

**Contract Between Owner and Construction Manager  
Where the Basis of Payment is  
Cost of the Work Plus a Fee With a Negotiated Guaranteed Maximum Price**

This contract is made as of the \_\_\_\_ day of \_\_\_\_\_ in the year **Two Thousand** \_\_\_\_\_  
*{Commencement Date}*

between the Owner

**School Board of Sarasota County**  
1960 Landings Boulevard  
Sarasota, FL 34231

and the Construction Manager (CM) \_\_\_\_\_  
\_\_\_\_\_

Sarasota, FL \_\_\_\_\_

The Project is \_\_\_\_\_  
\_\_\_\_\_

Sarasota, FL \_\_\_\_\_

Project Description Summary: *{see legal ad verbiage or preconstruction svcs. contract}*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Owner and Construction Manager agree as follows.

**RECITALS**

WHEREAS, the Owner intends to construct the Project and is engaging the CM to furnish or cause to be furnished all labor, equipment, materials, management and supervisory services required to successfully construct and complete the Project.

WHEREAS, the Owner and CM each acknowledge that it will act in good faith in carrying out its duties and obligations.

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

asserting jurisdiction over the Project.

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

WHEREAS, the Owner has engaged a Design Professional to perform architectural and engineering services for the Project, including preparation of site-specific Construction Documents.

## **ARTICLE 1** **THE CONTRACT DOCUMENTS**

**1.1** The Contract Documents consist of this Contract, the Exhibits, the Construction Documents and Modifications issued after execution of this Contract. These listed form the Contract and are all as fully a part of the Contract as if attached to this Contract or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents is inconsistent with this Contract, this Contract shall govern.

**1.2** The Contract Documents include:

**1.2.1** This Contract,

**1.2.2** Exhibit "A"-“Supplemental Conditions”,

**1.2.3** Exhibit "B"-“Enumeration of the Construction Documents”, dated \_\_\_\_\_,

**1.2.4** Exhibit "C"-“ Guaranteed Maximum Price”, dated \_\_\_\_\_,

**1.2.5** Exhibit "D"-“ Guaranteed Maximum Price Qualifications”, dated \_\_\_\_\_,

**1.2.6** Exhibit "E"-“Construction Schedule”, dated \_\_\_\_\_,

**1.2.7** Exhibit "F"-“Project Personnel, Subcontractor, & Supplier List”, dated \_\_\_\_\_,  
and

**1.2.8** Modifications approved by both parties after the date of this contract.

## **ARTICLE 2** **THE WORK OF THIS CONTRACT**

**2.1** The CM shall execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3**  
**RELATIONSHIP OF THE PARTIES**

**3.1** The CM accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to cooperate with the Owner and exercise the CM's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The CM shall, in consultation with the Owner, Design Professional, and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties. The Owner agrees to furnish or approve, in a timely manner, information required by the CM and to make payments to the CM in accordance with the requirements of the Contract Documents.

**3.2** The CM has prepared Exhibit "F" to this contract which lists the name, title, and hourly rate of the CM's primary employees, and all subcontractors and suppliers listed by company name and trade category, who will work on the Project. The CM shall promptly inform the Owner, in writing, of any proposed changes, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement and the CM shall not make any changes without prior written approval of the Owner.

**3.3 Quality Control.** The CM shall develop and maintain a program, acceptable to the Owner, to assure quality control of the construction. The CM shall supervise the work of all Subcontractors and provide instructions to each when their work does not conform to the requirements of the plans and specifications and the CM shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. The Owner shall be the final judge of performance and acceptability.

**ARTICLE 4**  
**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**4.1** The date of commencement of the Work shall be the date of the Notice to Proceed issued to the CM by the Owner or the issuance of the building permit, whichever is later.

**4.2** The Contract Time shall be measured from the date of commencement.

**4.3** It is the intention of both parties that the CM shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_, **.20xx** subject to adjustments of this Contract Time in accordance with this contract.

