

**THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA**

**DESIGN-BUILD AGREEMENT**

**[MILL CREEK ELEMENTARY]**

**OR**

**[PLEASANT HILL ELEMENTARY]**

**CLASSROOM ADDITION**

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## DESIGN-BUILD AGREEMENT

This Design-Build Agreement (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 "Design-Build Firm").

WHEREAS, the Owner owns a certain parcel of land (hereinafter referred to as the "Site") having a street address of [1700 Mill Slough Road, Kissimmee, FL 34744 (Mill Creek Elementary)] or [1253 Pleasant Hill Road, Kissimmee, FL 34746 (Pleasant Hill Elementary)], Osceola County, Florida;

WHEREAS, the Owner hereby retains the Design-Build Firm to perform all Work and Services in connection with the design and construction of a Classroom Addition (the "Project") at the Site;

WHEREAS, the plans and specifications will be prepared by the Design-Build Firm for the Project; and

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

- Exhibit A -- Truth-In-Negotiation Certificate
- Exhibit B -- Youth Apprenticeship Vertical Construction Program
- Exhibit C -- GMP and Amendment No. 1 (to be attached at a later date)
- Exhibit D -- Owner Direct Material Equipment Purchase Program
- Exhibit E -- Supplemental Conditions of Contract
- Exhibit F -- Scope of Design Phase Services
- Exhibit G -- Scope of Construction Phase Services
- Exhibit H -- Form of Payment Bond
- Exhibit I -- Form of Performance Bond
- Exhibit J -- Release and Affidavit

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 Relationship of Parties.

1.2.1 The Design-Build Firm accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Design-Build Firm's best efforts, skill and judgment in furthering the interests of the Owner. The Design-Build Firm shall furnish efficient business administration and supervision, and use the Design-Build Firm's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.2 Wherever the terms of this Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

1.2.3 Design-Build Firm has retained the services of \_\_\_\_\_ to provide all required professional design services ("Designer").

1.2.4 Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Design-Build Firm. However, it is agreed that Owner is an intended third party beneficiary of all contracts for design and engineering services, all subcontracts, purchase orders and other agreements between Design-Build Firm and third parties. Design-Build Firm shall incorporate the obligations of this Contract into its respective consultant agreements, subcontracts, supply agreements and purchase orders.

1.3 The Contract Documents. The Contract Documents shall consist of this Agreement, the Design Criteria Package, the Exhibits identified in the recitals, and any duly executed addenda, Drawings and Specifications for the construction of the Project ("Construction Documents") being prepared by the Design-Build Firm but only after the Construction Documents have been completed by the Design-Build Firm and approved in writing by Owner, and any duly executed addenda issued thereto, and modifications issued after execution of the Agreement. Any modification to this Agreement shall only be effective if it is reduced to writing, and duly executed by both parties, except a Construction Change Directive shall be effective after approval and execution by Owner.

1.4 The term "Work" as used herein refers to all construction and other services required by the Contract Documents, including all design services, labor, materials, equipment and services needed to complete the Project.

- 1.5 The term “Drawings” as used herein means the graphic and pictorial portions of the Contract Documents, which serve to show the design, location and dimensions of the Work to be performed.
- 1.6 The term “Specifications” as used herein means that portion of the Contract Documents which are the written requirements for the materials, equipment, systems, standards and workmanship for completion of the Work and performance of related services.
- 1.7 The term “Design Criteria Package” means the concise, performance oriented drawings or specifications setting forth performance based criteria for the Project including the legal description of the Sites, survey information concerning the Sites, interior space requirements, material quality standards, schematic layouts and design criteria of the Project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements.
- 1.7 The term “provide” as used herein shall mean to furnish and install materials and equipment, together with all incidentals for a complete and ready to use item and system.
- 1.8 It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be designed and constructed in accordance with the Contract Documents. Any work, services, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties and Design-Build Firm has otherwise complied with the requirements of the Contract Documents, Design-Build Firm shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time.
- 1.9 If during the performance of the Work Design-Build Firm discovers a conflict, error or discrepancy in the Contract Documents, Design-Build Firm immediately shall report same to Owner in writing, and before proceeding with the Work

affected thereby, shall provide a written interpretation or clarification to Owner for Owner's review and approval. Prior to commencing each portion of the Work, Design-Build Firm shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Design-Build Firm shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Design-Build Firm, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

- 1.10 Construction Documents approved by Owner are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Design-Build Firm shall be required to comply with the provision which is the more restrictive or stringent requirement upon Design-Build Firm, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.
- 1.11 All indicates or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.
- 1.12 Where codes, standards, requirements and publications or public and private bodies are referred to in the Specifications, such references are to the latest revision prior to the date of receiving bids, except where otherwise indicated.
- 1.13 Where no explicit quality or standards for materials or workmanship are established for the Work, such Work is to be of good quality and what is reasonably inferable from the Drawings and consistent with the quality of the surrounding Work and of the construction of the Project generally.
- 1.14 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.
- 1.15 The mechanical, electrical and fire protection drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations

of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such work, the Design-Build Firm shall prepare coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical and fire protection installations and demonstrating to the Design-Build Firm's satisfaction that the installations will comply with the preceding sentence.

1.16 Exact locations for fixtures and outlets shall be obtained from the Architect as provided in Article 3 before the Work is roughed in. Work installed without such information from the Owner shall be relocated at the Design-Build Firm's expense.

1.17 Where the Work is to fit with existing conditions or Work to be performed by others, the Design-Build Firm shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

1.18 Ownership and Use of Documents.

1.18.1 Design-Build Firm shall furnish Owner with one (1) sealed copy and one (1) reproducible set of the Construction Documents. All copies of the Construction Documents, required by Design-Build Firm for execution of the Work, shall be made by Design-Build Firm from its reproducible set at Design-Build Firm's sole cost and expense. Upon the completion or termination of this Agreement, as directed by Owner, Design-Build Firm shall deliver to Owner copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by Design-Build Firm under this Agreement ("Project Documents"). Owner shall specify whether the originals or copies of such Project Documents are to be delivered by Design-Build Firm. Design-Build Firm shall be solely responsible for all costs associated with delivering to Owner the Project Documents. Design-Build Firm, at its own expense, may retain copies of the Project Documents for its files and internal use.

1.18.2 Notwithstanding anything in this Agreement to the contrary and without requiring Owner to pay any additional fees, Design-Build Firm hereby grants Owner a nonexclusive, irrevocable license in all of the Project Documents for Owner's use on this Project. Design-Build Firm warrants to Owner that it has full right and authority to grant this license to Owner. Further, Design-Build Firm consents to Owner's use of the Project Documents to complete the Project following Design-Build Firm's termination for any reason or to perform additions to or remodeling or renovation of the Project.



1.18.3 Reuse and Repeated Design. The Owner may reuse or repeat the Project, as designed by the Designer at any time or times. The Designer shall make all plans, specifications, designs, drawings, notes, and other documents available to the Owner to facilitate the reuse of the Project design. Design-Build Firm agrees to make available to Owner all plans, specifications, designs, drawings, notes, and other documents used by Designer and Design-Build Firm under this agreement for reuse by Owner on repeat projects. For each reuse or repeat project, Owner agrees to pay Design-Build Firm a fee according to the schedule of re-use fees below. If Owner engages Design-Build Firm in multiple simultaneous re-use Owner agrees to pay design Professional a discounted fee per the schedule. Further, Owner and Design-Build Firm will negotiate a fee for Design Professional to adapt plans, specifications, and other documents used in the project to any new site where the project documents are to be used. Additionally, Owner and Design-Build Firm shall negotiate a fee for the Design-Build Firm to provide bidding and construction phase services. Owner and Design-Build Firm shall also negotiate a separate fee for any Owner requested changes or modifications or any revisions that are required due to building code or other regulatory changes.

Schedule of Re-use Fees:

<b>Single Project</b>	<b>Simultaneous Multiple Projects</b>
TBD	TBD

All subsequent Re-uses

**ARTICLE 2: OWNER’S RESPONSIBILITIES**

2.1 Information and Services

2.1.1 Owner has provided Design-Build Firm with the Design Criteria Package and will provide responses or clarification within a reasonable period of time to the Design-Builder Firm’s inquiries with respect to the Design Criteria Package.

2.1.2 The Owner shall establish and update an overall budget for the Project, based on consultation with the Design-Build Firm, which shall include contingencies for changes in the Work and other cost which are the responsibility of the Owner.

2.1.3 Structural and Environmental Tests, Surveys and Reports

- 2.2 Owner's Designated Representative. The Owner may designate a representative with the authority to approve matters contemplated in this Agreement where the monetary impact is less than \$10,000.00. This limit applies to each matter, and a matter may not be divided into separate matters or subparts to avoid the requirement of Owner approval. Provided, however, that Owner's Representative is not authorized to issue any orders or instructions to Design-Build Firm that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatsoever the: (1) scope of services to be provided and performed by Design-Build Firm hereunder; (2) the time Design-Build Firm is obligated to commence and complete all such services; or (3) the amount of compensation Owner is obligated or committed to pay Design-Build Firm. Owner's Representative shall review and make appropriate recommendations on all requests submitted by Design-Build Firm for payment for services and work provided and performed in accordance with this Agreement.
- 2.3 The Owner shall advise the Design-Build Firm of any known special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.
- 2.4 Information or services required of the Owner by this Agreement shall be furnished by the Owner with reasonable promptness after receipt from the Design-Build Firm of a written request for such information or services.
- 2.5 In the event the Design-Build Firm fails and refuses to correct any Work which is not in accordance with the requirements of the Contract Documents, or, fails and refuses to perform the Work in accordance with the Contract Documents, the Owner at the Owner's discretion may direct the Design-Build Firm to stop the Work or any portion thereof, until such time as the non-conforming Work has been corrected.
- 2.6 In the event the Design-Build Firm fails to perform the Work in accordance with the Contract Documents, within a seven (7) calendar day time period after receipt of written notice from the Owner with regard to such failure, the Owner may, without waiving its rights to pursue any and all other remedies, move forward to correct such deficiencies itself. In that event, the Owner will issue a Construction Change Directive deducting from any and all payments due to the Design-Build Firm the cost of correcting such non-conforming Work, including any compensation to third parties for additional services and expenses incurred as a result of such failure by the Design-Build Firm. The method for determining the Construction Change Directive value shall be determined solely by the Owner. In the event the payments due the Design-Build Firm are insufficient to pay for the Construction Change Directive referenced above, then the Design-Build Firm shall immediately pay the difference to the Owner.

