



Document 00700: General Conditions of the Contract

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General Conditions of the Contract

ARTICLE 1. DEFINITIONS.

- 1.01 **The Chief Facilities & Construction Officer:** An employee of the School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the **Chief**.
- 1.02 **The Contract Documents:** The Contract Documents consist of the Agreement Form, Addenda, Supplementary Conditions, General Conditions, Documents contained in the Project Manual, Drawings, Specifications, and all modifications issued after execution of the Contract.
- 1.03 **The Owner, the Contractor, and the Project Consultant:** are those mentioned as such in the Contract Documents.
- 1.03.01 **Owner:** The School Board of Broward County, Florida, (also referred to as the "Board").
- 1.03.02 **Contractor:** The "party of the second part", of the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents. The Contractor may also be referred to as the Design/Builder, Construction Manager, Total Program Manager, Construction Services Emergency Projects Contractor, or Construction Services Minor Contracts Contractor.
- 1.03.03 **Project Consultant:** The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services for development of the design and Contract Documents for the Work of this Project and provide Construction Contract Administration as described in the Contract Documents. The Project Consultant may also be referred to as Design Criteria Professional.
- 1.04 **The Office of Facilities & Construction ("Office"):** The Owner's organizational entity which acts as liaison between the Consultant and Owner and provides day to day management and other professional services on the Owner's behalf.
- 1.05 **Final Completion:** Means that date subsequent to the date of Substantial Completion at which time the Contractor has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work.

- 1.06 **Journeyman:** A person working in an apprenticeable occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation. "Established industry practices" means the number of years of training required by the majority of registered program standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."
- 1.07 **Project Manager:** An employee of The School Board of Broward County, Florida, referred to hereinafter as the "**Project Manager**" who is to manage the Project from the planning and development of design and construction contract documents through the construction and warranty close-out process, and who serves as the Owner's liaison to school based personnel and the public.
- 1.08 **Building Code Inspectors and Plans Examiners:** Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida statutes 468, 633 and 553 to provide plan review and inspections for code compliance..
- 1.09 **Other Contractors:** Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by the Contract.
- 1.10 **Owner's Representative:** The Chief of Facilities & Construction Officer, or designee.
- 1.11 **Phase:** A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.
- 1.12 **The Project:** The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.
- 1.13 **Punch List:** A list of items of work required by the Contract Documents which after inspection by the Project Consultant, the Owner, and the Contractor has been termed to be deficient and/or inconsistent with the Contract Documents.
- 1.14 **Subcontractor:** A person or entity other than a materialman or laborer who enters into a Contract with Contractor for the performance of any part of Contractor's Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.15 **Sub-subcontractor:** A person or entity other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-

subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.

- 1.16 **Submittals:** Are prepared by the Contractor or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Contractor's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, workmanship bonds, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.17 **Substantial Completion:** The term Substantial Completion as used herein, shall mean that point at which, as certified in writing by the Project Consultant, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase.
- 1.18 **Subconsultant:** A person or organization of properly registered professional architects, engineers or other design professionals who has entered an agreement with the Project Consultant to furnish professional services in support of the Project Consultants agreement with the Owner.
- 1.19 **Superintendent:** The executive representative for the Contractor present on the work at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant and capable of superintending the work efficiently.
- 1.20 **Superintendent Of Schools:** The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.21 **Surety:** The firm, corporation, or individual which is bound by the Contract Bond with and for the Contractor, and which engages to be responsible for the Contractor's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.22 **Work:** The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
- 1.23 **Written Notice:** Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail, fax or other traceable delivery service to the last business address known to him who gives notice.

ARTICLE 2. THE WORK.

- 2.01 The Contractor shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.
- 2.02 When completed the Work shall conform to the requirements of the Contract Documents and be completely ready for occupancy and finally completed.
- 2.03 The Contractor represents and warrants to the Owner that:
- 2.03.01 It is financially solvent and has sufficient working capital to perform the obligations under this Construction Contract;
- 2.03.02 It is experienced and skilled in the construction of the type of project described in the Contract Document;
- 2.03.03 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;
- 2.03.04 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Contractor" in the Construction Contract;
- 2.03.05 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines. The Contractor acknowledges receipt and has reviewed the site geotechnical report as provided by the Owner.
- 2.03.06 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.
- 2.03.07 It will comply with the Workforce Composition requirements, S/M/WBE program requirements, and the requirements of Document 00425, Certificate of Intent.
1. 2.03.08 It is capable of providing appropriate schedules and determining design and construction sequences, means and methods and/or the like, to complete the project in accordance with the requirements of the Contract Documents.
- 2.03.08 The Owner reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other

inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

- a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.
- b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
- c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.
- d. Tools and equipment with an individual cost of \$500 or less.
- e. Cell phone charges in excess of \$100 per authorized employee as approved by the Owner.
- f. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.
- g. Overtime charges not previously authorized in writing by the Owner.
- h. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 3. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

3.01 The Contractor represents that:

- 3.01.01 The Contractor and Subcontractors have fully examined and compared all Drawings, Specifications and other Contract Documents including but not limited to those relating to the architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.
- 3.01.02 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Contractor is aware of as a result of the examination and comparison of the Contract Documents have been either corrected or

clarified to the satisfaction of the Contractor prior to execution of this Construction Contract.

- 3.01.03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be functional and in accordance with the requirements of the Contract Documents.
- 3.01.04 The Contract Time is adequate for the performance of the Work.
- 3.02 The Contractor is responsible for all means, methods, techniques and sequencing of construction.
- 3.03 If, after execution of this Construction Contract, the Contractor detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owner prior to proceeding with the specific portion of the Work.

ARTICLE 4. INTENT AND INTERPRETATION.

- 4.01 With the respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:
 - 4.01.01 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project Consultant of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work.
 - 4.01.02 The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all.
 - 4.01.03 The intent of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. The Contractor shall continually refer to drawing, specifications and other Contract Documents in this regard.
 - 4.01.04 In the event of a conflict among the Contract Documents, the most stringent requirement to the Contractor shall control.
- 4.02 The Project Consultant shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder.
 - 4.02.01 The Project Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

- 4.02.02 Interpretations and decisions of the Project Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents.
- 4.02.03 In the capacity of interpreter the Project Consultant shall endeavor to secure faithful performance by both the Owner and the Contractor, and shall not show partiality to either.

ARTICLE 5. OWNERSHIP OF THE CONTRACT DOCUMENTS WHICH MAKE UP THE CONTRACT.

- 5.01 Subject to any rights the Project Consultant may have, the Contract Documents and each of them, as well as any other documents, intellectual property, software, computer-assisted material or disks relating to or regarding the Work, shall be and remain the property of the Owner. This shall be the case even if prepared, created or provided by the Project Consultant, Contractor, Subcontractor or others.
- 5.02 The Contractor shall have the right to keep copies of same upon completion of the Work; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of same on other projects without the Owner's prior written authorization.
- 5.03 The Contractor agrees to provide any and all items referred to in this Paragraph to Owner upon demand by Owner. In the event Contractor fails to provide same to Owner as demanded, Contractor acknowledges that the Owner will need same and will be irreparably harmed and be subject to an injunction to provide same.

ARTICLE 6. TEMPORARY UTILITIES.

- 6.01 Water For Building Work: The Contractor shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 6.02 Electrical Energy: The Contractor shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 6.03 Temporary Sanitary Facilities And Sewers:
 - 6.03.01 The Contractor shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.
 - 6.03.02 No nuisance will be permitted.

- 6.03.03 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- 6.03.04 Contractor is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 7. PROGRESS.