**4.4 Liquidated Damages.** The CM understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. The CM agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, the CM shall pay to the Owner \$ \_\_\_\_\_ as liquidated damages, and not as a penalty, for each calendar day that Substantial Completion extends beyond the Scheduled Substantial Completion Date. The liquidated damages provided

herein are hereby agreed to as a reasonable pre-estimate of the damages the Owner would incur as a result of delayed completion of the Project and shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving Substantial Completion. In addition, the CM understands that if Final Completion is not achieved within thirty (30) calendar days of Substantial Completion, the Owner will suffer damages which are difficult to determine and accurately specify. The CM agrees that if Final Completion is not achieved within thirty (30) calendar days after the date certified as Substantial Completion, the CM shall pay to the Owner \$\_\_\_\_\_ as liquidated damages, and not as a penalty, for each calendar day that Final Completion extends more than thirty (30) calendar days past Substantial Completion.

## **ARTICLE 5 CONTRACT SUM**

**5.1** The Owner shall pay the CM the Contract Sum in current funds for the CM's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 7 plus the CM's Fee. The GMP and the GMP Qualifications are attached as Exhibits "C" and "D" and shall be used to monitor actual costs.

### **5.2 Construction Manager Fee**

**5.2.1** The CM's Fee is \_\_\_\_\_ percent (   %) of the Cost of the Work.

**5.2.2** The CM's Fee for Change Orders shall be determined as follows:

**5.2.2.1** Change Orders that impact the scope of the Work, and either increase or decrease the Guaranteed Maximum Price, shall include an increase or a decrease adjustment to the CM's Fee based on the same percentage used in the original Fee calculation.

**5.2.2.2** Deductive Change Orders that are issued for Direct Material Purchase by the Owner shall include no adjustment in the CM's Fee.

### **5.3 Guaranteed Maximum Price (GMP)**

**5.3.1** The sum of the Cost of the Work and the CM's Fee is guaranteed by the CM not to exceed \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CM without reimbursement by the Owner.

**5.3.2** Within the GMP, the Cost of General Conditions, defined in Article 7, is guaranteed by the CM not to exceed \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the General Conditions Maximum Price (GCMP). Costs which would cause the GCMP to be exceeded shall be paid by the CM without reimbursement by the Owner.

**5.3.3** a list of all Construction Documents that the GMP is based upon is contained in Exhibit B. The CM understands that these documents complement each other and it is their responsibility to review all disciplines for discrepancies and that the CM and their subcontractors will be liable for omissions as a result of these discrepancies and, at the discretion of the Owner's Representative, may not be compensated for them if not brought to the Owner/Design Professional's attention prior to the acceptance of the GMP.

**5.4** During the progress of the Project, the CM shall review with the Owner on a mutually agreeable regular basis any changes regarding the anticipated total Contract Sum. These regular reviews shall compare the GMP with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes.

## **ARTICLE 6** **SCHEDULE AND MODIFICATIONS**

**6.1** The CM has prepared Exhibit "E" to this contract which includes the Construction Schedule. The CM shall review the Construction Schedule with the Owner on a mutually agreeable regular basis and shall modify the schedule to reflect actual performance and changes in expected timing of the balance of the work. The review and approval of the Owner of any changes to the schedule does not constitute an approval of any change to the Contract Time or Substantial Completion Date.

**6.2 Modifications.** A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Supplemental Instruction.

**6.3 Change Orders.** A Change Order is a modification of the scope of the Work that may include an adjustment to the Contract Time and/or the GMP and/or the GCMP and must be signed by both parties.

**6.4 Supplemental Instructions.** A Supplemental Instruction is a minor change or clarification in the scope of the Work, issued by the Design Professional, and signed by the CM, that does not affect the Contract Time, GMP, or GCMP.

## **ARTICLE 7** **GENERAL CONDITIONS COSTS TO BE REIMBURSED**

**7.1 Cost of the Work.** The term Cost of the Work shall mean costs necessarily incurred by the CM in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

### **7.2 Labor Costs**

**7.2.1** Wages of construction workers directly employed by the CM to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

**7.2.2** Wages or salaries of the CM's personnel, whether stationed at the site or the

CM's office, while performing any work related to the project, including required clerical work, shall be reimbursed at actual cost.