- 2.7 Payments. Owner shall make payments to Design-Build Firm in accordance with the terms of the Contract Documents.

**ARTICLE 3: DESIGN-BUILD FIRM'S RESPONSIBILITIES**

**A. Design Phase Services.**

- 3.1 At the Owner's sole discretion and upon the Owner's written direction, pursuant to a duly issued notice to proceed, the Design-Build Firm shall perform the Design Phase Services, and shall commence and diligently complete preparation of the Construction Documents. The scope of Work for Design Phase Services shall include the work and services set forth in **Exhibit F**.
- 3.2 For all Design Phase Services, including, but not limited to, preparing the Construction Documents, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with the Owner during the various design phases, and preparing cost estimates and schedules, Design-Build Firm shall receive the fixed amount of \$\_\_\_\_\_ ("Design Phase Fee") as the total lump sum compensation for all Design Phase Services. Said lump sum amount shall be paid in accordance with a schedule submitted by Design-Build Firm, and reviewed and approved by Owner.

**B. Construction Phase Services.**

- 3.3 After the Construction Documents have been sufficiently completed by Design-Build Firm (as defined in section 3.10.1 below) and approved by Owner in writing for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Design-Build Firm have agreed in writing upon the guaranteed maximum price to be paid Design-Build Firm and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Design-Build Firm shall assume full responsibility for and furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents ("Construction Phase Services"). The scope of Work for Construction Phase Services shall include the work and services set forth in **Exhibit G**, which is attached hereto. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Design-Build Firm shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price and/or Contract Time for the entire Work has not been agreed to by the parties, so long as they have agreed in writing

upon the compensation to be paid Design-Build Firm and the performance time for such portion of the Work.

- 3.4 With respect to the Construction Phase Services to be provided by Design-Build Firm hereunder, Owner shall reimburse Design-Build Firm for the Cost of the Work (as that term is defined hereafter), and pay Design-Build Firm a fixed Design-Build Firm's Fee ("Design-Build Firm's Fee) as set forth in the GMP and Amendment No. 1 for the entire Construction Phase Services. The Design-Build Firm's Fee shall be Design-Build Firm's total compensation for all overhead not reimbursable as Cost of the Work under Section 3.5 below, as well as Design-Build Firm's total profit for Construction Phase Services. Design-Build Firm agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Design-Build Firm's Fee plus the Cost of the Work within forty-five (45) calendar days after the Construction Documents in Owner's opinion are sufficiently completed (as defined in section 3.10.1 below) by Design-Build Firm and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Design-Build Firm as required hereunder. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Design-Build Firm agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price shall be mutually agreed upon by Owner and Design-Build Firm and shall be set forth in the GMP and Amendment No. 1 ("GMP"). The form for GMP and Amendment No. 1 is attached hereto as **Exhibit C**. Design-Build Firm shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. For each line item in the GMP, Design-Build Firm shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line item price incorporated into the GMP. Design-Build Firm guarantees that in no event shall the Design Phase Fee, Design-Build Firm's Fee and the total reimbursable Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Design-Build Firm and Owner fail to reach an agreement on the GMP and Amendment No. 1, Owner may elect to terminate this Contract. In the event of any such termination, Design-Build Firm shall be entitled to receive that portion of the Contract Amount attributable to the Design Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Design-Build Firm shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

3.5 Costs to be Reimbursed. The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Design-Build Firm in the proper performance of the designated Work for the Construction Phase Services. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Design-Build Firm has provided sufficient support in writing that exceptional circumstances exist which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this section 3.5:

3.5.1 Labor Costs.

3.5.1.1 Wages of construction workers directly employed by Design-Build Firm to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.

3.5.1.2 Wages or salaries of Design-Build Firm's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement.

3.5.1.3 Wages and salaries of Design-Build Firm's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as in subsection 3.5.1.2 above.

3.5.1.4 The parties hereby establish the fixed markup rate of \_\_\_\_\_ percent (\_\_\_%) for all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections 3.5.1.1 through 3.5.1.3, above, but in any event excluding bonuses and other similar extraordinary benefits.

3.5.2 Subcontract Costs. Payments made by Design-Build Firm to subcontractors in accordance with the requirements of the applicable written subcontracts.

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

3.5.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3.5.3.2 Costs of materials described in subsection 3.5.3.1, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Design-Build Firm; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

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

3.5.4.1 Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Design-Build Firm at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Design-Build Firm.

3.5.4.2 Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Design-Build Firm at the Project site, whether rented from Design-Build Firm or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Design-Build Firm or others, shall be subject to Owner's prior written approval.

3.5.4.3 Cost of removal and proper disposal of debris from the Project site.

3.5.4.4 Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the

Project site and reasonable petty cash expenses of the Project site office.

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

3.5.5 Miscellaneous Costs.

3.5.5.1 That portion of any separate premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Design-Build Firm, with Owner's prior written approval, beyond the level of coverage specified herein.

3.5.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Design-Build Firm is liable.

3.5.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which Design-Build Firm is required by the Contract Documents to pay.

3.5.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.

3.5.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

3.5.5.6 Deposits lost for causes other than Design-Build Firm's fault or negligence.

3.5.5.7 Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Design-Build Firm, reasonably incurred by Design-Build Firm in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.

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

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

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

3.6.1 Salaries and other compensation of Design-Build Firm's personnel stationed at Design-Build Firm's principal office or offices other than the Project site office.

3.6.2 Expenses of Design-Build Firm's principal office and offices other than the Project site office.

3.6.3 Overhead and general expenses, except as may be expressly included in section 3.5 above.

3.6.4 Design-Build Firm's capital expenses, including interest on Design-Build Firm's capital employed for the Work.

3.6.5 Rental costs of machinery and equipment, except as specifically provided in subsection 3.5.4.2 above.

3.6.6 Except as expressly provided in subsection 3.5.5.8 above, costs due to the fault or negligence of Design-Build Firm, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials



and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

- 3.6.7 Any costs not specifically and expressly described in section 3.5 above.
- 3.6.8 Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directive.
- 3.7 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Design-Build Firm shall accrue to the Owner. Trade discounts, rebated, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner and the Design-Build Firm shall make provisions so they can be secured.
- 3.8 General. The construction phase shall commence on the earlier of:
  - 3.8.1 The Owner's acceptance of the Design-Build Firm's GMP proposal and issuance of a notice to proceed, or
  - 3.8.2 The Owner's first written authorization to the Design-Build Firm to
    - 3.8.2.1 award a subcontract, or
    - 3.8.2.2 undertake Work with the Design-Build Firm's own forces, or
    - 3.8.2.3 issue a purchase order for materials or equipment required for the Work.
- 3.9 The Design-Build Firm shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time, subject to the GMP.
- 3.10 Guaranteed Maximum Price Proposal and Contract Time
  - 3.10.1 When the Construction Documents are 98% complete, Design-Build Firm will propose a GMP, which is the total not-to-exceed estimate of the cost of Work and the Design-Build Firm's fee, and the form of which is attached hereto as **Exhibit "C."** The GMP shall include all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and any other services necessary for the proper execution and completion of the Work.
  - 3.10.2 After the Design-Build Firm proposes a GMP, the Construction Documents shall not be modified to include such things as changes in

scope, systems, kinds and quality of materials, finishes or equipment. If these modifications are required, all of which, if required, shall be incorporated by change order.

3.10.3 The GMP cost of Work shall include the Design-Build Firm's contingency, which is defined as a sum estimated by the Design-Build Firm to cover unforeseen costs during construction. The Owner retains exclusive use of the contingency, and all expenditures must be approved in writing by the Owner.

3.10.4 Basis of Guaranteed Maximum Price. The Design-Build Firm shall include with the GMP proposal a written statement of its basis, which shall include:

3.10.4.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.

3.10.4.2 A list of allowances and a statement of their basis.

3.10.4.3 A list of the clarifications and assumptions made by the Design-Build Firm in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications

3.10.4.4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.

3.10.4.5 The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of substantial completion is based.

3.10.5 Included within the GMP is the Design-Build Firm's fee. The Design-Build Firm's fee is hereby established as \_\_\_\_\_% (the "Design-Build Firm's Fee") (to be determined at the time of the GMP). The sum of the cost of the Work and the Design-Build Firm's Fee shall not exceed the GMP also referred to as the Contract Sum. The Design-Build Firm's Fee shall constitute Design-Build Firm's total compensation for profit and overhead (including General Conditions).

3.10.6 The Design-Build Firm shall meet with the Owner to review the GMP proposal and the written statement of its basis. In the event that the Owner

discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Design-Build Firm, who shall make appropriate adjustments to the GMP proposal, its basis or both.