- 7.01 Contractor shall provide the Owner with full information in advance as to its plans for performing each part of the Work. This shall include, but not be limited to, schedules provided to the Owner as Post-Award Information and subsequently updated schedules submitted to the Owner on a bi-monthly basis as required elsewhere in the Contract Documents.
 - 7.01.01 Such schedule shall be in a form acceptable to the Owner.
 - 7.01.02 The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project.
 - 7.01.03 Each such revision shall be provided to the Owner and the Project Consultant.
 - 7.01.04 Compliance with the requirements of this Subparagraph shall be a condition precedent to payment to the Contractor, and failure by the Contractor to comply with said requirements shall constitute a material breach of this Contract.
 - 7.01.05 By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but it is simply reviewing same for its own informational purposes.
- 7.02 If at any time during the progress of Work, the Contractor's actual progress is inadequate to meet the requirements of the Contract Documents, such as the required completion dates, the Owner may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress so as to complete the Work on or before the required Substantial Completion Date.
 - 7.02.01 If within a reasonable period as determined by Owner, the Contractor does not improve performance to meet the requirements of the Contract Documents, such as the required completion dates, then the Owner may require an increase in any or all of the following: Contractor's Subcontractor crews and Contractor's own labor force, the number of shifts, overtime operation, Contractor's supervision and additional days of work per week, all without cost to Owner.
 - 7.02.02 Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Contract Documents.

- 7.03 Failure of Contractor to comply with the instructions of the Owner may be grounds for determination by Owner that Contractor is not prosecuting its Work with such diligence as will assure completion within the time specified.
- 7.04 Upon such determination, Owner, in addition to any and all other rights set forth in the Contract Documents and remedies afforded Owner under the Contract Documents or at law, may:
 - 7.04.01 Elect to proceed with the Work with its own employees, agents, contractors, subcontractors, suppliers and assess all costs, expenses or fees for same against contractors and/or
 - 7.04.02 Terminate for cause Contractor's right to proceed with the performance pursuant to the Contract Documents, or any separable part thereof, in accordance with the applicable provisions of the Contract Documents.

ARTICLE 8. EXPEDITING.

- 8.01 The Work, equipment and material provided under this Contract may be subject to expediting by Owner.
- 8.02 Owner shall be allowed reasonable access to the shops, factories and other places of business of the Contractor and/or Subcontractors for expedition purposes.
- 8.03 As required by Owner, Contractor shall supply schedules and progress reports for Owner's use in expediting, and Contractor shall cooperate with Owner and require Subcontractors to cooperate with Owner in such expediting.
- 8.04 Any expediting performance by Owner shall not relieve Contractor of its sole and primary responsibility for timeliness of delivery of the equipment and material to be provided under the Contract Document.

ARTICLE 9. CONTRACT PAYMENTS.

- 9.01 Schedule of Values:
 - 9.01.01 The Contractor shall maintain and update the Schedule of Values originally provided to the Owner as Post-Award Information.
 - 9.01.02 The Contractor's Schedule of Values apportions the Contract Price among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.
 - 9.01.03 The Schedule of values shall be presented with such detail, and supported with whatever information the Project Consultant or the Owner reasonably requests.
 - 9.01.04 The Contractor shall not imbalance it's Schedule of Values nor artificially inflate any element thereof.

- 9.02 The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in the Contract Documents.
- 9.02.01 On or before the **15th** day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Contractor and Owner.
- 9.02.02 Said Application for Payment shall be in the format required elsewhere in the Contract Documents and include whatever supporting information as may be required by the Project Consultant, the Owner, or both. Said Application for Payment will include partial waivers of lien signed by subcontractors. Therein, the Contractor may request payment for that part of the Contract Price allocable to Contract requirements properly provided, labor, material and equipment properly incorporated in the Project. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in the Contract Documents, applicable Florida law, and the Florida Prompt Payment Act as set forth in Chapter 218. Financial Matters Pertaining To Political Subdivisions, under Title XIV- Taxation And Finance of The Florida Statutes, as amended if any, to wit: 218.735 Timely payment for purchases of construction services. Upon 50% completion of the project, 5% of this retainage should be released by the Owner in accordance with Florida Statute 255.078.
- 9.02.03 The amount of each such payment shall be the amount approved for payment by the Project Consultant less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents or reasonable business practices.
- 9.02.04 The Project Consultant's approval of the Contractor's Applications for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in the Contract Documents.
- 9.02.05 The submission by the Contractor of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance by any person whatsoever.
- 9.02.06 As a condition precedent to payment, the Contractor shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, properly executed documents that all subcontractors, materialmen, suppliers or others having rights, acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any rights or other claims relating to the Project site.
- 9.02.07 Furthermore, the Contractor warrants and represent that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner.

- 9.02.08 Dollar Value/Time Graphs: Each of the Contractor's Application for Payment shall be accompanied by a graph, prepared by the Contractor, that consecutively tracks the percentage of completion of both the Application for Payment's dollar value attained and the contract time (calendar days) elapsed, all coinciding with the date of the Application for Payment.
- 9.03 When payment is received from the Owner, the Contractor shall within five (5) days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for all work covered by such payment. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid.
- 9.04 It is mutually agreed that payments made under this Contract shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.

ARTICLE 10. WITHHOLDING PAYMENT TO CONTRACTOR.

- 10.01 In addition to the Retainage, payments, including but not limited to Final Payment, may be withheld or reduced by the Owner in its sole discretion if any of the following exists:
- 10.01.01 The Work is not proceeding in accordance with the Construction Documents Schedule as anticipated by the Project Consultant or the Owner. In that event, the Project Consultant or the Owner will assess the anticipated delay and the Owner will use the amounts specified for Liquidated Damages as the basis for amounts withheld. Said funds shall be held until such time as the Project Consultant or Owner determine that the Work is back on schedule. By making said funds available to Contractor, Owner does not waive its right to assess liquidated damages at the completion of the Project;
- 10.01.02 Liquidated Damages as set forth in this Contract;
- 10.01.03 Defective Work unremedied;
- 10.01.04 Punch-List items unremedied;
- 10.01.05 Subject to Owner's written notice to Contractor in accordance with the Contract Documents back charge items for work performed by Owner or another contractor at the request of Owner, which work is within the scope of the Work under this Construction Contract;
- 10.01.06 Claims filed by subcontractors, laborers, suppliers, materialmen or others;
- 10.01.07 Failure to comply with any and all insurance requirements;
- 10.01.08 Failure of the Contractor to make payment properly to Subcontractors or others;

- 10.01.09 Damage to the Owner or another contractor;
- 10.01.10 Reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion Date;
- 10.01.11 Failure of the Contractor to carry out any of its obligations in accordance with the Contract Documents;
- 10.01.12 Failure of the Contractor to submit the information or documents required by this Contract or reasonably required by Owner, including but not limited to schedules and daily logs.

ARTICLE 11. CONTRACTOR'S RIGHT UPON NONPAYMENT.

- 11.01 If within thirty (30) days of the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease work to the Owner.

ARTICLE 12. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER.

- 12.01 The Owner shall furnish to the Contractor, prior to the execution of the Contract, any and all written and tangible material, including but not limited to surveys and other information concerning existing conditions on the Site.
- 12.02 The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

ARTICLE 13. LICENSES AND PERMITS.

- 13.01 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Contractor.
- 13.02 Educational facilities constructed by The School Board of Broward County, Florida are not exempt from all county, district, municipal or local building codes and ordinances; therefore all applicable building and other permits will be required. All required permits, bonds and/or other fees required for Work to be performed, including but not limited to Work in public rights-of-way and other Work otherwise outside the Owner's property line will be procured and paid for by the Contractor.
- 13.03 All easements and rights-of-way will be procured and paid for by the Owner unless otherwise specifically provided within the Contract Documents.

ARTICLE 14. CEASE AND DESIST ORDER.

- 14.01 In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing the Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately

cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected and the Owner instructs that the Work may resume.

- 14.02 In the event the Owner issues such instruction to cease and desist, and in the further event the Contractor fails and refuses within 7 (seven) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the Owner.
- 14.03 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 15. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR.