**7.2.3** Wages and salaries of the CM's supervisory or administrative personnel engaged at the CM's office, workshops or on the road, in expediting the purchasing, production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**7.2.4** Costs paid or incurred by the CM for taxes, insurance, contributions, assessments and benefits required by law and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions.

### **7.3 Subcontract Costs**

**7.3.1** Payments made by the CM to Subcontractors in accordance with the requirements of the Project and subcontracts.

### **7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**7.4.1** Costs including transportation and storage at the site of materials and equipment incorporated, or to be incorporated, in the completed construction.

**7.4.2** Costs of materials described in the preceding Article 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the CM. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**7.5.1** Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools that are provided by the CM at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the CM. Cost for items previously used by the CM shall mean fair market value.

**7.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools that are provided by the CM at the site and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates of CM-owned equipment shall be based on current market rates.

**7.5.3** Costs incurred to provide site safety.

**7.5.4** Costs of removal of legally disposed debris from the site.

**7.5.5** Costs of document reproduction, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. Costs for superintendent and project manager vehicles and gas, mobile phones, and miscellaneous expenses.

**7.5.6** That portion of the reasonable travel and subsistence expenses of the CM's personnel incurred while traveling in discharge of duties connected with the Work.

**7.5.7** Costs of materials and equipment stored off-site at a mutually acceptable location, if approved in advance by the Owner.

## **7.6 Miscellaneous Costs**

**7.6.1** That portion of insurance and bond premiums that can be directly attributed to this Contract. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments.

**7.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the CM is liable.

**7.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections the CM is required by the Contract Documents to pay.

**7.6.4** Fees of laboratories for tests required by the Contract Documents to be paid by the CM

**7.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the CM resulting from such suits or claims and payments of settlements made with the Owner's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of the CM's Fee.

**7.6.6** Deposits lost for causes other than the CM's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

**7.6.7** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the CM and the Owner or between the CM and a subcontractor or supplier, reasonably incurred by the CM in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

**7.6.8** Expenses incurred in accordance with the CM's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

**7.6.9** Data processing costs related to the Work. However, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing.

**7.6.10** The cost of obtaining and using all utility services required for the Work.

**7.6.11** The cost of crossing or protecting any public utility, if required, and as directed by the Owner.

**7.6.12** All reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services, provided that quantity and rates are subject to Owner's prior written approval.

**7.6.13** The cost of secure off-site storage space or facilities approved in advance by Owner.

**7.7 Other Costs and Emergencies.**

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

**7.7.2** Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**ARTICLE 8**  
**COSTS NOT TO BE REIMBURSED**

**8.1** The Cost of the Work shall not include:

**8.1.1** Salaries and other compensation of the CM's personnel or consultants not listed in Article 7.2.2, or those listed in Article 7.2.2 when their work is not related to the Project. Personnel bonuses and incentives.

**8.1.2** Expenses of the CM's non-field offices, including operational expenses such as, telephone service and long-distance telephone charges, non-project postage, office supplies, express mail, and other similar expenses.

**8.1.3** Overhead and general operating expenses, except as may be expressly included in Article 7.

**8.1.4** The CM's capital expenses, including interest on the CMs capital employed for the Work.

**8.1.5** Data-processing costs indirectly related to the Work; including hardware, software, cost accounting software and CAD costs.

**8.1.6** Cost of all non-project specific insurance.

**8.1.7** Any costs or expenses incurred by the CM, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Contract and the best interests of the Owner.

**8.1.8** Any fees charged by any permitting and/or inspection authority for re-inspection of work required due to failure to pass previous inspections.

**8.1.9** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.



**ARTICLE 9**  
**DISCOUNTS, REBATES AND REFUNDS**

**9.1** Cash discounts obtained on payments made by the CM shall accrue to the Owner if (1) before making the payment, the CM included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM shall make provisions so that they can be obtained.

**9.2** Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**ARTICLE 10**  
**SUBCONTRACTS AND OTHER AGREEMENTS**

**10.1** Those portions of the Work that the CM does not customarily perform with the CM's own personnel shall be performed under subcontracts or by other appropriate agreements with the CM. The Owner may designate specific persons from whom, or entities from which, the CM shall obtain bids. The CM shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Owner shall then determine, with the advice of the CM, which bids will be accepted. The CM shall not be required to contract with anyone to whom the CM has reasonable objection.