- 3.10.7 Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Design-Build Firm, the GMP proposal shall not be effective without written acceptance by the Design-Build Firm.
- 3.10.8 Prior to the Owner's acceptance of the Design-Build Firm's GMP proposal and issuance of a notice to proceed, the Design-Build Firm shall not incur any cost to be reimbursed as part of the cost of the Work, except as the Owner may specifically authorize in writing, and except as may be included in the scope of the Design Phase Services.
- 3.10.9 Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in Amendment No. 1 to this Agreement. The GMP shall be subjected to additions and deductions by a change in the Work as provided in the Contract Documents and the date of substantial completion shall be subject to adjustment as provided in the Contract Documents.
- 3.10.10 The Contract Sum is guaranteed by the Design-Build Firm not to exceed the amount provided in Amendment No. 1 the form of which is attached hereto as **Exhibit "C"** to this Agreement, subject to additions and deductions by changes in the Work provided in the Contract Documents. Costs which would cause the Contract Sum to be exceeded shall be paid by the Design-Build Firm without reimbursement by the Owner.
- 3.11 Changes in Work. Adjustments to the GMP because of changes in the Work shall be determined by any of the methods listed in Article 7 of this Agreement.
- 3.12 All tests, inspections and approvals of portions of the Work required by the Contract Documents or any applicable laws, ordinances, rules, regulations or orders of public authorities having jurisdiction, shall be made at an appropriate time. The Design-Build Firm shall be responsible for making arrangements for such tests, inspections and approvals with an independent testing laboratory acceptable to the Owner, or with the appropriate public authority. In the event the Owner or public authority having jurisdiction determine that portions of the Work require additional testing, inspection or approval, the Owner must approve such additional testing, inspection or approval in writing. The Design-Build Firm shall make arrangements for such additional testing, inspection or approval, and give timely prior notice to the Owner. In the event the testing, inspection or approval described in this subparagraph reveals the failure of portions of the Work to be in compliance with the requirements of the Contract Documents, the Design-Build

Firm shall bear all costs of such non-conforming Work, including the additional testing, inspection or approval.

- 3.13 The Design-Build Firm shall obtain and deliver promptly to the Owner any occupancy permit and any certificates of final inspection of any part of the Design-Build Firm's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner shall be a condition precedent to substantial completion of the Work unless the certificates stated herein are withheld for reasons that are neither the fault nor the negligence of the Design-Build Firm.

3.14 ----- *Not used*

**C. Other Responsibilities.**

3.15 Accounting Records and Audit.

3.15.1 The Design-Build Firm shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Design-Build Firm's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project for audit purposes, and the Design-Build Firm shall preserve these records, documents and data for a period of four years after final payment, or for such longer period as may be required by law. The Design-Build Firm shall require all of its subcontractors likewise to retain such records, documents and data. If the Design-Build Firm receives notification of a dispute or the commencement of litigation regarding the Project within this four-year period, the Design-Build Firm shall continue to maintain all Project records until final resolution of the dispute or litigation.

3.15.2 Upon seven (7) calendar days' written notice, from the date of this Agreement to the latest date described in the preceding two sentences, the Design-Build Firm shall make its records available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Design-Build Firm's records at the Owner's reasonable expense, within adequate work space at the Design-Build Firm's facilities. Failure by the Design-Build Firm to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner to the Design-Build Firm pursuant to this Agreement.

- 3.15.3 If at any time, Owner conducts an audit of Design Build Firm's records and documentation and finds that Design Build Firm overcharged Owner, Design Build Firm shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$10,000.00, Design Build Firm shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Design Build Firm. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Design Build Firm with regard to the Project or under any other agreement between Design Build Firm and Owner. If such amounts owed Design Build Firm are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Design Build Firm hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.
- 3.15.4 This section 3.15, "Accounting Records and Audit," including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Agreement.
- 3.16 The Design-Build Firm is solely responsible for reviewing and comparing the Contract Documents with each other and shall immediately report to the Owner any and all errors, inconsistencies or omissions. In the event the Design-Build Firm performs any Work with the knowledge that it involves an error, inconsistency or omission in the Contract Documents, the Design-Build Firm shall be responsible for such erroneous, inconsistent, or omitted Work. The Design-Build Firm is also responsible for taking such field measurements as are necessary in order to verify field conditions and to compare such field measurements and conditions with the Contract Documents. Any and all errors, inconsistencies or omissions shall be immediately reported to the Owner.
- 3.17 The Design-Build Firm shall be solely responsible for supervising and directing the Work, and shall have sole responsibility for determining appropriate construction means, methods, techniques, sequences and procedures, and for coordinating the Work under the Contract Documents. The Design-Build Firm shall be solely responsible to the Owner for the acts and omissions of all entities or persons performing or supplying any portion of the Work for which the Design-Build Firm has contracted.
- 3.18 Warranty. The Design-Build Firm hereby warrants to the Owner that all materials and equipment furnished under the Agreement will be of good quality and new, and that the Work performed will be free from any and all defects and will be in conformity with the requirements of the Contract Documents. All Work not

- conforming to these requirements may be declared defective by the Owner. If requested, the Design-Build Firm shall furnish evidence to the satisfaction of the Owner of the quality of the materials and equipment supplied. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Prior to Final Payment the Design-Build Firm shall procure and deliver to the Owner all special warranties required by the Contract Documents.
- 3.19 In no case shall a substitution be granted where the Owner requires a sole source item to match existing School District standards.
- 3.20 In requesting approval of deviations or substitutions, the Design-Build Firm shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Owner, the evidence presented by the Design-Build Firm does not provide a sufficient basis for such reasonable certainty, the Owner may reject such substitution or deviation without further investigation. The Owner shall not unreasonably reject the request of the Design-Build Firm.
- 3.21 The contract documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Owner shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The Owner will not approve as equal to materials specified proposed substitutes which, in the Owner's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Design-Build Firm shall, if required by the Owner, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.
- 3.22 The Design-Build Firm shall pay all applicable sales, consumer, use and similar taxes for the Work which are legally required.
- 3.23 No city or county permits or inspection fees are required on school property. The Owner will pay costs of any impact, pollution control, any and all state and federal environmental permits including but not limited to clean water act permits, or connection fee charged to cover costs of central plants and main trunk line. When the Contract Documents require connection from the Work into utility lines or streets, the Design-Build Firm shall pay all costs of such connections, including any required permits or inspection fees, regardless of whether Work is done by the Design-Build Firm or by the utility supplier. Permits for such Work may need to be coordinated by the Owner for permit application.

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

- 3.28 The Design-Build Firm shall establish the building grades, lines, levels, column, wall and partition lines required by the various subcontractors in laying out their Work.
- 3.29 The Design-Build Firm shall arrange for and attend job meetings with the Owner and such other persons as the Owner may from time to time wish to have present. The Design-Build Firm shall be responsible for recording and distributing meeting minutes. The Design-Build Firm shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Design-Build Firm's own superintendent. An authorized representative of any subcontractor or sub-subcontractor shall attend such meetings if the representative's presence is required by the Owner. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change order, time schedules, manpower and Construction Change Directive, unless the above listed items require approval by the Owner. Any notices required under the Agreement may be served on such representatives.
- 3.30 The superintendent as designated by the Design-Build Firm and accepted by the Owner shall not be reassigned from the job prior to final completion, except with the approval of the Owner.
- 3.31 The Design-Build Firm shall be required to prepare a schedule of submittals for the Owner's approval which is coordinated with the construction schedule, allowing sufficient time for review. The submittals shall reference progress schedule dates for installation and Specification section. The Owner shall be provided with one copy of the accepted schedule of submittals for the Owner's records.
- 3.32 The Design-Build Firm shall maintain at the Project site one record copy of the Drawings, Specifications, addenda, change orders and any other modifications, which serve to indicate all current changes, in addition to all approved shop drawings, product data samples, and all other similar submittals. The Design-Build Firm shall maintain as built drawings at the Project site. The as built drawings shall document all changes in the Drawings and Specifications made during the course of the Work. The as built drawings shall be in sufficient form and detail to permit the Owner to maintain and repair the Work after its completion. At the completion of the Work, these items shall be delivered to the Owner.
- 3.33 The Design-Build Firm shall review, approve and submit to the Owner any and all shop drawings, product data, samples and any other similar submittals which are required by the Contract Documents, and allow a reasonable amount of time for review by the Owner, without impacting the Work schedule. The Design-Build Firm shall not perform any part of the Work relating to the shop drawings,



product data, samples or any other similar submittals, until such items have been approved by the Owner.

- 3.34 The Owner's approval of any shop drawing, product data, sample or other similar submittal does not in any way relieve the Design-Build Firm of responsibility for deviations from the requirements of the Contract Documents. Further, the Design-Build Firm shall not be relieved of responsibility for any errors or omissions in the shop drawings, product data, samples or any other similar submittals simply by the Owner's approval. In the event a deviation is requested, the Design-Build Firm shall specifically identify the deviation in writing to the Owner at the time of the submittal and the Owner is required to respond in writing to approve the specified deviation.
- 3.35 By approving and submitting shop drawings, product data, samples, and similar submittals, the Design-Build Firm represents that the Design-Build Firm has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the contract documents. The accuracy of all such information is the responsibility of the Design-Build Firm.
- 3.36 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and the Owner shall not be expected to make any independent examination with respect thereto.
- 3.37 The right of possession of the premises and the improvements made thereon by the Design-Build Firm shall be retained at all times by the Owner. The Design-Build Firm's right to enter arises solely from the permission granted by the Owner under the Contract Documents. The Design-Build Firm shall confine the Design-Build Firm's equipment, the storage of materials and the operations of the Design-Build Firm's workmen to the Project site and according to the directions of the Owner, and shall not unreasonably encumber the premises with the Design-Build Firm's materials.
- 3.38 The Design-Build Firm shall keep the premises, the surrounding area and property free from all waste, construction debris, or trash. At the completion of the Work, the Design-Build Firm shall remove all tools, construction equipment, machinery and surplus materials. In the event the Design-Build Firm fails to keep the premises, surrounding area and property in a clean condition, the Owner may do so and charge the cost back to the Design-Build Firm.
- 3.39 Immediately prior to the Owner's inspection for substantial completion, the Design-Build Firm shall completely clean the premises utilizing a licensed

cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Design-Build Firm at the Design-Build Firm's expense.