- 15.01 The Contractor shall perform the Work in accordance with the Contract Documents.
- 15.02 The Contractor shall supervise the Work and bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.
- 15.03 The Contractor hereby warrants that all labor provided under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all material and equipment provided shall be new and of high quality, that the Work will be complete, of high quality, without defects, and in compliance with the requirements of the Contract Documents. Any Work not complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.
- 15.04 The Contractor shall obtain and pay for all required permits, fees, and licenses and shall comply with all legal requirements applicable to the Work.
- 15.05 The Contractor shall prepare and submit schedules and supporting documentation as required elsewhere in the Contract Documents.
- 15.06 Record Keeping on Site:
 - 15.06.01 The Contractor shall keep a daily log, an updated copy of the Contract Documents, approved shop drawings and other submittals, and other documents and materials as required by the Contract Documents at the site.
 - 15.06.02 All of these items shall be available to the Owner and the Project Consultant at all regular business hours.
 - 15.06.03 Upon final completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.
- 15.07 Shop Drawings And Other Submittals:

- 15.07.01 The Contractor shall submit for approval with reasonable promptness and in a timely manner so as to cause no delay in the Work, various submittals including shop drawings as required for the Work of the various trades.
- 15.07.02 These shop drawings and other submittals shall be in accordance with the requirements of the Contract Documents and shall be carefully checked in every respect and signed by the Contractor before submitting same to the Project Consultant.
- 15.07.03 Shop drawings and other submittals from the Contractor are not part of the Contract Documents but are documents prepared and utilized by the Contractor to coordinate the Work.
- 15.07.04 The Contractor shall not do any Work requiring shop drawings or other submittals unless such have been approved in writing by the Project Consultant.
- 15.07.05 All Work requiring approved shop drawings or other submittal shall be done in compliance with such approved documents. However, approval by the Project Consultant or the Owner shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Contract Documents.
- 15.07.06 The Owner and the Project Consultant shall have no duty to review partial submittal or incomplete submittal except as may be provided otherwise within the Contract Documents.
- 15.07.07 The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.
- 15.07.08 The Contractor shall have the duty to carefully review, inspect and examine any and all submittal and resubmittals before submission of same to Owner or the Project Consultant.
- 15.08 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of debris, trash and excess materials or equipment. In the event the Project is located at or near occupied facilities, then Owner may establish additional rules and regulations regarding condition at the Project, including but not limited to, keeping the Project and the occupied premises clean, safe and secure.
- 15.09 At all times, the Contractor shall permit the Owner and the Project Consultant to enter upon the Project site and to review or inspect the Work.

ARTICLE 16. SUBCONTRACTS.

- 16.01 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Contractor shall fix the scope of all Work and responsibilities of the Subcontractor. Contractor shall not replace Subcontractor without good cause.

The Contractor shall enter into written agreements with all Subcontractors, suppliers and materialmen.

- 16.01.01 Contractor shall provide to Owner a written notice of all potential subcontractor(s) prior to executing subcontracts. Owner reserves the right to reject any potential subcontractor(s) **for any reason**, and prior written Owner approval is required before Contractor enters into any subcontract agreements for this project. Contractor is not authorized to enter into any subcontracts without prior written Owner approval.
- 16.01.02 Related Party Transactions: the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common Ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above. If any of the costs proposed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, the Contractor shall procure the work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of this agreement. If the Owner fails to authorize the transaction, the Contractor shall procure the work, equipment, goods or service from some person or entity other than a related party according to the terms of this agreement.
- 16.02 The Contractor shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
 - 16.02.01 The general form of Subcontract Agreement used by the Contractor within thirty (30) days of execution of the Construction Contract.
 - 16.02.02 Updated listings of Subcontractors denoting changes to the list submitted as Post-Award Information within ten (10) days of said change.
 - 16.02.03 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
 - 16.02.04 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Contractor.
- 16.03 All contracts with Subcontractors shall incorporate by reference the terms and conditions of this Construction Contract.
- 16.04 The Contractor shall cause and require to be included in all Subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Contractor is replaced by another contractor pursuant to the term of the Contract Documents. The Contractor shall also include in all

Subcontracts a provision requiring the Subcontractor, in the event of the Contractor's termination, to consent to the assignment of their Subcontracts to the Owner.

- 16.05 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Contractor and the Contractor shall cause to be included in all Subcontracts a requirement that the Subcontractors provide said sworn statement upon Owner's request.
- 16.06 Each Subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each Subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Contractor and any legal or statutory provisions that apply to its work, materials or equipment.
- 16.07 Owner may at its discretion require Contractor to have major sub-subcontractors or suppliers comply with the requirements of this Article 16 or other provisions of the Contract Documents.
- 16.08 Any disputes which may arise in this connection between the Contractor and any Subcontractor must be settled between the parties concerned and the Owner will not undertake, nor be in any way responsible for, the settlement of such disputes.
- 16.09 No Subcontractor shall under any condition relieve the Contractor of his liabilities and obligations to the Owner under his Contract and the Contractor shall be solely responsible to the Owner as provided herein.

ARTICLE 17. BONDING OF SUBCONTRACTORS.

- 17.01 The Contractor shall submit proof, in the form of copies of properly executed bond forms, that the following major subcontractors have provided a performance bond and a payment bond to the Contractor and Owner as dual obligees with a corporate surety approved by the United States Treasury Department and authorized to do business in the State of Florida and otherwise acceptable to the Owner:
 - 17.01.01 HVAC/Mechanical
 - 17.01.02 Electrical
 - 17.01.03 Plumbing
 - 17.01.04 Roofing
 - 17.01.05 Shell and Concrete
- 17.02 If the value of a subcontract listed above is below \$200,000, the Subcontractor Bonding requirement for that respective subcontract may be waived by the Owner, at its sole discretion, for S/M/WBE Subcontractors participating in the Owner's S/M/WBE Subcontractor Programs as described elsewhere in the Contract Documents.

- 17.03 The respective performance and payment bonds shall:
- 17.03.01 Require the Surety to perform the Subcontract and to pay all bills and invoices for labor done and materials provided in the performance of the Work, including any guarantee or warranty period provided for in the Contract Documents.
- 17.03.02 Be on the forms as provided by the Owner. No other forms will be acceptable.
- 17.03.03 Executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact. The Owner may request the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- 17.03.04 In case of default or other proceedings on the part of the Subcontractor, actions for all expenses incident to ascertaining and collecting losses under the bond, including reasonable attorney's fees for same, shall be covered by the bond.
- 17.03.05 Bonding companies acceptable to the Owner are bonding companies which are United States Treasury Department approved bonding companies, qualified and rated in accordance with Article 42.09 below and limited in bonding ability to the current United States Treasury Department standing for net limit on any one risk at the time of execution of the Subcontract.

ARTICLE 18. CONTRACTOR'S SUPERINTENDENT

- 18.01 Before starting the Work, Contractor shall designate an English speaking, competent, authorized representative (hereinafter Superintendent), acceptable to the Owner, to represent and act for the Contractor. The Contractor shall:
- 18.01.01 Inform Owner, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor and shall specify any and all limitation on such authority.
- 18.01.02 Keep the Owner informed of any subsequent changes in the foregoing.
- 18.02 The Superintendent shall be present or be duly represented at the site of the Work at all times when the Work is actually in progress.
- 18.03 During periods when portions of the Work are suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency which may be required.
- 18.04 All notices, determinations, instructions and other communications given to the Contractor's Superintendent shall be binding upon the Contractor.
- 18.05 The Superintendent shall maintain a daily log/report which shall include at least the following information: weather conditions; trades at site; manpower totals by trade; activities in progression; and inspections at site. Copies of the daily entries shall be

provided to the Owner once per month or as required elsewhere in the Contract Documents.

ARTICLE 19. COOPERATION WITH OTHERS.

- 19.01 The Owner and other contractors and subcontractors may be working at the site during the performance of the Construction Contract, and Contractor's work may be interfered with as a result of such concurrent activities. Contractor shall fully cooperate with Owner and other contractors to avoid any delay or hindrance of the Work. Owner may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.
- 19.02 If any part of the Contractor's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner or separate contractor's work as fit and proper to receive Contractor's Work, except as to defects which may subsequently become apparent in such work performed by others.

ARTICLE 20. SITE CONDITIONS.