**10.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Contract and shall not be awarded on the basis of Cost Plus a Fee without the prior consent of the Owner.

**ARTICLE 11**  
**ACCOUNTING RECORDS**

**11.1** The CM shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the CM's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the CM shall preserve these for a period of seven (7) years after final payment.

**ARTICLE 12**  
**PAYMENTS**

**12.1 Progress Payments**

**12.1.1 Within 20 days** after the execution of this contract and before the first Application for Payment, the CM shall submit a detailed Schedule of Values which enumerates a breakdown of contracted and estimated costs to complete the work. This Schedule of Values will be the basis utilized for all Applications for Payment. This Schedule of Values may only be modified with the written approval of the Owner.

**12.1.2** Based upon Applications for Payment submitted to the Owner by the CM, the Owner shall make progress payments on account of the Contract Sum to the CM as provided below and elsewhere in the Contract Documents. The Application for Payment shall be formatted to present the costs in the same detail and categories as used in the Schedule of Values.

**12.1.2** The period covered by each Application for Payment shall be one calendar month ending on approximately the last day of the month.

**12.1.3** Provided that an Application for Payment is received by the Owner not later than the fifth day of a month, the Owner shall make payment to the CM not later than the twentieth day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Owner receives the Application for Payment.

**12.1.4** With each Application for Payment, the CM shall submit a partial Affidavit of Payment, a detailed list of all expenses, time sheets, invoices, and subcontractor pay applications or other documents required to evidence all costs incurred during the period covered by the Application for Payment.

**12.1.5** Applications for Payment shall show the Cost of the Work actually incurred by the CM through the end of the period covered by the Application for Payment and for which the CM has made or intends to make actual payment prior to the next Application for Payment.

**12.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**12.1.6.1** Begin with the total Cost of the Work, as defined in Article 7, actually incurred by the CM through the end of period covered by the Application for Payment;

**12.1.6.2** subtract from that total Cost of the Work a **5%** retainage, excluding however from such computation the General Conditions costs which have been incurred or which are applicable through the end of the period covered by the Application for Payment **except:**

**12.1.6.2.1** for contracts of **200,000** or less, retainage may be **10%**; or

**12.1.6.2.2** for contracts funded in whole or in part by federal funds, retainage may be **10%**, or as otherwise provided by federal laws regulations or requirements.

**12.1.6.3** add the proportionate amount of the CM's Fee applicable through the end of the period covered by the Application for Payment; and

**12.1.6.4** subtract the aggregate of all previous payments made by the Owner to the CM.

**12.1.8** In taking action on the CM's Applications for Payment; the Owner shall be

entitled to rely on the accuracy and completeness of the information furnished by the CM and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 12.1.4 or other supporting data; that the Owner has made exhaustive or continuous on-site inspections; or that the Owner has made examinations to ascertain how or for what purposes the CM has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

## **12.2 Final Payment**

**12.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the CM, within sixty (60) calendar days of the latter of the following:

**12.2.1.1** the CM has fully performed the Contract;

**12.2.1.2** the CM has achieved Final Completion; and

**12.2.1.3** a Final Application for Payment has been submitted to the Owner by the CM.

**12.2.1.4** all Close-out documents have been submitted, reviewed and approved for accuracy by the Owner.

**12.2.2** The Owner may review and report in writing on the CM's final accounting records within thirty (30) days after delivery of the Final Application for Payment to the Owner by the CM. The CM shall respond within fifteen (15) days to any concerns expressed by the Owner.

**12.2.3** If the Owner determines the Cost of the Work as substantiated by the CM's final accounting records to be less than claimed by the CM, the CM shall be entitled to demand mediation of the disputed amount. Such demand for mediation shall be made by the CM within thirty (30) days after the CM's receipt of the Owner's report. Failure to demand mediation within this 30-day period shall result in the substantiated amount reported by the Owner becoming binding on the CM. Pending a final resolution by mediation, the Owner shall pay the CM all undisputed amounts due to the CM.