- 3.40 Responsibility for Work. Notwithstanding any requirements herein for Owner's review, inspection or approval, the parties acknowledge and agree that Design-Build Firm shall be solely responsible and liable for the proper performance of the Work as provided for herein.
- 3.41 Notices and Compliance with Law. Design-Build Firm shall be responsible for giving all notices and for complying with all laws, ordinances, rules, regulations and lawful orders of any public authorities having jurisdiction over the particular portion of the Project with respect to the performance of the subject Work. The Master Project Schedule for the subject Work and the GMP associated therewith shall be based upon the laws, ordinances and regulations which are then in effect on the date the GMP Amendment is executed. Any changes in laws, ordinances or regulations thereafter that require additional work outside Design-Build Firm's established scope shall be the subject of a Change Order under Article 7 of this Agreement.
- 3.42 Indemnification for Infringement. Design-Build Firm shall pay all royalty and license fees required for the design and construction of any portion of the Project assigned to it. To the maximum extent permitted by law, Design-Build Firm shall defend any and all suits or claims for infringement of patent rights and shall indemnify and save Owner harmless from all loss or expense on account thereof (including attorneys' and paralegals' fees).
- 3.43 Design Services. Design-Build Firm shall provide the architectural and engineering design for the Project. The design for the Project shall be set forth in the Construction Documents. All changes, supplements and additions to the Construction Documents shall be subject to Owner's review and written approval, such approval to be obtained prior to the commencement of any portion of the Work relating thereto.
- 3.44 Review, Recommendations and Warranty: Design-Build Firm shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications being prepared by the Designer and shall follow the development of the Project design through all required design Phases. Design-Build Firm shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including

assistance to Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. Design-Build Firm shall furnish pertinent information as to the availability of materials and labor that will be required. Design-Build Firm shall submit to Owner such comments as may be appropriate concerning construction feasibility and practicality. Design-Build Firm shall call to Owner's attention any defects in the design, drawings and specifications or other documents of which it is aware. Design-Build Firm shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by a 50% Construction Document Estimate, which shall be followed by the setting of the GMP.

- 3.45 Review Reports: Within ten (10) calendar days after receiving the documents produced by Designer, Design-Build Firm shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 3.44 above and on factors set out in Paragraphs 3.46 and 3.47 below. Within the same ten (10) day period, Design-Build Firm shall submit to Owner a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as Design-Build Firm may deem appropriate, and all actions taken by Design-Build Firm with respect to same, any comments Design-Build Firm may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN THE GMP AMENDMENT, THE DESIGN-BUILD FIRM SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE FOR THE CONTRACT AMOUNT. FURTHER, THE DESIGN-BUILD FIRM SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS IS CONSTRUCTABLE WITHIN THE CONTRACT TIME.

- 3.46 Long Lead Procurement: Design-Build Firm shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and consult with Owner concerning same. When each item is identified, Design-Build Firm shall notify the subcontractors and Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. Design-Build Firm shall keep itself informed of the progress of the respective subcontractors or

suppliers, manufacturing or fabricating such items, and advise Owner of any problems or possible delays in delivery.

3.47 Interfacing:

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

3.47.2 Design-Build Firm shall include in the reports required under Paragraph 3.45 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that Design-Build Firm may arrange for necessary corrections.

3.48 Truth-In-Negotiation and Adjustment

If the amount paid under this Agreement exceeds the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY FOUR (\$150,000), Design-Build Firm shall execute a Truth-in-Negotiation certificate (in the form of **Exhibit A** to the Agreement) stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted by Owner to exclude any significant sums by which Owner determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments will be made within one (1) year following the termination of this Agreement.

**ARTICLE 4: ADMINISTRATION OF THE AGREEMENT**

- 4.1 The Design-Build Firm will provide administration of the Work and the job site.
- 4.2 Any needed communications by and with subcontractors or material suppliers shall be through the Design-Build Firm to the Owner.
- 4.3 The Owner shall review the Design-Build Firm's applications for payment. The Owner shall reject Work which Owner determines does not conform to the Contract Documents. However, this authority does not in any respect serve to

release or otherwise discharge the Design-Build Firm's responsibility with regard to performing the Work in compliance with the Contract Documents.

4.4 The term "claim" as used herein shall mean a demand by either the Design-Build Firm or Owner seeking an adjustment to or interpretation of an Agreement term, payment of money, extension of time, or any other relief with regard to the terms of this Agreement or the Construction Documents. All claims are required to be made in writing by the parties asserting the claim.

4.4.1 Claims arising prior to final payment or the earlier termination of the Agreement shall be referred to the Owner for action.

4.4.2 Initial notice of Claims by Design-Build Firm shall be made in writing to Owner within seven (7) calendar days after the incident giving rise to the claim or within seven (7) calendar days after the complaining party first knew or should have known the condition giving rise to the claim or else Design-Build Firm shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner within twenty-one (21) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Design-Build Firm shall be deemed to have waived the Claim. Pending final resolution of any claim, unless otherwise mutually agreed between the parties in writing, the Design-Build Firm shall proceed with the performance of the Work and the Owner shall proceed to make uncontested payments in accordance with the Contract Documents.

4.4.3 The making of any progress payment or a final payment shall not in any respect constitute a waiver of any claim by the Owner.

4.5 If the Design-Build Firm encounters conditions at the site which are sub-surface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities as set out in the Contract Documents, then the Design-Build Firm shall immediately provide notice to the Owner of the conditions, no later than 21 calendar days after the first observance of the condition. After investigation, the Owner will determine if conditions differ materially, and what, if any, adjustment is needed to the Contract Sum or contract time.

4.6 In the event the Design-Build Firm wishes to make a claim for an increase in the GMP, the Design-Build Firm shall provide written notice prior to proceeding to execute the Work. However, prior notice is not required for claims involving an immediate emergency endangering health, safety, welfare or property, but shall be provided as soon as possible.

- 4.7 In the event the Design-Build Firm wishes to make a claim for an increase in the contract time, the Design-Build Firm is required to provide written notice. The Design-Build Firm shall have the burden of demonstrating the effect of the claimed delay on the contract time, and shall furnish the Owner with such supporting documents as the Owner may reasonably require. In the event adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data, establishing that the weather condition was abnormal, could not have been reasonably anticipated, and had an adverse effect on the scheduled Work.
- 4.8 In the event either party to this Agreement suffers injury or damage to person or property as a result of an act or omission of the other party, of any of the other party's employees or agents, written notice of such injury or damage shall be provided to the other party immediately, and in no event later than 21 calendar days after the injury or damage. In the event there is to be a claim for additional cost or time, it shall be provided as described in this Article.
- 4.9 The Owner shall review claims and may (1) defer any action with respect to all or any part of a claim and request additional information from the Design-Build Firm; (2) decline to render a decision for any reason which the Owner deems appropriate; or (3) render a decision on all or a part of the claim within ten business days from the date of the claim. The Owner shall notify the Design-Build Firm in writing of the disposition of such claim. If the Owner decides that the Work relating to such claim should proceed regardless of the disposition of such claim, the Owner shall issue to the Design-Build Firm a written order to proceed. The Design-Build Firm shall proceed as instructed, and all rights of both parties with respect to such claim shall be deemed to have been reserved.
- 4.10 Either party may pursue any claim against the other in the State Court having jurisdiction in Osceola County, Florida, as provided in Article 15 of this Agreement, provided the party has first complied with the provisions of this Article 4 with respect to such claim.
- 4.11 Design-Build Firm shall prepare, maintain and submit to Owner, for its review and approval, the various logs, reports, and schedules as required by the Owner. Design-Build Firm's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Design-Build Firm. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Design-Build Firm to Owner pursuant to the Contract Documents.
- 4.12 Design-Build Firm shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and

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

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

#### **ARTICLE 5: SUBCONTRACTORS AND MATERIAL SUPPLIERS**

- 5.1 The Design-Build Firm shall continue to develop subcontractor interest in the Project and shall furnish to the Owner for its information a list of possible subcontractors, including material suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each portion of the Work. The Owner will promptly reply in writing to the Design-Build Firm if the Owner knows of any objection to such subcontractor or material supplier. The receipt of such list shall not require the Owner to investigate the qualifications of proposed subcontractors or material suppliers, nor shall it waive the right of the Owner later to object to or reject any proposed subcontractor or supplier.
- 5.2 Equal Employment Opportunity and Affirmative Action. The Design-Build Firm shall comply with applicable laws, regulations, and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

- 5.3 Youth Apprenticeship Vertical Construction Program. The Owner desires to use vertical construction projects as a vehicle for providing on the job training for youth apprentices in the construction trades. The Design-Build Firm shall comply with the requirements of the School District of Osceola County Youth Apprenticeship Vertical Construction Program attached hereto as **Exhibit “B.”**
- 5.4 The Design-Build Firm shall not subcontract with any proposed person or entity to which the Owner has made a reasonable and timely objection. If the Owner has a reasonable objection to a person or entity proposed by the Design-Build Firm, the Design-Build Firm shall promptly propose another person or entity for that portion of the Work. Further, the Design-Build Firm shall not change a subcontractor, person or entity previously selected, in the event the Owner makes a reasonable objection to such change.
- 5.5 The Design-Build Firm is required to enter into written agreements with each subcontractor who will perform any portion of the Work on the Project. The subcontract agreement shall incorporate the terms of the Contract Documents, and the terms of this Agreement. Further, where appropriate, the Design-Build Firm shall require each subcontractor to enter into similar agreements with sub-subcontractors and material suppliers. Before entering any agreement with a subcontractor, Design-Build Firm shall confirm that the subcontractor is properly licensed by the state and Osceola County, and any applicable municipality, for the portion of the Work to be performed on the Project and shall supply such information or proof of licensing, in writing, to Owner.
- 5.6 Each subcontract agreement for a portion of the Work shall be assignable by the Design-Build Firm to the Owner in the event of a termination of this Agreement by the Owner with or without cause, and only for those subcontract agreements which the Owner accepts by notifying the subcontractor in writing.
- 5.7 Contract Requirements
- 5.7.1 On all subcontracts exceeding \$100,000 the Design-Build Firm may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Design-Build Firm wishes to award subcontracts to Contractors unable to supply this bonding, he may request special authorization to do so from the Owner.
- 5.7.2 The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years unless waived by Owner, Architect and Design-Build Firm. Similar projects completed by the subcontractor will be indicated on the scope of work sheet by the Design-Build Firm.