- 20.01 Contractor shall have the sole responsibility to conduct reasonable inspection of the site and to satisfy itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of material; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions; location of underground utilities as depicted in the Contract Documents; governmental processes and requirements for obtaining permits other than issuance of the original building permits, certificates of occupancy and other regulatory/utility approvals; physical conditions at the work sites and the Project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quality of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Construction Contract; and all other matter which can in any way affect performance of the Construction Contract, or the cost associated with such performance.
- 20.02 The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the duration, difficulties, or the costs of successfully performing the Work.
- 20.03 Contractor may reasonably rely upon site documentation provided by the Owner. In the event the site conditions are materially different than what Contractor anticipated as a result of Contractor's inspection of the property or tests, information or data supplied to Contractor by others such as design professionals or testing companies, then Contractor may seek an adjustment in time or price based upon same provided that Contractor gives Owner written notice of same within 10 days of discovery of the differing site condition. Said request for change in time or price shall be addressed in the same manner as a Change Order pursuant to Article 33 below.

ARTICLE 21. RESPONSIBILITY FOR WORK SECURITY.

- 21.01 Contractor shall at all times conduct, at its expense, all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.
- 21.01.01 Contractor shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.
- 21.01.02 Contractor shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.
- 21.02 Contractor shall comply with all applicable laws and regulations.
- 21.02.01 Contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Contractor 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 will 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 SBBC in advance of Contractor or its personnel providing any services under the conditions described in the previous sentence. Contractor will 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 Contractor and its personnel. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in Contractor's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.
- Bidder agrees to indemnify and hold harmless Owner, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Bidder's failure to comply with the requirement of this Section or Section 1012.32 and Section 1012.465, Florida Statutes in addition to any other indemnification obligations that may be imposed upon Bidder pursuant to Article 38 of the General Conditions and the laws of Florida.
- 21.02.02 Contractor shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.
- 21.02.03 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.

- 21.02.04 Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining property security for the above noted items, nor shall it be constructed as limiting in any manner Contractor's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 21.03 Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

ARTICLE 22. PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT.

- 22.01 Contractor shall be responsible for and shall bear any and all risks of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of the Work under this Contract.
- 22.02 Permanent openings for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the Work will be delivered to the Owner in proper, whole and unblemished condition.

ARTICLE 23. ADMINISTRATION OF THE CONTRACT.

- 23.01 The Project Consultant will provide Administration of the Contract.
- 23.01.01 For those projects for which the Owner's Office of Facilities and Construction serves as the Project Consultant all references to the Project Consultant shall be considered to be the Project Construction Manager.
- 23.01.02 In the event the Owner should find it necessary to replace the Project Consultant, the Owner shall retain a replacement and the role of the replacement shall be the same as the role of the original Project Consultant.
- 23.02 Unless otherwise directed by the Owner in writing, the Project Consultant will perform those duties and discharge those responsibilities allocated to the Project Consultant by the Owner.
- 23.03 Neither the Project Consultant nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Contractor, its Subcontractors or their agents or employees.
- 23.04 The Project Consultant and Owner will each have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing with prior approval by the Owner. Neither the Project Consultant's nor the Owner's authority to act under this Paragraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Consultant or the Owner to the Contractor, any

Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 23.05 The Contractor shall forward all communications to the Project Consultant, with simultaneous copies to the Owner.
- 23.06 The Project Consultant will review and certify the Contractor's Application for Payments which the Owner must subsequently approve prior to Payment of the Contractor.
- 23.07 The Project Consultant shall approve shop drawings for design only, the Contractor being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 23.08 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Contractor, the Project Consultant, and the Owner.
- 23.09 Notwithstanding anything to the Contrary in these General Conditions or any other "Contract Document" as that term is defined in Article 1.09 of the Professional Services Agreement between The School Board of Broward County, Florida and the Project Consultant, it is not the intention nor shall any of the provisions of those documents act as a release, limitation or discharge of the obligations or responsibilities of the Project Consultant pursuant to its agreement with the Owner.

ARTICLE 24. MATERIALS.

- 24.01 The Contractor shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner.
 - 24.01.01 Any such substitution must be approved by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.
 - 24.01.02 Proposed substitutions must be submitted for consideration from the Contractor to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Contractor's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.
 - 24.01.03 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner.
 - 24.01.04 All additional costs incurred by the Owner as the result of any substitution will be the direct responsibility of and borne by the Contractor.
- 24.02 The Contractor shall make written request to the Project Consultant for and obtain his written approval of the use of any materials proposed for use when "approval" materials

are specified or a performance type specification is utilized without mentioning any standard by name.

- 24.03 If, in the opinion of the Project Consultant, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Project Consultant shall request a Change Order Proposal from the Contractor for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.
- 24.04 The Owner may structure contracts to avoid sales tax on public works project materials by purchasing those materials directly from the supplier rather than having the contractor make those purchases. A direct purchase program avoids the sales tax on materials incorporated into a public project. Section 212.08(6), F.S., contains the following basic requirements to qualify for the direct purchase program:
 - 24.04.01 The Owner will issue its own purchase order directly to the suppliers.
 - 24.04.02 The Owner will provide the supplier with a copy of the Owner's sales tax exemption certificate.
 - 24.04.03 The supplier's invoices will be addressed to the Owner, not the contractor.
 - 24.04.04 Payments will be made by the Owner directly to the supplier.
 - 24.04.05 The Owner will take title of the building materials and equipment directly from the supplier upon delivery rather than from the contractor after the project is completed.
 - 24.04.06 The Owner rather than the contractor will bear the risk of loss of the materials as established through contract provisions concerning casualty insurance.

ARTICLE 25. STORED MATERIALS.

- 25.01 Contractor shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials and equipment required for the performance of the Contract.
 - 25.01.01 Contractor is not entitled to payment for same except for those materials which in Owner's discretion are properly stored and are going to be installed or incorporated into the construction of the Project within thirty (30) days of delivery to the construction site.
 - 25.01.02 The storage facilities and methods of storing shall meet Owner's approval and shall be in accordance with manufacturer's recommendations, or Owner will not be obligated to pay for same.
 - 25.01.03 Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure provided by Contractor at its expense.

- 25.01.04 Owner may at its discretion require material to be stored in an air-conditioned location.
- 25.02 Provided the above conditions are met, the stored materials may be included in a subsequent Application for Payment if the Contractor also complies with the following:
- 25.02.01 An applicable purchase order is provided listing the materials in detail and identifying the Contract Documents, by name, with verification that the total value of the purchase order amount reconciles with the corresponding application for payment stored materials line item value.
- 25.02.02 Evidence that proper storage security is provided.
- 25.02.03 The Owner is provided legal title (free of liens or encumbrances of any kind) to the material that is stored or stockpiled.
- 25.02.04 The Contractor and/or its Subcontractor have provided insurance for the Stored Materials against loss, damage (from whatever source), or disappearance, including loss or theft prior to incorporation into the Work. By execution of the Contract, Contractor releases Owner from any responsibility for Stored Materials and assumes all liability for and risk of loss or damage, by whatever means, including Owner's alleged negligence, regardless of whether the Owner has paid for said Stored Materials.
- 25.03 Once any Stored Material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Project or upon subsequent written approval by Owner.
- 25.04 No Applications for Payment shall be submitted nor payments made based on the value of materials stored at locations other than the Project, unless otherwise approved in writing by the Owner.
- 25.05 It is further agreed between the parties that the transfer of title and the Owner's payment for any Stored Material pursuant to the Contract Documents shall in no way relieve the Contractor of the responsibility for providing and installing such material in accordance with the requirements of the Contract Documents.
- 25.06 The Contractor warrants that title to all of the Work or Stored Materials covered by the Application for Payment will pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security, interest or encumbrance; and that none of the Work and none of the Stored Materials covered by the Application for Payments will have been acquired by the Contractor, or by any other person performing the Work at the site or providing materials and equipment to the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such person.
- 25.07 In the event stored materials which Owner is paying for in advance of their being installed or incorporated into the Project pursuant to this Paragraph are not installed or incorporated into the Project within thirty (30) days of when they are delivered to the

site, Contractor shall not be entitled to payment for any future stored materials on this Project and the amounts previously approved for payment for said materials shall be deducted from the Contractor's next application for payment.