## **ARTICLE 13** **INSURANCE AND BONDS**

**13.1 Insurance.** The CM shall purchase and maintain at all times that it is performing services under this Contract, at its expense, from a company or companies authorized to do business in the State of Florida, insurance policies containing the following selected types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract by the CM or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

**13.1.1** Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the State of Florida.

**13.1.2 Commercial General Liability** which (a) includes premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground, explosion and collapse hazard, and personal / advertising injury; and (b) names the Owner and the Owner's Related Parties as additional insureds, with per-occurrence limits of not less than One Million Dollars (\$1,000,000.00).

**13.1.3 Commercial Comprehensive Automobile Liability** which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage, or One Million Dollars (\$1,000,000.00) combined single limit.

**13.2 Builder's Risk Liability.** Builder's Risk Liability includes fire, theft, vandalism, malicious mischief, collapse, earthquake, flood, and windstorm shall be the responsibility of the Owner. The Owner shall cover this risk through existing property insurance program with a \$250,000.00 all other perils per occurrence deductible or a higher names storm wind deductible if applicable.

**13.3 Bonds.** In accordance with the provisions of Section 255.05, Florida Statutes, the CM shall provide to the Owner, on forms furnished by the Owner a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total GMP. Bonds must be submitted and approved prior to issuance of documents for subcontractor bids. To be acceptable to the Sarasota County School Board as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

**13.3.1** The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write Surety bonds in the State of Florida.

**13.3.2** The Surety Company shall have a currently valid Certificate of Authority, issued by the United States Department of Treasury under Sections 9304 and 9308 of Title 31 of the United States Codes.

**13.3.3** The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

**13.3.4** The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code as of the date of this contract.

**13.3.5** The Surety Company shall have at least minimum financial rating in the latest issue of AM Best's Key Rating Guide of A- with a financial size category no less than IX.

**13.3.6** The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10%) percent of its surplus to policyholders, provided:

**13.3.6.1** Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

**13.3.6.2** In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

**ARTICLE 14**  
**GENERAL PROVISIONS**

**14.1 Representation and Notices**

**14.1.1** The Owner's representative is:

{CSD Director}  
Construction Services Department  
Sarasota County Schools  
7895 Fruitville Road  
Sarasota, FL 34240

**14.1.2** The CM's representative is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14.1.3** Neither the Owner's nor the CM's representative shall be changed without ten (10) days' written notice to the other party.

**14.1.4** Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by e-mail; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by e-mail or facsimile shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

This Contract is entered into as of the day and year first written above and is executed in one (1) original copy, of which one (1) electronic copy is to be delivered to the CM and the original copy shall be retained by the Owner.

**School Board of Sarasota County**

**(Construction Manager)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_, Board Chair  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

Approved for Legal Content: – 9/30/2021  
Shumaker Attorney for Sarasota County Schools  
Signed: PD

SBSC/CSD Use Only:  
Reviewed & Approved for Board Chair Signature:

PM / DATE: \_\_\_\_\_

CSD/D / DATE: \_\_\_\_\_

## EXHIBIT "A"

### SUPPLEMENTAL CONDITIONS

#### ARTICLE 1 CONTRACT DOCUMENTS

**1.1 Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the CM for execution of the Work shall be made by the CM through an Owner provided vendor purchase order. Electronic copies will be provided by the Design Professional for this purpose. All subcontractors will be responsible for reproduction of documents from electronic media provided by the CM at no additional cost to the Owner.

**1.2 Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.

**1.3 Owner Disclaimer Of Warranty.** The Owner has requested that its Design Professional prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the CM concerning such documents. The CM hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

**1.4 Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

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

**1.4.2** As between large-scale plans and small-scale plans, the large-scale plans shall govern;

**1.4.3** As between plans and specifications, the more stringent requirement shall apply.

**1.4.4** As between this document and the plans, specifications, and general requirements, this document shall govern.

**1.5 Shop Drawings And Submittals.** Shop drawings and other submittals from the CM or its subcontractors and suppliers do not constitute a part of this Contract.

**1.6 Contract Changes.** The CM understands and agrees that this Contract cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract can be accomplished only by written documents signed by the parties.