5.7.3 All Subcontracts shall provide:

- 5.7.3.1 Limitation of Remedy – No damages for delay. The subcontractor’s exclusive remedy for delay in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or the Architect or attributable to the Owner or Architect and including claims based on breach of contract or negligence, shall be an extension of contract time.
- 5.7.3.2 In the event of a change in the work, the subcontractors claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead, profit and bond costs for additional work and 10% for deducts. A detailed breakdown, with necessary backup, shall be provided.
- 5.7.3.3 The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies or claims for increase in the contract price, damages, losses or additional compensation.

**ARTICLE 6: CONSTRUCTION BY OWNER**

- 6.1 The Owner has the right to perform construction work related to the Project with the Owner’s own employees, or by contracting with other individuals or entities. The Owner shall be responsible for coordination of activities of Owner’s own employees or of any separate contractors, with the Work performed by the Design-Build Firm. The Design-Build Firm shall cooperate or participate with any separate contractor and the Owner in reviewing and coordinating construction schedules.
- 6.2 The Design-Build Firm shall not interfere with either the Owner or any separate contractor’s ability to store materials and equipment, or perform construction work. In the event the Design-Build Firm’s Work depends upon, or connects to, the construction by the Owner or any separate contractor, the Design-Build Firm is required, prior to proceeding with that portion of the Work, to immediately report to the Owner any and all discrepancies or defects which would render it unsuitable for continuation of the Work. In the event the Design-Build Firm fails to report, such failure shall be deemed an acceptance of the Work performed by the Owner or separate contractor by the Design-Build Firm and that the Work is fit and proper.

- 6.3 Any and all costs caused by delays or by improperly timed or coordinated activities, or defective construction Work, shall be borne by the party responsible. The Design-Build Firm shall promptly repair any damage caused by the Design-Build Firm to any Work or to the property of the Owner or any separate contractor.

#### **ARTICLE 7: CHANGES TO THE WORK**

- 7.1 Changes to the Work may be accomplished by preparation of and execution of a change order or Construction Change Directive. Change orders or Construction Change Directives will be preceded by a change proposal request initiated by the Owner. The Design-Build Firm shall provide the Owner prices and details within 30 calendar days of receipt of a change proposal request.
- 7.2 For the purposes of this Agreement, a change order is a written document prepared by the Owner, and executed by the Owner and Design-Build Firm, 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.
- 7.3 For the purposes of this Agreement, a Construction Change Directive is a written document prepared 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.
- 7.3.1 Upon request of the Owner, the Design-Build Firm shall, without any increase in the GMP, submit to the Owner within 15 calendar days, in such form as the Owner may require, an accurate written estimate of the cost of any proposed Work set forth in the Construction Change Directive.
- 7.3.2 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 Owner. The Design-Build Firm shall promptly revise and resubmit such estimate if the Owner 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 Owner, in order to establish the exact cost of new work added or of previously required work omitted, the Design-Build Firm shall obtain and furnish to the Owner 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 Design-Build Firm's expense. The Design-Build Firm 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 Design-Build Firm 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.

- 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, 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 Design-Build Firm as define in this subparagraph and accepted by the Owner. The Design-Build Firm'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 Design-Build Firm, 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 Design-Build Firm, 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 Design-Build Firm, a subcontractor, a sub-subcontractor or any other lower tier subcontractors

for any work performed by their own forces shall be a maximum of \_\_\_% of any net increase, and \_\_\_% of any net decrease when the decrease results in a reduction of overhead requirements. The maximum percentage of \_\_\_% as applied to subcontractors shall be a cumulative percentage, inclusive of sub-contractor, sub-subcontractors and other subordinate contracting parties. In the event the Design-Build Firm does not perform any of the Work with its own forces, the percentage for the Design-Build Firm shall be the same percentage increase or decrease as the Design-Build Firm Fee set out in paragraph 3.10.5 above.

- 7.4 When in the reasonable judgment of the Owner a series of Construction Change Directives or change orders effect a single change, percentage shall be calculated on the cumulative net increase or decrease in cost, if any.
- 7.5 Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the Owner's option to require the cost of any change to be determined by one of the other methods stated in 7.3.3. If the Owner elects to determine the cost of the change to the Work by unit prices and the nature of the work is such that it cannot readily be measured after the completion of such work or any subsequent work, the Design-Build Firm shall keep daily records, available at all times to the Owner for inspection, of the actual quantities of such work put in place, and delivery receipts or other adequate evidence, indicating the quantities of materials delivered to the site for use in such unit price work, and distinguishing such from other similar material delivered for use in work included in the GMP.
- 7.6 If Owner elects to determine the costs of the work as provided in paragraph 7.3.3 (c) or (d) ,or if the method of determining the costs has not been established before the Work is begun, the Design-Build Firm shall keep detailed daily records of labor and materials costs applicable to the work.
- 7.7 Upon receipt of a Construction Change Directive, the Design-Build Firm shall promptly proceed with the change in the Work. In the event the Owner and Design-Build Firm do not agree with the adjustment in the contract time as a result of the Construction Change Directive, the dispute shall be referred to the Owner for determination. Once the Owner and Design-Build Firm reach agreement concerning the adjustment in the contract time, such agreement shall be reduced to writing and executed in an appropriate change order.
- 7.8 The Owner shall have the authority to order minor changes in the Work which do not involve any adjustment to the GMP or the contract time, and that are consistent with the original intent of the Contract Documents. Any such minor changes shall be reduced to writing and the Design-Build Firm shall promptly carry out the Work.

- 7.9 Notwithstanding any other provision in this Agreement concerning audits, and not in derogation thereof, Owner shall have the right to conduct an audit of Design-Build Firm's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Design-Build Firm's claim with respect to Design-Build Firm's costs associated with any Change Order or Construction Change Directive.
- 7.10 Owner may direct Design-Build Firm to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Contract Amount, Contract Time or Project quality and are generally within the scope of the Work. All such changes must be evidenced by a written order from Owner to Design-Build Firm. Design-Build Firm shall comply with all such orders.
- 7.11 No action, conduct, omission or course of conduct by Owner shall act to waive, alter, or change the requirement that Change Orders must be in writing and signed by Owner. Such written and signed Change Orders are the sole and exclusive way to change either the amount of compensation to be paid to Design-Build Firm or the time within which Design-Build Firm is to perform its obligations hereunder. No changes will be allowed based upon actual, constructive, or oral notice or lack of prejudice to Owner.

#### **ARTICLE 8: TIME**

- 8.1 Time is of the essence in the performance of the Work under this Contract. The "Design Phase Commencement Date" shall be established in a Notice to Proceed to be issued by Owner. Design-Build Firm shall commence the Design Phase Services portion of the Work within five (5) calendar days after the Design Phase Commencement Date. Any Work performed by Design-Build Firm prior to the Design Phase Commencement Date shall be at the sole risk of Design-Build Firm. The "Construction Phase Commencement Date" shall be established in the GMP Amendment. Design-Build Firm shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time is set forth with more specificity in section 8.2 below.
- 8.2 Because the Work is to be completed in two phases (i.e. Design Phase and Construction Phase), the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, Design-Build Firm agrees to provide the Design Phase

Services in accordance with a design schedule submitted to and approved by Owner. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Design-Build Firm. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Design-Build Firm and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Design-Build Firm shall be entitled to receive that portion of the Contract Amount attributable to the Design Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Design-Build Firm shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose. The entire Work shall be fully completed and ready for final acceptance by Owner within thirty (30) calendar days after the Substantial Completion Date.

- 8.3 When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term “business day” as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.
- 8.4 If the Owner has determined that the Design-Build Firm should be permitted to extend the time for completion, the dates in the progress schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of substantial completion, and the dollar value of work to be completed as of the first of each month shall be adjusted prorata.
- 8.5 Nothing herein shall limit the Owner’s right to liquidated or other damages for delays by the Design-Build Firm or to any other remedy which the Owner may possess under other provisions of the Contract Documents or by law.
- 8.6 Liquidated Damages. Time is of the essence in the performance of the Work under the Contract Documents. The Owner and Design-Build Firm agree that the losses suffered by Owner, if substantial completion of the Work is not achieved, are not ascertainable at this time. Design-Build Firm acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if substantial completion of the Work is not achieved within the Contract Time, as

said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Design-Build Firm fail to achieve substantial completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of \$2,000.00 for each calendar day thereafter until substantial completion is achieved and \$1,500.00 for each calendar day thereafter until final completion. Design-Build Firm hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Design-Build Firm fails to achieve substantial completion of the Work within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Design-Build Firm fails to achieve substantial completion of the Work within the Contract Time.