ARTICLE 26. WORKFORCE COMPOSITION.

- 26.01 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 26.01.01 The ratio of journeymen utilized shall be two (2) journeymen to one other worker. When two (2) workers involved in the crafts are employed, the first employed shall be a journeyman, and the second may be either a journeyman or a worker.
- 26.01.02 The Contractor shall utilize at least one certified journeyman that holds a State of Florida Certification or a certificate of competency obtained through a proctored examination in Broward County for the respective crafts or trades required for the execution of the Work.
- 26.01.03 For trades or crafts for which licenses or Certificates of Competency are required in Broward County, no Work may be performed or person employed as a worker in that trade unless the Work is under the direct supervision of a master or certified journeyman, certified in that trade. A certified master or certified journeyman shall not provide direct supervision to more than three (3) other workers or uncertified journeymen at a job site.
- 26.01.04 The Contractor shall post on the outside of the Contractor's on-site project office and maintain by monthly updating a current list, available for the Owner and Project Consultant's use, of the names, areas of specialty, and license or certificate numbers, or all journeymen, certified journeymen, and certified masters utilized for prosecution of the Work, including those used by Subcontractors.
- a. Work shall not commence in a particular trade or specialty until the Contractor's posted list has been updated to include that particular trade or specialty.
 - b. The Owner will not consider requisitions for payment for Work completed by a particular trade or specialty unless Journeymen, certified Journeymen, or certified Masters of that respective trade or specialty have been properly included on the Contractor's posted list.
 - c. The format for the posted list should begin with the Contractor's company name; name of qualifier with their certificate or registration number; a listing of all the Contractor's employee names, work trade and work skill; journeymen with their license number or certificate of competency; or a designation as unskilled labor. The remainder of the list should follow the same format listing all the subcontractors and any other person performing labor on the project site. A copy of all licenses, certificates, registrations, and state registered apprenticeship documents should be kept on file in the Contractor's field office to substantiate his posted list.

- 26.02 Requirements for workforce quality specified above do not apply to those elements of the Work requiring only unskilled labor.
- 26.03 The Contractor shall employ no illegal aliens or other individuals not properly registered with and allowed to work by the United States Immigration and Naturalization Service (INS).
- 26.04 Contractor shall be assessed, and the Owner may deduct from each applicable Application for Payment, \$250 per day for failure to comply with these workforce composition requirements contained herein beginning three days after written notice of non-compliance is received by the Contractor.

ARTICLE 27. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

- 27.01 All material and equipment provided and work performed shall be properly inspected by Contractor, at its expense, and shall at all times be subject to quality surveillance, inspections, observations or quality audit by Owner, Project Consultant and any inspectors conducting an inspection pursuant to code, law, regulations, etc.
 - 27.01.01 Contractor shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.
 - 27.01.02 The Contractor shall permit and facilitate inspection of the Work by the Owner, Project Consultant, Inspectors for any governmental agency, authority, or board including but not limited to Building Code Inspectors (BCI).
 - 27.01.03 Owner also reserves the right to designate others such as consultants, commissioning authorities, test and balance agents, forensic specialists, etc. to conduct inspections during or subsequent to the Work as Owner in its discretion desires.
 - 27.01.04 Owner and Project Consultant shall be afforded full and free access to the shops, factories or places of business of Contractor and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.
 - 27.01.05 In the event the Project Consultant or Owner requires a factory inspection, the Contractor shall notify the suppliers that the material shall not be produced or fabricated without due notice to the Project Consultant and Owner and an opportunity for such inspection.
- 27.02 If any Work should be covered up without approval or consent of the Project Consultant or Owner, it must, if required by the Project Consultant or Owner, be uncovered for examination at the Contractor's expense.
- 27.03 If any material, equipment or workmanship is determined by Owner, Project Consultant or Inspector either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Construction Contract, Owner or Project Consultant or Inspector will notify Contractor in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such

- item or seek compensation from Contractor for same. Thereupon, Contractor shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Contractor shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of either the Project Consultant or the Owner made necessary by the correction of such defective materials, equipment or portions of the Work and any re-inspections required from the Building Department or their inspectors will be subject to re-inspection fees as stated in 01450 in the Specifications.
- 27.04 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 28. WARRANTY.

- 28.01 Unless otherwise provided elsewhere in the Contract Documents, all material and equipment incorporated into any Work covered by the Contract Documents shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner and Project Consultant.
- 28.02 Unless otherwise provided in the Contract Documents, Contractor warrants all Work, equipment, materials and workmanship to be in accordance with the Contract Documents, any and all applicable codes, proper and workmanlike, first class and free from defects for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Contract Documents in which case the longer periods of time shall prevail) from and after Final Completion of the Work under the Contract Documents, regardless of whether the same were provided or performed by Contractor or by any Subcontractor.
- 28.03 In addition to the twelve (12) month warranty set forth in this Article, Contractor warrants the Work, equipment, materials and workmanship against latent defects for a period of ten (10) years from Final Completion.
- 28.04 In the event of damage or injury to persons or property or other consequential or resultant damages result from Contractor's breach of any warranties, then the Contractor will be responsible for same.

ARTICLE 29. OFFICE SPACE FOR THE OWNER'S PERSONNEL.

- 29.01 The Contractor shall provide, for the duration of the Work, a suitable lockable office for the Project Construction Manager, BCI and other designated personnel.

ARTICLE 30. PROJECT RECORD DOCUMENTS AND SURVEY.

- 30.01 A marked up record set of the Contract Documents and other project records as required elsewhere within the Contract Documents will be kept up to date by the Contractor on the jobsite at all times. These documents will be given to the Project Consultant at the completion of the Work as required by the Contract Documents, and properly labeled as "Project Record Documents."
- 30.02 In addition to the "Project Record Documents", the Contractor will cause to have prepared by a Surveyor, registered in the State of Florida, a site survey clearly representing all Work done under this Contract and updating the original survey as may have been provided by the Owner.
- 30.03 The Contractor shall submit Project Record Documents and Survey in the manner and format specified elsewhere in the Contract Documents.
- 30.04 This is a critical item and final payment will be withheld from the Contractor until "Project Record Documents" and survey are provided by the Contractor and approved by the Project Consultant.

ARTICLE 31. SALVAGE.

- 31.01 Any salvage resulting from clearing, grubbing, grading, draining, remodeling or altering any existing facilities on this site shall be the property of the Owner; and this material shall be piled or stacked on the site if the Owner desires this material.
- 31.02 If this material is not desired by the Owner, it shall be disposed of by the Contractor at his expense.

ARTICLE 32. CLAIMS BY THE CONTRACTOR.

- 32.01 Although Contractor acknowledges the No Damage for Delay clause set forth in Article 6 of Document 00520, Agreement Form, in the event the Contractor is entitled to assert a claim against Owner for any reason, claims by the Contractor against the Owner are subject to the following terms and conditions:
 - 32.01.01 All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Project Consultant. Such claim shall be received by the Owner and the Project Consultant no later than fifteen (15) calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim and the actual damages or injuries suffered;
 - 32.01.02 The Contractor shall continue its performance hereunder regardless of the existence of any claims submitted by the Contractor;
 - 32.01.03 In the event the Contractor seeks to make a claim, as a condition precedent to any such claim the Contractor shall strictly comply with the notice requirements above and such claim shall be made by the Contractor before proceeding to execute any

additional or changed Work. Failure of the condition precedent to occur, i.e., providing notice as required in Article 32.01.01 above, shall constitute a complete waiver by the Contractor of any claim for additional compensation or extension of time. This written notice requirement may not be waived by verbal representations or the acts of representatives of the Owner or Project Consultant;

- 32.01.04 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost of labor and materials incurred by the Contractor at the jobsite and shall in no event include indirect cost, overhead, loss of profit, or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties including, but not limited to, subcontractors, suppliers, laborers, etc.