**ARTICLE 2**  
**CONSTRUCTION MANAGER'S REVIEWS AND EVALUATIONS**

**2.1 Sufficiency Of Construction Documents And Drawings.** The CM acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Design Professional about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

**2.1.1** If the CM performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Design Professional and prior to receiving written authorization from the Design Professional to proceed, the CM shall be responsible for the consequences of such performance.

**2.1.2** Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the CM and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Design Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Design Professional failed to receive written notice before the Work was performed.

**2.2 Sufficiency Of Site.** Prior to signing this Contract, the CM has

**2.2.1** visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and

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

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

**2.2.3** reviewed all available as-built and record drawings, plans and specifications; and

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

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



**ARTICLE 3**  
**CONSTRUCTION MANAGER'S DUTIES, OBLIGATIONS**  
**AND RESPONSIBILITIES**

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

**3.1.1** The CM shall not be required to provide professional services which constitute the practice of architecture or engineering.

**3.1.2** All services rendered by the CM for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.

**3.1.3** The CM shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

**3.1.4** The CM understands and acknowledges that the Work referred to in this Contract may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The CM shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

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

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

**3.2.1** be familiar with and comply with all applicable state laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project or in any manner affecting the Work;

**3.2.2** be familiar with and comply with all Federal laws, rules and regulations that may in any manner affect the Work, including but not limited to the following:

.1 U.S. EPA Asbestos Containing Materials in Schools, final Rule and Notice 40CFR763, Reference 736.99(a)(7);

- .2 Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327, et seq.;
- .3 Federal Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.;
- .4 Title VI of the Civil Rights Act of 1975;
- .5 Executive Order 11246, as amended by Executive Orders 11375 and 12086, related to discrimination;
- .6 Americans with Disabilities Act;
- .7 Anti-Kickback Act of 1986, 41 U.S.C. Section 51;
- .8 The Hatch Act, 18 U.S.C. 594, 598, 600-605;
- .9 Uniform Federal Accessibility Standards, 41 C.F.R. Section 101-19.6;
- .10 Title IX of the Education Amendments of 1972, 20 U.S.C.: 1681-1683 and 1685-1686 prohibiting discrimination on the basis of sex;
- .11 Comprehensive Alcohol and Alcoholism Prevention Treatment and Rehabilitation Act of 1970, 42 U.S.C. 4521-45-94;
- .12 Public Health Service Act of 1912, 42 U.S.C. 290dd-3 and 290ee-3;
- .13 Lead Based Point Poison Prevention Act
- .14 Energy Policy and Conservation Act, P.L. 94-163: 42 U.S.C.;
- .15 Clean Air Act of 1955, 42 U.S.C. 7401-7642;
- .16 Clean Water Act of 1977;
- .17 Immigration and Nationality Act, 8 U.S.C. Section 1324a(e) Section 274A(e);
- .18 Records Retention, 34 C.F.R.
- .19 acknowledges that it has been informed of the provisions of paragraph (2)(a) of Section 287.133 of Florida Statutes and agrees to sign the Public Entity Crime Affidavit.

**3.2.3** prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and

**3.2.4** give all notices required of it by governmental authorities relating to the Project.

**3.2.5** CM shall comply with Florida's Public Records Law including:

.1 keeping and maintaining public records that ordinarily and necessarily would be required by the OWNER in order to perform the service;

.2 providing the public with access to public records on the same terms and conditions that the OWNER would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

.3 ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

.4 meeting all requirements for retaining public records and transfer, at no cost, to the OWNER all public records in possession of the CM upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the OWNER in a format that is compatible with the information technology systems of the OWNER.

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

**3.4 Concurrent Records.** The CM shall, concurrently with performance, maintain detailed records of activities on the Site.

**3.5 As-Built Drawings.** The CM shall maintain at the Site one (1) copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Design Professional, the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the CM shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction. The As-built Drawings shall be reviewed each month with the current Application for Payment and, if in the sole opinion of the Owner, the As-built Drawings are not current, the Owner may withhold an amount equal to five percent (5%) of the current amount due to the CM until the As-built drawings are determined to be current.

**3.6 Bribes And Kickbacks.** The CM shall not by any means:

**3.6.1** induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

**3.6.2** confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;

**3.6.3** offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or

**3.6.4** without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the CM has a direct or indirect proprietary or other pecuniary interest.