- 8.7 Design-Build Firm shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subconsultants, subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Design-Build Firm or anyone for whom Design-Build Firm is liable. Design-Build Firm shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors.
- 8.8 If Design-Build Firm is obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Design-Build Firm, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year Osceola County, Florida, average not capable of reasonable anticipation, Design-Build Firm shall notify Owner in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Design-Build Firm may have had to request a time extension.
- 8.9 If Design-Build Firm encounters on the Project site any materials reasonably believed by Design-Build Firm to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Design-Build Firm immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous

material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by Design-Build Firm or any of its employees, agents, subconsultants, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Design-Build Firm shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such hazardous material.

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

## **ARTICLE 9: PROGRESS PAYMENTS AND COMPLETION OF CONSTRUCTION**

- 9.1 **Progress Payments.** Based upon applications for payment submitted to the Owner by the Design-Build Firm, the Owner shall make progress payments on account of the Contract Sum to the Design-Build Firm as provided below and elsewhere in the Contract Documents.
- 9.1.1 Design-Build Firm's monthly Applications for Payment shall be in such form and contain such detail and backup as Owner reasonably may require. Prior to submitting its first monthly Application for Payment, Design-Build Firm shall submit to Owner, for its review and approval, a Schedule of Values based upon the lump sum compensation to be paid Design-Build Firm for Design Build Phase Services hereunder. After its



approval by Owner, that Schedule of Values shall be used as the basis for Design-Build Firm's monthly Applications for Payment with respect to the Design Build Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) calendar days after the Design Build Phase Commencement Date. The approved Schedule of Values shall be updated to reflect current Change Orders and Construction Change Directives and submitted each month to Owner along with a completed and notarized copy of the Application for Payment form. The application for payment shall be signed by the Design-Build Firm, and notarized, and shall be supported by sufficient data which serves to establish the Design-Build Firm'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.

- 9.1.2 At the time it submits its GMP proposal to Owner, Design-Build Firm also shall submit to Owner, for its review, a revised Schedule of Values based upon the GMP proposal listing the major elements of the Work and the dollar value for each element. That revised Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment and shall be used as the basis for Design-Build Firm's monthly Applications for Payment thereafter. The revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Owner by Design-Build Firm along with a completed and notarized copy of the Application for Payment form.
- 9.1.3 The Owner agrees to make payments by the 20th of the month providing the Design-Build Firm processes the invoices and delivers same to the Facilities Department by the 20th of the preceding month.
- 9.1.4 The application for payment shall reflect the amount of Work completed each month separated by materials stored and labor, inclusive of Design-Build Firm's Fee, as a percent complete of each line item within the schedule of values for the Project. The Design-Build Firm 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.

- 9.1.5 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 Design-Build Firm does not intend to pay to a subcontractor or material supplier, for any reason.
- 9.1.6 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials. Payments shall not be made for materials which are not suitably stored at the Site.
- 9.1.7 By submitting an application for payment, the Design-Build Firm 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.
- 9.1.8 Upon receipt of the Owner's certificate for payment, the Owner shall make payment to the Design-Build Firm. The Design-Build Firm shall promptly pay each subcontractor out of the amounts paid to the Design-Build Firm on account of such subcontractor's portion of the Work, minus any percentages retained as retainage from payments made to the Design-Build Firm on account of such subcontractor's portion of the Work. The Design-Build Firm 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, the Owner shall not have an obligation to pay or to see the payment of money to a subcontractor, sub-subcontractor or material supplier.
- 9.1.9 Any certificate for payment, progress or monthly payment to Design-Build Firm, or partial or entire use or occupancy of the Project by the Owner, shall in no way imply approval or acceptance of Design-Build Firm's work.

- 9.1.10 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Agreement as **Exhibit J**, showing that all materials, services, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. Owner shall not be required to make payment until and unless these affidavits and reports are furnished by Design-Build Firm. Further, if Design-Build Firm is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which Owner has paid Design-Build Firm, Design-Build Firm agrees to refund such money to Owner.
- 9.1.11 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 Design-Build Firm in an Application for Payment, or rescind any amount previously approved for payment, and Owner may withhold any payments otherwise due Design-Build Firm under this Contract or any other agreement between Owner and Design-Build Firm, 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 probably filing of third party claims against Owner attributable to the fault or neglect of Design-Build Firm; (c) Design-Build Firm'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 Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Design-Build Firm'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 Design-Build Firm. 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 Design-Build Firm's expense, if such items are not cured by Design-Build Firm to Owner's reasonable satisfaction within three (3) business days after Design-Build Firm's receipt of written notice from Owner. If the Owner so desires, the Owner's accountants, auditors or other representatives will review and report in writing on the Design-Build Firm's final accounting within 30 calendar days after delivery of the final accounting to the Owner by the Design-Build Firm. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Design-Build Firm's final accounting, and provided the other conditions of final payment have been met, the Owner 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 Design-Build Firm, or notify the Design-Build Firm and Owner in writing of the Owner's reason for withholding a certificate.

- 9.1.11 In the event that the total of cost of the Work, including the Design-Build Firm's Fee, is less than the GMP after giving effect to adjustments for changes in the Work, then the difference between cost of the Work, including Design-Build Firm's Fee and the GMP is defined herein as "Savings". All Savings shall inure and be paid to the Owner.
- 9.2 The phrase "substantial completion" as used in this Agreement shall mean the date when the Work or any portion thereof is sufficiently complete so that the Owner may occupy or utilize the Project for its intended use, and only minor items which can be corrected or completed without any material interference with the Owner's use of the Project remain to be corrected or completed. When the Design-Build Firm deems the Work or a portion thereof to be substantially complete, the Design-Build Firm shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected, which comprehensive list shall be referred to as the "punch list." The Design-Build Firm shall be responsible for completion and correction of all items on the punch list. Any item not included on the punch list which does not comply with the Contract Documents, shall be added to the punch list and promptly corrected by the Design-Build Firm. The submission of the punch list by the Design-Build Firm does not in any respect alter the ultimate responsibility of the Design-Build Firm to complete the project in accordance with the Contract Documents.
- 9.3 Upon receipt of the Design-Build Firm's list, the Owner, after inspection of the Work, may add additional items to the punch list which the Design-Build Firm shall promptly correct. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner shall issue a certification of substantial completion which establishes the date of substantial completion, the date the Design-Build Firm will have completed all items on the punch list, and such other items as the Owner deem appropriate. The certificate of substantial completion shall be executed by the Design-Build Firm and Owner.
- 9.4 Upon full execution of the certificate of substantial completion, and upon the application for payment by the Design-Build Firm and the issuance of certification for payment by the Owner, the Owner may make payment to the Design-Build Firm adjusting the retainage withheld for the Work or portion thereof reflected in the certificate of substantial completion.
- 9.5 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 and Design-Build Firm 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.

- 9.6 Final payment of the Contract Sum will be made after the Owner certifies that the Work is complete, and Owner's representatives complete their final acceptance report, and the "certificate of final inspection" by the State Department of Education is received. It is understood and agreed, that final payment will not be withheld if a certificate of final inspection is issued by the Owner's Uniform Building Code Inspector, or if any other government agency refuses to give final acceptance for any reason other than the failure of the Design-Build Firm to complete the Work in accordance with the Contract Documents. Further, neither final payment nor any remaining retainage shall be paid to the Design-Build Firm until the Owner has received an affidavit in a form sufficient to the Owner that all indebtedness in connection with the performance of the Work for which the Owner or the Owner's property may be held liable or encumbered, have been fully paid or otherwise satisfied; a certification in a form acceptable to the Owner which establishes that all required insurance will remain in full force and effect after final payment and will not be cancelled or allowed to expire until at least 30 calendar days prior written notice has been provided to the Owner; consent of the surety to final payment; and any other certifications reasonably required by the Owner establishing full payment or satisfaction of any obligations. In the event the Design-Build Firm fails to furnish such certifications as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Design-Build Firm as a condition of final payment and at the Design-Build Firm's expense, to furnish a bond in a form and amount satisfactory to the Owner to indemnify the Owner against such liens or claims. Final payment by the Owner to the Design-Build Firm shall not constitute a waiver of any claim the Owner may have against the Design-Build Firm for Work not in compliance with the Construction Documents. However, acceptance of final payment by the Design-Build Firm, a subcontractor or material supplier shall constitute a waiver of any claims by that entity or individual, except those previously made in writing and clearly identified as unsettled at the time of the final application for payment and payment thereon. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Design-Build Firm hereunder or to the recovery of damages for defective Work not discovered by Owner at the time of final inspection.

#### **ARTICLE 10: DESIGN-BUILD FIRM'S SAFETY PROGRAM**

- 10.1 The Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm 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. Design-Build Firm may require Owner to furnish copies of reports of tests conducted by a qualified testing laboratory verifying the absence of such hazardous waste before Design-Build Firm 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 Design-Build Firm shall not be required pursuant to the changes clause herein to perform without consent any work relating to hazardous waste.
- 10.4 The Design-Build Firm 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 Design-Build Firm has access.
- 10.5 The Design-Build Firm 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 Design-Build Firm shall exercise the utmost care and carry on such activities under the continuous supervision of properly qualified individuals.
- 10.6 The Design-Build Firm 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 Design-Build Firm’s negligence, the Design-Build Firm shall bear the entire cost of the loss or damage, if the damage or loss is due in part to the Design-Build Firm’s negligence, the Design-Build Firm shall bear the cost that is determined, by the Owner, to be their portion of the loss or damage.

- 10.7 The Design-Build Firm shall designate its superintendent on the Project as its safety program representative.
- 10.8 The Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm shall utilize its judgment and discretion to prevent any threatened damage, injury or loss. In the event of such an emergency, the Design-Build Firm shall immediately notify the Owner, and coordinate and cooperate in the resolution of all such emergencies.

