the fullest extent permitted by law the Builder shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Builder's services, including without limitation any breach of contract or negligent act or omission (i) of the Builder; or (ii) of the Builder's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Builder or its subcontractors or suppliers.

26.3.1 To the fullest extent permitted by law, the Builder, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.

- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Builder shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Architect in writing. If the Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Builder shall be responsible for such loss unless such information is promptly given to the Owner.
- 26.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Agreement for Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement for Construction or by law.
- 26.6 **Waiver Of Damages.** The Builder shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 26.7 **Interest.** The Owner is entitled to interest at the legal rate for judgments in the State of Florida on all amounts due from the Builder that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise.

ARTICLE 27

MISCELLANEOUS PROVISIONS

- 27.1 **Integration.** This Agreement for Construction represents the entire and integrated agreement between the Owner and the Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement for Construction may be amended only by written instruments signed by both the Owner and the Builder, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.

- 27.2 **Severability.** If any provision of this Agreement for Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 27.3 **Waiver.** No provision of this Agreement for Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement for Construction.
- 27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Builder with any provision of this Agreement for Construction shall operate to release, discharge, modify, change or affect any of the Builder's obligations.
- 27.5 **Third-Party Beneficiaries.** This Agreement for Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Agreement for Construction, nothing contained in this Agreement for Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Builder.
- 27.6 **Survival.** All provisions of this Agreement for Construction which contain continuing obligations shall survive its expiration or termination.
- 27.7 **Assignment.** Except as prohibited by applicable law, Builder shall not assign any or all of its benefits or executory obligations under this Agreement for Construction without the prior, written approval of the Owner. The Builder agrees that its rights to payment hereunder and the rights of any assignee shall be subject to the rights of the Owner arising prior to such payment. Owner has the right to assign its rights hereunder without prior notice to Builder and, in the event of such assignment, Builder shall continue to perform its obligations hereunder for the account of the assignee; provided, however, that such obligations shall be conditioned upon such assignee covenanting to make all payment required by the Contract Documents and not paid prior to the date of such substitution. The Owner and the Builder bind their successors and assigns to the other party to this Agreement for Construction.

ARTICLE 28 DEFINITIONS

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

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

Construction Price: The dollar amount for which a Builder agrees to perform the Work set forth in a Agreement for Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

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

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

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

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

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

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

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in an Agreement for Construction.

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

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

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose, and only minor items which can be corrected or completed without any material interference with the Owner's use of the Project remain to be corrected or completed.

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

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

EXHIBIT D

RELEASE AND AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF _____)

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

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

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

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

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

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

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

General Contractor:

Witnesses:

By:_____

Its: _____

Date: _____

[Corporate Seal]

STATE OF _____

COUNTY OF _____

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

My Commission Expires:

Notary Public (Signature)

(AFFIX NOTARY SEAL)

(Printed Name)

(Title or Rank)

(Serial Number, if any)