ARTICLE 33. CHANGE ORDERS.

- 33.01 One or more changes to the Work within the general scope of this Contract may be ordered by the Owner by Change Order, Project Consultant's Supplementary Instructions, and Construction Change Directives.
- 33.02 The Contractor shall proceed with any extra Work or changes which alter the Contract by adding to, or deducting from the Contract Sum or Contract Time in strict accordance with the following terms and conditions:
- 33.02.01 Change Order shall mean a written order to the Contractor executed by the Owner and the Project Consultant after execution of this Contract, directing a change in the Work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;
- 33.02.02 Any change in the Contract Price or time resulting from a Change Order shall be determined as follows:
- a. By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price or time being set forth in Change Order in accordance with Article 33.02.08 below, and (b) the execution of the Change Order; or,
 - b. If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived based upon the Cost Plus Price basis (as set forth in Article 33.02.08 below) by determining the "total actual costs" (in accordance with Article 33.02.09 below), incurred or savings achieved, resulting from revisions in the Work. Such total actual costs or savings shall include a component for direct jobsite overhead and profit but under no circumstances shall it include non-job site overhead expenses or costs or any other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Project Consultant requires. If agreement is not reached as to the change in time, Contractor shall be given a reasonable time based upon the scope of Work required by the change.

- 33.02.03 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work and the change in the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for issues or matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.
- 33.02.04 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders and provide such consent in the form of fully executed Document 00630, Performance Bond Rider, and, Document 00635, Payment Bond Rider. The Contractor's execution of the Change Order and submission of fully executed Document 00630, Performance Bond Rider, and, Document 00635, Payment Bond Rider shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.
- 33.02.05 The Owner, without invalidating the Contract, may require the change for any reason whatsoever. All such Work shall be executed under the terms of the original Contract.
- 33.02.06 All change orders and adjustments shall be in writing and executed by the Contractor and Owner; otherwise, no claim for additional compensation or time will be allowed.
- 33.02.07 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the total actual cost (as set forth in Article 33.02.09 below) saved as confirmed by the Project Consultant. The amount of the credit shall include an amount for the overhead and profit of the Contractor which the Owner is not required to pay as a result of the deletion or decrease. When both additions and credits covering related Work or substitutions are involved in a change, the overhead and profit shall be calculated on the basis of net increase, if any, with respect to that change. The Contractor shall not be entitled to overhead and profit in the event the net change results in a reduction of the original contract amount.
- 33.02.08 The value of any change ordered under the Contract for extra Work and/or any reductions in Work required, shall be determined using one of the selected pricing methods as described in Exhibit A.
- 33.02.09 The Contractor is obligated to proceed with the Work for a Change Order, even though there has not been an agreement reached with the Owner as to an adjustment to the Contract Price or time, and even if there is a dispute as to same. In such instances the Project Consultant will issue Document 01250e, Construction Change Directive as specified elsewhere in the Contract Documents. A Change Order or proposed Change Order shall not be the basis of the Contractor not performing pursuant to the Contract Documents.

- 33.02.10 The Contractor, Owner and Project Consultant shall administer and document the Change Order process by utilizing the documentation system specified elsewhere in the Contract Documents, including Document 01250e, Construction Change Directive.
- 33.03 The Project Consultant will have authority to order minor changes in the Work not involving an adjustment to the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order on Document 01250f, Project Consultant's Supplemental Instructions and such changes shall be binding on the Owner and the Contractor.
- 33.04 The Owner has authorized the following approval thresholds for Change Orders in the Name of The School Board of Broward County, Florida under Board Policy 7006, the rules of which are incorporated below:
- A. The Chief is authorized to approve change orders in accordance with Board Policy 7006, Change Orders, as amended from time to time.
 - B. When the cumulative total of all change orders on a project has exceeded the ceiling established in 33.04A above, all subsequent change orders will require prior Board approval, except in emergency cases as declared by the Superintendent, or where the change order in question would be in the form of a credit, thereby reducing the adjusted contract amount.
 - C. Approval of change orders under this policy shall be for the purposes of expediting the work in progress and shall be confirmed by Board action at the next regular meeting of the Board.

ARTICLE 34. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

- 34.01 In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Project Consultant, such work shall be uncovered and displayed for the Owner's or Project Consultant's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- 34.02 If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph (A) above, it shall, if directed by the Owner or the Project Consultant, be uncovered and displayed for the Owner's or Project Consultant's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Contractor.
- 34.03 The Contractor shall, at no additional cost in money to the Owner or extension of time correct work rejected by the Owner or by the Project Consultant as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

- 34.04 In addition to its warranty obligations set forth elsewhere herein, the contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following final completion upon written direction from the Owner.
- 34.05 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 34.05.01 In such event, the Contract Price shall be reduced, at Owner's option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.
- 34.05.02 If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 35. SAFETY, PROTECTION OF WORK AND PROPERTY.

- 35.01 Contractor shall be fully and solely responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Contractor shall continuously and diligently inspect all Work, material and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions.
- 35.02 Contractor shall instruct its personnel on the requirements of the Contractor's safety program and shall coordinate with other contractors and subcontractors on safety matters.
- 35.03 Contractor shall provide safety equipment and enforce the use of such equipment by its employees.
- 35.04 Contractor shall maintain accurate accident and injury reports and shall provide to Owner a monthly summary of injuries and man-hours lost due to injuries.
- 35.05 Contractor shall maintain all portions of the Work in a neat, clean and sanitary condition at all times.
- 35.06 Contractor shall assure that all Subcontractors shall, without expense to Owner, comply with the foregoing.
- 35.07 Contractor shall comply with any and all rules, regulations, laws, etc., which apply to safety requirements, including but not limited to OSHA requirements.
- 35.08 Safety Precautions and Programs:

- 35.08.01 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
- 35.08.02 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Contractor and Project Consultant.
- 35.08.03 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
- 35.09 Safety of Persons and Property
- 35.09.01 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- a. Employees on the Work and other persons who may be affected thereby;
 - b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 35.09.02 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of person or property or their protection from damage, injury or loss.
- a. The Contractor and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health Act (OSHA) of 1970.
 - b. The Contractor shall prominently post and maintain on the jobsite:
 - 1) OSHA 200: Log and summary of occupational injuries and illnesses.
 - 2) OSHA 2203: Provisions of the Act poster.
- 35.09.03 The Contractor shall implement and maintain a continuing safety program applicable to all Contractor employees, Subcontractors, and Sub-subcontractors, to include:
- a. Designating a responsible member of the Contractor's organization at the site as the Contractor's "Safety Officer" whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.
 - b. Holding weekly safety meetings with employees and Subcontractors.
 - c. Implementing OSHA Voluntary Protection Programs.
 - d. Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.

- e. Compliance with the Drug Free Work Place Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.
 - f. Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - g. Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their rights in these regards.
- 35.09.04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 35.09.05 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to properly caused in whole or in part by the Contractor, a Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is reasonable, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.
- 35.09.06 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 35.09.07 Building materials, Contractor's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which he shall store all materials which would be damaged by weather. This shall in no manner relieve the Contractor from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force.
- 35.10 **Emergencies:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 36. ROYALTIES AND PATENTS.

- 36.01 The Contractor shall pay all royalties and license fees.
- 36.02 The Contractor shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Contractor and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.

- 36.03 Contractor hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Contractor, or out of the process of actions employed by, or on behalf of Contractor in connection with the performances of this Construction Contract. Contractor shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Contractor upon becoming aware of such claims or actions, and provided further, that Contractor's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.
- 36.04 Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.
- 36.05 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of \$1.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Bid Documentation and Specifications if any.

ARTICLE 37. TAXES.

- 37.01 Contractor shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract.
- 37.02 The Contract Sum and any agreed changes thereto shall include all taxes imposed by law. Contractor shall make any and all payroll deductions as required by law.
- 37.03 Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

ARTICLE 38. INDEMNITY AND HOLD HARMLESS.