**3.7 Quality Control And Testing.** The CM shall develop and implement a quality management program to insure quality construction. The CM shall coordinate all tests and inspections required by the Construction Documents, and the CM shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

**3.8 Incident Reporting.** The CM shall immediately notify the Owner and the Design Professional, both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

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

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

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

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

**3.10.3** The CM shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their

activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

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

**3.11.1** The CM shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to the Owner's occupancy of the Project.

**3.11.2** The CM shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The Design Professional will attend and assist with such familiarization and training.

#### **ARTICLE 4**

### **CONSTRUCTION MANAGER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES**

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

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

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

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

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

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

**4.2 Subcontractor / Supplier Contracts.** The CM shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract. It is the intent of the Owner and the CM that the obligations of the CM's subcontractors and suppliers flow to the benefit of the Owner and the CM.

**4.2.1** The CM shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this

Contract, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

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

**4.2.3** The CM's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner. The CM's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract, and upon request of the Owner, the CM's subcontractors and suppliers will perform services for the Owner.

**4.3 Resolution Of Trade Disputes.** The CM shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

**4.4 Security.** CM acknowledges and understands that the Project is being constructed on public property owned by the Owner, which property may at various times during construction be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the property, and otherwise comply with applicable law, the CM agrees to the following provisions and also agrees that the failure to comply with any of these provisions may result in the termination of this Contract:

**4.4.1 Unauthorized Aliens.** Owner considers the employment of unauthorized aliens by the CM, or any of its subcontractors, a violation of Section 274A(e) of the Immigration and Naturalization Act. If it is determined that an unauthorized alien is working on the Project, the CM shall take all steps necessary to remove such unauthorized alien from the property and the project. Owner shall have the right to terminate this Contract if the CM does not comply with this provision.

**E-Verify.**

- A. **As of January 1, 2021, pursuant to Section 448.095, Florida Statutes, Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all employees hired during the term of this Agreement and must, upon request, provide evidence of compliance with this provision.**
- B. **Subcontractors**
  - (i) **As of January 1, 2021, Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.**
  - (ii) **Subcontractors shall provide Contractor with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as stated in Section 448.095, Florida Statutes.**

(iii) **Contractor shall provide a copy of such affidavit to the School Board upon receipt and shall maintain a copy for the duration of the Agreement.**

C. **Failure to comply with this provision is a material breach of the Agreement, and School Board may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with School Board securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).**

**4.4.2 Possession of Firearms.** Possession of firearms will not be tolerated on the project or the Owner's property. No person who has a firearm in their vehicle may park their vehicle on the Owner's property. Furthermore, no person may possess or bring a firearm on School District property. If any employee/independent contractor of the CM, or any of its sub-contractors, is found to have brought a firearm on to the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the CM. If a sub-contractor fails to terminate said employee/independent contractor, the CM shall terminate its agreement with the sub-contractor. If the CM fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Contract may be terminated by the Owner. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive device, or any machine gun. Powder actuated construction nailers and fasteners are excluded from this definition.

**4.4.3 Criminal Acts.** Employment on the project by the CM, or any of its sub-contractors, of any employee, or independent contractor, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the project site, the CM agrees to take all steps necessary to remove such person from the project and the property. Owner shall have the right to terminate this Contract if the CM does not comply with this provision.

**4.4.4 Sexual Predators/Sexual Offenders.** In order to insure that no sexual predators or sexual offenders are working on the project site, the CM shall perform a query of all its employees/independent contractors working at the project site, and require all of its sub-contractors to perform a query of their employees/independent contractors working at the project site, against the Florida Department of Law Enforcement Sexual Predator/Offender Registry ([www.fdle.state.fl.us](http://www.fdle.state.fl.us)). Any person who is on the Sexual Predator/Offender Registry shall not be allowed on the project, and CM shall immediately remove such person from the project and the property. CM shall, upon request by the Owner, provide evidence that such queries have been done on all personnel working at the project site. Owner shall have the right to terminate this Contract if the CM, or any sub-contractor, does not comply with this provision.