#### **ARTICLE 11: INSURANCE AND BOND REQUIREMENTS**

- 11.1 The Design-Build Firm shall deliver the required bonds and proofs of insurance to the Owner prior to the commencement of any Work, and in no event any later than 5 business days after the execution of this Agreement.
- 11.2 The Design-Build Firm 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 11. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Design-Build Firm 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 five (5) business days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Design-Build Firm 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).

- 11.3 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.
- 11.4 The Design-Build Firm shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.
- 11.5 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. Design-Build Firm Liability including the provision for Design-Build Firm's obligation of indemnification and hold harmless
  6. Owned, non-owned and hired motor vehicles
  7. Broad Form Property Damage including Completed Operations
  8. Professional Liability
- 11.6 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) General aggregate and products/completed operations aggregate of no less than \$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. Professional Liability - The Design-Build Firm shall, during the Term of this Agreement, provide the Owner with evidence of professional liability insurance for its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$1,000,000 with an aggregate total of \$2,000,000, and Design-Build Firm shall waive its right of recovery against Owner as to any claims under this insurance. The certificate shall provide Professional Liability insurance in the amounts of \$1,000,000 per claim, with an aggregate total of \$2,000,000 for the policy period. The Design-Build Firm further agrees to maintain like coverage for a minimum of Four (4) years following the latest date of the following: completion of this Agreement, completion of construction or issuance of a certificate of occupancy. Design-Build Firm shall promptly submit certificates of insurance providing for an unqualified written notice to Owner of any cancellation of coverage or reduction in limits. In addition, Design-Build Firm shall also notify Owner by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Design-Build Firm from its insurer. Design-Build Firm shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by Owner.
  
- 11.7 The Design-Build Firm 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 Design-Build Firm.
  
- 11.8 Boiler and Machinery Insurance. The Design-Build Firm shall purchase and maintain boiler and machinery insurance if applicable to the Contract Documents. This insurance shall remain in full force and effect until final acceptance of the insured items by the Owner.
  
- 11.9 Performance and Payment Bonds. The Design-Build Firm 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 Design-Build Firm 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.
  - 11.9.1 Within ten (10) business days after the GMP is agreed to by Owner and Design-Build Firm, Design-Build Firm shall provide Owner with Performance and Payment Bonds, in the form prescribed in **Exhibits H and I**, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Design-Build Firm. The Performance and

Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

- 11.9.1.1 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.
- 11.9.1.2 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.
- 11.9.1.3 The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
- 11.9.1.4 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.
- 11.9.1.5 The Bonds must be fully performable in Florida, with service and venue in Osceola County, Florida.

11.9.2 If the surety for any bond furnished by Design-Build Firm 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, Design-Build Firm shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval. The cost of any such replacement bond shall be paid by Design-Build Firm.

11.9.3 In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Design-Build Firm shall record within five (5) calendar days in the Public Records of Osceola County, Florida, a copy of the Performance and Payment Bonds. Design-Build Firm shall deliver within ten (10) calendar days 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 Design-Build Firm hereunder. Design-Build Firm shall deliver the original, recorded Performance and Payment Bonds to Owner within two (2) business days after receipt of same from the Osceola County Clerk of the Circuit Court.

11.10 Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Design-Build Firm, 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.

- 11.11 No Waiver by Approval/Disapproval. Neither approval by the Owner nor failure to disapprove the insurance furnished by the Design-Build Firm shall relieve the Design-Build Firm of its full responsibility to provide the insurance as required by this Agreement.
- 11.12 During the term of this Agreement Design-Build Firm shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described in this Article 11. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Certified, true and exact copies of all insurance policies required shall be provided to Owner, on a timely basis, if requested by Owner. Certificates of insurance and policies shall contain provisions that thirty (30) calendar days' written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages. Design-Build Firm shall also notify Owner, in a like manner, within two (2) business days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Design-Build Firm from its insurer, and nothing contained herein shall relieve Design-Build Firm of this requirement to provide notice. All insurance coverages of Design-Build Firm shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement.
- 11.13 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.
- 11.14 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Design-Build Firm to meet the requirements of this Agreement shall name The School Board of Osceola County, Florida, as that name is defined in section 11.13, above, as an additional insured as to the operations of Design-Build Firm under the Contract Documents and shall contain a severability of interests provisions.
- 11.15 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 Design-Build Firm.

- 11.16 All insurance coverages of Design-Build Firm 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 Design-Build Firm shall not apply to any insurance or self-insurance program carried by Owner applicable to this Agreement.
- 11.17 The Certificates of Insurance, which are to be provided pursuant to paragraph 11.2 above, must identify this Contract.
- 11.18 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.
- 11.19 All insurance policies to be provided by Design-Build Firm 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.
- 11.20 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.
- 11.22 Before starting and until completion of all Work required hereunder, Design-Build Firm shall procure and maintain insurance of the types and to the limits specified in this Article 11. Design-Build Firm 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 Design-Build Firm in this Agreement, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.
- 11.23 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 thirty (30) calendar days prior to the date of expiration.
- 11.24 Should at any time Design-Build Firm 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 Design-Build Firm for such coverages purchased. If Design-Build Firm fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Design-Build Firm 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 12: UNCOVERING AND CORRECTION OF THE WORK**

- 12.1 In the event the Design-Build Firm covers a portion of the Work contrary to the request of the Owner or prior to an inspection by the Owner, the Design-Build Firm must if requested in writing uncover the Work, and then shall be required to replace the work at the Design-Build Firm's sole expense, without any change to the contract time.
- 12.2 In the event the Design-Build Firm covers a portion of the Work which the Owner has not specifically requested to inspect, the Owner may request the Design-Build Firm to uncover the Work. If such Work is in compliance with the Contract Documents, the costs of uncovering the Work and replacement of the Work shall be reimbursed to the Design-Build Firm and Owner will charge the Owner. If such Work is not in compliance with the Contract Documents, the Design-Build Firm shall bear such costs.
- 12.3 The Project is subject to and shall be constructed in accordance with the Florida Building Code, and to all applicable codes referenced therein.
- 12.4 The Design-Build Firm shall promptly correct any and all Work rejected by the Owner and any and all Work which fails to comply with the requirements of the Contract Documents. The Design-Build Firm shall bear all of the costs for correcting such Work, including any compensation for the Owner's services.
- 12.5 If within one (1) year after the date of final completion of the Work or after the date for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Build Firm shall promptly return to the Project and correct the deficient Work upon receipt of written notification from the Owner to do so. The obligation set forth in this subparagraph shall survive acceptance of the Work under this Agreement and any termination of the Agreement. The Owner shall give such written notice promptly after discovery of the deficient Work. This one (1) year Design-Build Firm warranty described in this subparagraph does not impact or impair any manufacturer's warranty or the Owner's ability to make any other claim against the Design-Build Firm as allowed under Florida law.
- 12.6 The Design-Build Firm shall immediately remove from the Work Site any and all portions of the Work which are not in compliance with the requirements of the Contract Documents. In the event the Design-Build Firm fails to correct any non-conforming Work within a reasonable time, the Owner may correct such non-

conforming Work in accordance with paragraph 2.6. In the event the Owner corrects the non-conforming Work, the Owner may remove and store any salvageable materials or equipment at the Design-Build Firm's expense. If the Design-Build Firm fails to reimburse the Owner for such expenses, within 5 business days after written notice, the Owner may take any and all action it deems appropriate in order to obtain reimbursement of its expenses under this subparagraph. Any action taken by the Owner under this subparagraph shall not in any respect serve to limit in law or equity the Owner's ability to place any other claim against the Design-Build Firm.

- 12.7 The Owner has the discretion to accept Work that is not in compliance with the requirements of the Contract Documents. In this event, the Owner shall reduce its decision to writing, which shall include any reduction, if any, to the Contract Sum as a result of the acceptance of non-conforming Work. Any such adjustment to the Contract Sum shall apply whether or not final payment has been made under this Agreement.

### **ARTICLE 13: TERMINATION OF THE AGREEMENT**

#### **A. Termination by Design-Build Firm**

- 13.1 The Design-Build Firm may terminate the Agreement if the Work is stopped for a period of 30 calendar days through no act or fault of the Design-Build Firm, or a subcontractor, sub-subcontractor, material supplier, or their agents or employees, for any of the following reasons:
- (a) The issuance of an order of a Court or any other public authority having jurisdiction;
  - (b) An act of government, such as a declaration of national emergency, making materials unavailable;
  - (c) In the event the Owner has not made payment on an uncontested certificate for payment within the time stated in the Contract Documents.
- 13.2 In the event the Design-Build Firm elects to terminate the Agreement for one of the above enumerated reasons, the Design-Build Firm shall provide the Owner with 7 day written notice, and thereafter terminate the Agreement and receive from the Owner payment for any non-deficient Work executed up to the date of such termination notice.
- 13.3 In the event the Work is stopped for a period of 60 calendar days through no act or fault of the Design-Build Firm, a subcontractor, sub-subcontractor or material supplier, because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to substantive matters relating to the progress of the Work, the Design-Build Firm may, upon giving the

Owner an 7 day written notice, terminate the Agreement and recover from the Owner payment for any non-deficient Work executed up to the date of said termination notice.

**B. Termination by Owner for Cause**

13.4 The Owner may terminate the Agreement for cause for any of the following reasons:

- (a) Repeated refusal or failure of the Design-Build Firm to supply sufficient, properly skilled workers, or proper materials to the Work Site;
- (b) Failure to make payment to subcontractors for materials or labor in accordance with the required agreements between the Design-Build Firm and subcontractors;
- (c) Disregard by the Design-Build Firm of any applicable laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction;
- (d) Any substantive breach of a provision of the Contract Documents.