- 38.01 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its members, officers, employees and agents (hereinafter collectively "Related Parties") from and against any and all liability, claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), losses, damage, costs, expenses and fees (including but not limited to reasonable fees of attorneys, expert witnesses and other consultants), which are or may be imposed upon, incurred by or asserted against Owner and/or the Related Parties to the extent said liability, claims, causes of action, losses, damages, costs, expenses and/or fees are caused

by the Contractor's negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission.

- 38.02 In any and all claims against the Owner by any employee of the Contractor, or anyone for whose acts the Contractor may be liable, the obligations for Contractor to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workman's compensation acts, disability acts, or other employee benefit acts.
- 38.03 In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Contractor further agrees to pay, at the sole expense of the Contractor, the attorney's fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. However, if the claims or actions are covered by insurance and such coverage is acknowledged by the insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions against the Owner which are within the insurance policy limits and are paid by the insurance company solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.
- 38.04 The Contractor recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Contractor under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 39. TERMINATION BY THE CONTRACTOR.

- 39.01 If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of 90 days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Project Consultant.
- 39.02 In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance for convenience pursuant to the terms and conditions of this Contract.

ARTICLE 40. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE.

- 40.01 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without

reason. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;

40.02 In the event the Owner directs a suspension of performance under this Paragraph through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of the following items only:

40.02.01 Demobilization and remobilization, including such costs paid to subcontractors;

40.02.02 Preserving and protecting Work in place;

40.02.03 Storage of materials or equipment purchased for the Project, including insurance thereon;

40.02.04 Performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 41. TERMINATION BY THE OWNER.

41.01 The Owner may at any time terminate this Contract in accordance with the following terms and conditions.

41.02 The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience:

41.02.01 The Owner shall give written notice of such termination to Contractor 7 days before it becomes effective.

41.02.02 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop work when such termination becomes effective.

41.02.03 The Contractor shall also terminate outstanding orders and subcontracts.

41.02.04 The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders.

41.02.05 The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee.

41.02.06 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

41.02.07 When terminated for convenience, the Contractor shall be compensated as follows:
a. The Contractor shall submit a termination claim within one year to the Owner and the Project Consultant specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Project Consultant. If the Contractor fails to file a

termination claim with the Owner's Project Consultant within one (1) year from the effective date of termination, the Owner shall have no further obligation to the Contractor and Contractor waives any and all rights for compensation based upon the termination.

- b. The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- c. Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
 - 1. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - 2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead (and not home office or other overhead) and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - 3. Reasonable costs of settling and paying claims arising out of the termination of subcontractors or orders pursuant to this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.
 - 4. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

41.03 The Owner may terminate this Contract for cause in accordance with the following terms and conditions:

41.03.01 If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor for cause upon seven (7) day written notice and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.

41.03.02 In such case, the Contractor shall not be paid further until the Work is complete.

41.03.03 After final completion has been achieved, if any portion of the Contract Price (as it may be modified hereunder) remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Contractor. Otherwise, the Contractor shall pay the Owner any and all costs, fees, damages or expenses which the Owner has paid or is obligated to pay in excess of the contract price (as it may be modified

hereunder). This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the terms of Article 41.02 shall apply.

ARTICLE 42. CONTRACTOR'S INSURANCE.

General Insurance Requirements:

- 42.01 The Contractor shall not provide any services under this contract until the Contractor has obtained all insurances required hereunder and such insurances have been approved by the Owner. Owner may withhold payments due to Contractor in accordance with this Contract or terminate or suspend this contract with all costs or expenses associated with same to be paid by Contractor in the event Contractor fails to comply with any requirement in the Contract regarding insurance.
- 42.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars (\$200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars (\$200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F.S., as amended.
- 42.03 The Contractor shall furnish certificates of insurance to the Owner for review within ten (10) days after award and shall maintain the required insurance at all times during the term of this contract.
- 42.04 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this contract shall have at least an "A-" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.
- 42.05 All certificates of insurance shall be in the form as approved by Insurance Standards Office (ISO), unless approved by Owner's Designated Risk Management Administrator and such certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice to and approval by the Owner's Designated Risk Management Administrator.
- 42.06 The Contractor shall verify that all subcontractors utilized in conjunction with all services provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions.

- 42.07 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Contractor shall relieve the Contractor of full responsibility to provide the insurance as required by this contract.
- 42.08 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverages maintained by the Owner. The Owner shall be named as an additional insured under the General Liability policy.
- 42.09 The Owner reserves the right to review, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein throughout the life of this contract.
- 42.10 **Insurance Provider and Surety:** In the event that any insurance provider, including but not limited to performance and payment bond surety companies, is downgraded from A-VI rating by AM Best or Aa3 rating by Moody's Investor Service, or has an order of liquidation entered against it in any jurisdiction, Contractor shall furnish a replacement insurance product, insurance policy or surety bond, that satisfies the requirements of this Agreement within fifteen (15) days of receipt of written notice from Owner or from the time Contractor becomes aware of the downgrade or order of liquidation whichever is sooner.
- 42.11 Contractor and Surety shall have a continuing obligation to insure that all insurance or surety requirements are satisfied throughout the construction of the project and until all post completion obligations; including punch list and warranty requirements are completed or expire.

Insurance Required:

- 42.12 **Commercial General Liability Insurance:** The Contractor shall maintain Comprehensive General Liability Insurance, including Products & Completed Operations, Personal and Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein. Limits shall not be less than \$1,000,000 per occurrence; \$2,000,000 general aggregate. Products Completed Operations aggregate shall not be less than \$2,000,000. The Owner, its members, officers, employees and agents shall be named as an Additional Insured.
- 42.13 **Automobile Liability Insurance:** The Contractor shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in the amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage and shall not be any less restrictive than the standard ISO Business Auto Policy CA 00 01.

In the event the Awardee does not own any vehicles, we will accept hired and non-owned coverage for \$1,000,000 Combined Single Limits and we will require an affidavit signed by the Awardee indicating the following:

(Insured's Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this agreement, (Insured's Name) agrees to provide proof of "Any Auto" coverage effective date of acquisition.

Workers' Compensation Insurance: The Contractor shall maintain Workers' Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than \$100,000/\$100,000/\$500,000 (each accident/disease - each employee/ disease-policy limit).

- 42.14 **Builders' Risk/Installation Floater Insurance:** The Contractor shall carry Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief, windstorm, hurricane, theft, building collapse in addition to perils identified within the extended coverage. Insurance limits shall be insured in the amount of one hundred percent (100%) of the contract value to include both hard and soft costs. Such policies shall be written to protect the Contractor and Owner as their interest may appear. This coverage shall not be lapsed or cancelled due to partial occupancy by the Owner prior to final acceptance of the Project.

Insurance Warranty Period for Claims-Made Policies: All Claims-Made Insurance policies must remain in effect during performance of the work and for a period of one (1) year after Certificate of Completion, Certificate of Occupancy (OEF 110b), or Certificate of Final Inspection (OEF 209) which has been signed by the Chief Building Official /certified inspector.

- 42.15 **Certificate of Insurance Requirements:** Prior to the commencement of any work, as evidence of required coverage, Awardee must provide a Certificate of Insurance to The School Board of Broward County, FL for approval. In addition, the following wording must be included on the Certificate of Insurance:

- a. The School Board of Broward County, FL, its members, officers, employees, and agents are added as additional insured.
- b. All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
- c. Builder's Risk/Installation Floater policy must contain the following wording and appear on the certificate: Builder's Risk limits are insured at 100% of the contract value and include both hard and soft costs. Please include the Project Number and Project.
- d. Certificate Holder Address:

The School Board of Broward County
c/o EXIGIS Risk Management Services
P. O. Box 4668 – ECM #35050
New York, NY 10163-4668

ARTICLE 44. INSPECTION OF CONTRACTOR RECORDS BY OWNER.

- 44.01 Contractor shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Contractor's Records, regardless of the

form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Contractor or any of Contractor's payees pursuant to this Agreement. Contractor's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with, this Agreement. Contractor's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to folding sources.

Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law

- 44.02 Contractor Records Defined. For the purposes of this Agreement, the term Contractor Record shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

Contractor's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (,all

foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or his payees. Contractor shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.

- 44.03 Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, Owner's agent or authorized representative shall have access to Contractor Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by Owner to Contractor pursuant to this Agreement.

Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

- 44.04 Notice of Inspection. Owner's agent or its authorized representative shall provide Contractor reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

- 44.05 Audit Site Conditions. Owner's agent or its authorized representative shall have access to Contractor facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

- 44.06 Failure to Permit Inspection. Failure by Contractor to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by Owner for cause and shall be grounds for the denial of some or all of any Contractor claims for payment by Owner.

- 44.07 Overcharges and Unauthorized Charges. If an audit inspection or examination in accordance with this Article, and finds that Contractor overcharged Owner, the Contractor shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Contractor shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit

costs, incurred as a result of its audit of Contractor and Owner. If such amounts owed Contractor are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Contractor hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

- 44.08 Inspection of Subcontractor's Records. Contractor shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Contractor to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by Owner for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by Owner to Contractor pursuant to this Agreement and such excluded costs shall become the liability of the Contractor.
- 44.09 Inspector General Audits. Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

ARTICLE 45. LAWS AND REGULATIONS.

- 45.01 Contractor and its employees and representative shall at all times, comply with all applicable laws, ordinances, statutes, rules and regulations (including but not limited to the State Requirement for Educational Facilities, 2007(SREF)) in effect at the time Work is performed pursuant to the Contract Documents.
- 45.02 If, during the term of this Construction Contract, there are any changed or new laws, ordinances or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Contractor shall within fifteen (15) days of the discovery of said law, ordinance or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance may be made at Owner's discretion.
- 45.03 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Contractor shall within fifteen (15) days of discovery of same report the same in writing to Owner who will issue such instructions as may be necessary.

ARTICLE 46. DISPUTE RESOLUTION.

- 46.01 The Owner and Contractor agree that, in the event of a dispute, the parties will attempt to resolve such dispute without litigation and that resolution through mediation procedures will be encouraged.

- 46.02 The existence of a dispute between the parties shall not be the basis of the Contractor unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 47. GOVERNING LAW.

- 47.01 The Construction Contract shall be governed by the laws of the State of Florida.

ARTICLE 48. RIGHTS AND REMEDIES.

- 48.01 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 49. SUCCESSORS, ASSIGNS AND ASSIGNMENT.

- 49.01 The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party in respect to all covenants, agreements and obligations contained in the Construction Contract. It is agreed that the Contractor shall not assign, transfer, convey or otherwise dispose of the contract or its right, title and interest in and to the same or any part thereof, without previous consent of the Owner and concurred to by the Sureties.
- 49.02 If requested by Owner the Contractor agrees to assign all Subcontracts required for performance of this Contract to the Owner upon the Owner or Project Consultant's determination that Contractor has defaulted under the Contract Documents. The Contractor shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Contractor's default under this Contract, to consent to the assignment of their subcontracts to the Owner.

ARTICLE 50. NON-DISCRIMINATION.

- 50.01 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, religion, color, gender, national origin, marital status, disability or sexual orientation.
- 50.02 **Equal Employment Opportunity (EEO)** - The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Executive Director, Benefits & EEO Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.
- 50.03 **Americans with Disabilities Act Amendments Act of 2008** - Individuals with disabilities requesting accommodations under the Americans with Disabilities Act

Amendments Act of 2008, (ADAAA) may call Equal Educational Opportunities (EEO) at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

ARTICLE 51. STRICT PERFORMANCE.

- 51.01 No failure of either party to exercise any power or right given under this Agreement, or to insist upon strict compliance of the other party with any of its obligations, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver or variation of either party's rights to demand exact compliance with terms of the Agreement.

Exhibit A

Change Orders, Extra Work and Claims

1. The contract language contained in this Article will supplement and take precedence over all other change order pricing contract provisions in file contract documents provided by either the Owner or the Contractor and/or Architect/Engineer. It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the Contractor, Prime Contractors, Trade Contractors or Subcontractors (Subcontractor), and all other lower tier Contractors (Sub-Subcontractors) working on the Project. In the event of a conflict between the language in this Article and the other contract documents used for the project, the change order pricing and contract provisions in this Article shall govern.
2. Contractor agrees it will incorporate the provisions of this Article into all agreements it enters into with any entity or individual in relation to this Project. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing, specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.
3. The term change order shall include Extra Work and Claims unless specifically excluded or further described.
4. Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Contractor in accordance with the pricing provisions found in this Article. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as defined in the following provisions:
 - a. **Lump Sum Change Order Proposals** - The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format *satisfactory* to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen,

superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in paragraph 6 of this Article.

Labor Burden - Labor burden allowable in change orders shall be defined as employer's net *actual* cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce its standard payroll tax percentages to reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

Material: Estimated material change order costs shall reflect the Contractors reasonably anticipated net actual cost for the *purchase* of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to Owner if the Contractors provided Owner funds in time for Contractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

Equipment: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$1000), for Contractor or subcontractor owned equipment, the "bare" equipment rental rates allowed *to be used* for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor or subcontractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

- b. Unit Price Change Order Proposals - As an alternative to Lump Sum Change Order Proposals, the Owner or the Contractor acting with the approval of the Owner may choose the option to use Contract Unit Prices. The Contractor will submit within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.

- c. Cost Plus Change Order Proposals - As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including the cost or rental of small tools, minor equipment, or plant (fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor and / or contractors for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.
5. Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing change orders to any Lump Sum Contract change order, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed (the following sliding scale of percentages) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work. The following sliding scale will apply for the pricing of the self-performed work portion of each change order proposal request:
 - a. 15% on the first \$25,000 of the change order direct cost of self-performed work,
 - b. 10% on the portion of the change order direct cost of self-performed work between \$25,000 and \$50,000 and,
 - c. 7.5% on the portion of the change order direct cost of self-performed work between \$50,000 and \$200,000 and,
 - d. 5% on the portion of the change order direct cost of self-performed work greater than \$200,000.
 6. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not-to-exceed the following

- sliding scale on the aggregate amount allowed to be charged by the lower tier contractor(s) for each change order event:
- a. 8% on the first \$25,000 of approved change order work performed by all subcontractors combined for any particular change order proposal.
 - b. 4% on any amount greater than \$25,000 of approved change order work performed by all the subcontractors combined for any particular change order proposal.
7. Sales and use tax (if applicable) shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable by the Contractors shall be added, after computing the change order amount before tax.
 8. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; comprehensive general liability insurance; auto insurance and umbrella insurance; pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$1,000 or less.
 9. The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, after the net credit is computed by applying the sliding scale percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the owner. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.
 10. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
 11. The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar

days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

12. In the event the Contractor has been required to furnish performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in bond premium costs associated with change orders to Contractor's base contract price. Contract adjustments related to any such increased or decreased costs of related to insurance and/or bond coverage will not be subject to any Contractor markup for overhead and profit.
13. **Accurate Change Order Pricing Information:** Contractor agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change orders.
14. **Right to Verify Change Order Pricing Information:** Contractor agrees that any designated Owner's representative will have the right to examine the Contractor's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Contractor agrees that if the Owner later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders; then an appropriate contract price reduction will be made.
15. **Requirements for Detailed Change Order Pricing Information:** Contractor agrees to provide and require all subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Article. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

The Contractor is required to notify the owner within seven (7) calendar days subsequent to an event that may lead to a claim by the Contractor or Subcontractor of any tier. The claim is to be perfected and the Owner provided a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Contractor requests in writing and the Owner agrees to a specific extension of this time. The reason for the extension is to be made known to the Owner in the written request. Any claims that are not promptly and accurately reported in keeping with this article will not be entertained. The Owner has the right to verify amounts claimed in the same manner as described in paragraphs 16 and 17 of this paragraph.