13.5 If any of the above enumerated causes exist, the Owner may, without prejudice to any other rights or remedies, and after giving the Design-Build Firm and the Design-Build Firm's surety, if any, five (5) business days' written notice, terminate this Agreement with the Design-Build Firm and may, subject only to any prior rights of the surety, take possession of the Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Build Firm; accept assignment of subcontracts pursuant to this Agreement; and finish the Work by whatever reasonable method the Owner may deem appropriate. The Design-Build Firm shall not be entitled to receive any further payment under this Agreement. In the event the costs for completing the Work, including compensation for any Owner services and expenses, exceed the unpaid balance of the Contract Sum, the Design-Build Firm shall pay the difference to the Owner. This obligation for payment shall survive termination of this Agreement.

**C. Suspension or Termination by Owner Without Cause**

13.6 The Owner may, without cause, require the Design-Build Firm to suspend, delay or terminate the Work in whole or in part for such period of time as the Owner may determine. Such requirement shall be in writing, signed by the Owner. An adjustment will be made for any increases in the cost of performance of the Agreement, caused by the suspension, delay or termination. No adjustment shall be made to the extent that the Design-Build Firm is responsible for any cause which would also have suspended, delayed, or interrupted the work or to the extent that the Design-Build Firm has previously requested an equitable adjustment under another provision of this Agreement and such request has



either been granted or denied. Any such adjustments made in the cost of performance, shall only be upon a mutually agreed fixed or percentage fee and will be agreed upon before the Design-Build Firm is required to recommence work.

- 13.7 In the event the Work is temporarily suspended or terminated under this subparagraph, the Owner shall pay the Design-Build Firm for any non-deficient Work executed up to the date of said temporary suspension or termination.

**ARTICLE 14: TAX EXEMPT OWNER DIRECT MATERIAL/EQUIPMENT  
PURCHASE PROGRAM**

- 14.1 The Owner shall appoint the Design-Build Firm as the Owner's authorized representative with respect to any matter arising out of the purchase orders under this program. The Design-Build Firm 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 Design-Build Firm, 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 "D,"** controls the Direct Purchase Program for the Project. The Direct Purchase Program will be operated in accordance with the following provisions:

14.1.(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.

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

14.1.(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.

14.1.(d) The Owner assumes all risk of loss on all material and equipment purchased under the Direct Purchase Program. The Design-Build Firm cannot be held liable for damage or loss to the material or equipment.

14.1.(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 Design-Build Firm does not share any economic benefits of proceeds from bond or insurance covering risk of damage or loss of the material or equipment.

14.1. (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.

- 14.2 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 Design-Build Firm 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. If the items included in the purchase order represent any materials, supplies or equipment that is part of a subcontractor's scope of Work, then 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.
- 14.3 The items being purchased shall be purchased from the vendors and suppliers selected by the Design-Build Firm and/or the subcontractor for prices negotiated by the Design-Build Firm and/or subcontractor.
- 14.4 The Design-Build Firm 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 Design-Build Firm and the Owner. The system developed by the Design-Build Firm 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 Design-Build Firm shall submit a monthly accounting report of this information with the Design-Build Firm's application for payment.
- 14.5 The Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm. Should a delay be incurred that is not the result of the Owner's failure, as stated above, the Design-Build Firm shall be held accountable for such a delay. The Design-Build Firm, 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.

- 14.6 The Design-Build Firm shall be responsible for all purchases in the same manner as if the Design-Build Firm had purchased the items, inclusive of managing the warranties for the Owner. The Design-Build Firm 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.
- 14.7 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.
- 14.8 The Design-Build Firm 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.
- 14.9 The Design-Build Firm agrees that its builder's risk insurance coverage amount shall be unaffected by any direct purchase deductive change order implemented pursuant to this program.
- 14.10 Payment shall be directly made by the Owner to the vendor for any Direct Purchases.
- 14.11 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.
- 14.12 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 Design-Build Firm. The cost of the supply bond shall be included in Design-Build Firm's GMP.
- 14.13 The Owner agrees to make payments by the 15th of the month providing the Design-Build Firm processes the invoices and delivers same to the Facilities Department by the 20th of the preceding month.

14.14 Owner shall not withhold retainage on any payments made to the vendor.

**ARTICLE 15: MISCELLANEOUS PROVISIONS**

- 15.1 Recitals. The recitals set forth in the Whereas Clauses are incorporated herein by reference and made a part of this Agreement.
- 15.2 Defining Terms. Unless otherwise noted, the terms used in the Agreement shall have their ordinary and customary meanings as used in the industry.
- 15.3 Indemnity and Hold Harmless. The Design-Build Firm shall hold harmless and indemnify the Owner, its agents and employees from and against any and all losses, damages, claims made by third parties, liabilities to third parties, litigation and other matters which may arise from, be caused, or result during or as a result of any act or omission of the Design-Build Firm, the performance of the Agreement, or breach of performance of the Agreement by the Design-Build Firm, or the performance or failure of performance of any product or service furnished by the Design-Build Firm under this Agreement with the Owner, or in any way or manner whatsoever related to any duty imposed on the Design-Build Firm related to, occurring during, or rising from the construction and subsequent occupancy of the Project. This hold harmless and indemnification provision shall include a duty to defend the Owner and to pay all reasonable attorneys' fees and expenses, including administrative and on appeal, incurred by the Owner in the defense of any matter covered by this provision. This hold harmless and indemnity shall survive the termination or expiration of this Agreement. The parties acknowledge that \$100.00 of the Owner's first payment to the Design-Build Firm shall be in consideration for this indemnification. This indemnity shall not be deemed to include matter which may be cause or results from an act or omission of the Owner in whole or in part.
- 15.4 Limitation of Liability. The Owner shall be liable only to the extent of its interest in the Project, and no officer, director, partner, agent or employee of the Owner shall ever be personally or individually liable with respect to this Agreement or the Work. Any subcontract entered into by the Design-Build Firm shall include the forgoing limitation, which shall be effective in the event the Owner ever succeeds to the Design-Build Firm's rights and obligations under a subcontract.
- 15.5 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise.



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

- 15.10 Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
- 15.11 Captions. The headings used for the various portions of this Agreement and the Construction Documents are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope or the intent of this Agreement, any section of this Agreement, or any section of the Contract Documents.
- 15.12 Severability. In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
- 15.13 Cumulative Remedies. All rights, powers, remedies, benefits, and privileges are available under any provision of this Agreement to any party, is in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.
- 15.14 Approval. Whenever any review or approval is required by any party, such party agrees that such review or approval will be promptly and expeditiously prosecuted to conclusion.
- 15.15 Further Assurances. The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
- 15.16 No Partnership or Joint Venture. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the parties or any third party, or cause any

party to be responsible in any way for the debts and obligations of the other party.

- 15.17 No Construction Against Drafter. Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
- 15.18 Third Party Beneficiary. This Agreement has been made and entered into for the sole protection and benefit of the Owner, and its respective successors, and no other person or entity shall have any right or action under this Agreement.
- 15.19 No Assignments. This Agreement is for the personal services of the Design-Build Firm, and may not be assigned by the Design-Build Firm in any fashion, whether by operation of law or by conveyance of any type, including without limitation, transfer of stock in the Design-Build Firm, without the prior written consent of the Owner, which consent the Owner may withhold in its sole discretion.
- 15.20 Force Majeure. With regard to the performance under this Agreement, a party shall not be deemed to be in default of this Agreement, or have failed to comply with any term or conditions if, for reasons beyond the parties reasonable control, including without limitation acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, easements, permits or other compliance with applicable laws, rules and regulations, such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond the parties reasonable control, provided that the party commences such performance as soon as reasonably possible and diligently pursues such performance..
- 15.21 Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Florida. Osceola County, Florida shall be the proper for all suits to enforce this Agreement. Any legal proceeding arising out of or in connection with this Agreement shall be brought in the Circuit Courts of Osceola County, Florida. Design-Build Firm (which term for the purposes of this subparagraph shall include Design-Build Firm's surety) consents and submits to the exclusive jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court. Owner and Design-Build Firm 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. Notwithstanding any other provision of the Contract Documents, the Owner does not agree to, nor shall the parties, arbitrate in any manner whatsoever any issue arising out of this

Agreement, the Contract Documents or the performance thereof. In connection with a dispute, legal action or litigation arising out of this Agreement, the Contract Documents or the performance thereof, each party shall bear their own attorneys' fees and costs.

15.22 Waiver of Jury Trial. **THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL.**

15.23 Dispute Resolution. Prior to initiating any litigation arising out of the Agreement, the parties agree to submit the dispute to non-binding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees, and the cost of the mediator shall be split between the parties.

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

15.25 Conduct While on School Property. The Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm agrees to immediately remove any agent or employee if directed to do so by the building administrator or designee.

15.26 Owner Transfer of Interest. If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Design-Build Firm arising from this Agreement shall automatically transfer to such third party



without the necessity of a written document or consent from the Design-Build Firm.

- 15.27 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, Design-Build Firm 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-09-Q-006 KR-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-09-Q-006 KR-FPC had one or more public transactions (federal, state or local) terminated for cause or default.

Design-Build Firm 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 15.27 (a) – (d) above, with respect to Design-Build Firm or its principals.

- 15.28. Background Check. The Design-Build Firm 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 Design-Build Firm or its personnel providing any services under the conditions described in the previous sentence. The Design-Build Firm 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 Design-Build Firm and its personnel. The parties agree that the failure of the Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes. Design-Build Firm shall require each of Design-Build Firm's subcontractors on the project to agree, in writing, to the provisions of this paragraph.
- 15.29. 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.
- 15.30 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.
- 15.31 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, Design-Build Firm 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).

**THE SCHOOL BOARD OF OSCEOLA  
COUNTY, FLORIDA**

By: \_\_\_\_\_  
John McKay, Chairman

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Michael A. Grego, Ed.D., Superintendent

**DESIGN-BUILD FIRM**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_