**4.4.5 Possession/Use/Under the Influence of Mind Altering Substances.** Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by CM's employees/independent contractors or its sub-contractors' employees/independent contractors will not be tolerated on the Owner's property. If any

employee/independent contractor is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the CM. If a sub-contractor fails to terminate said employee/independent contractor, the CM shall terminate its agreement with the sub-contractor for the project shall be terminated. If the CM fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Contract may be terminated by the Owner.

**4.4.6 Background Screening Requirements.** CM agrees that before any of its employees, agents or subcontractors will be permitted on school grounds while students are present, such employees, agents or subcontractors will be fingerprinted and have their backgrounds checked as provided by Florida law. CM's employees, agents and subcontractors will coordinate with the Owner to arrange a mutually convenient time for the Owner to conduct the fingerprinting and agree to bear the cost of the fingerprinting/background checks. The Owner has the right to refuse entry onto any school grounds to any individual whose background check does not meet the requirements established by the Owner pursuant to Florida law.

**FINGERPRINTING AND BADGE RENEWAL:**

<https://www.sarasotacountyschools.net/Page/2414>

**To schedule a fingerprinting appointment for Contractors/Vendors COVID-19 update: Contractors/Vendors must have an appointment in order to get fingerprinted. To make an appointment [click here](#). Please print and fill out the application form and bring to your appointment. If you need assistance, please send an e-mail to: [scsbfingerprinting@sarasotacountyschools.net](mailto:scsbfingerprinting@sarasotacountyschools.net).**

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

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

**5.1 Quality Of Materials.** The CM shall furnish goods, products, materials, equipment and systems which:

**5.1.1** comply with this Contract;

**5.1.2** conform to applicable specifications, descriptions, instructions, drawings, data and samples;

**5.1.3** are new (unless otherwise specified or permitted) and without apparent damage;

**5.1.4** are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;



**5.1.5** are merchantable;

**5.1.6** are free from defects; and

**5.1.7** are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

**5.2 Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the CM shall so inform the Owner and the Design Professional and shall proceed as directed by the Design Professional, unless otherwise directed by the Owner. The CM shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

**5.3 Unsuitable Materials.** The CM shall inform the Owner of goods, products, materials, equipment or systems which the CM knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the CM, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and the Design Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and the Design Professional if such items should be defective or not as previously represented. Should the CM furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the CM shall provide such at no increased cost to the Owner.

## **ARTICLE 6** **DOCUMENTS AND INFORMATION**

**6.1 Information From Owner.** The Owner shall provide the CM with information reasonably necessary to assist the CM in performing its services including, if applicable:

**6.1.1** the Site legal description and any required survey;

**6.1.2** all written and tangible material in its possession concerning conditions below ground at the Site;

**6.1.3** if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and

**6.1.4** the Owner's pertinent Project dates and key milestone dates.

**6.2 Resolution Of Questions.** The CM shall resolve all questions concerning the Construction Documents with the Design Professional.

**6.3 Processing Of Documents.** When requested to do so by the Owner, the CM shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by CM; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

**6.4 Sufficiency Of Owner Information.** The furnishing of information by the Owner to the CM shall not relieve the CM of responsibilities contained elsewhere in this Contract to evaluate information and documents provided by the Owner and the CM shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the CM to perform the Work.

## **ARTICLE 7** **SUBMITTALS**

**7.1 Submittal Schedule.** The CM shall timely prepare and transmit to the Design Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Design Professional; and (iii) set forth specific dates for submission of the listed submittals. The CM shall review and approve all submittals prior to submission to the Design Professional.

**7.2 Processing Of Submittals.** The CM shall in timely fashion review, approve if appropriate and forward submittals to the Design Professional for review and approval along with such detail and information as the Design Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

**7.2.1** The Design Professional is responsible to the Owner, but not to the CM, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with this Contract.

**7.2.2** All Work shall be performed in accordance with approved submittals. Approval of submittals by the Design Professional shall not relieve the CM from complying with this Contract, including all plans and specifications, except as changed by Change Order.

## **ARTICLE 8** **CONSTRUCTION MANAGER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK**

**8.1 Rejection And Correction Of Work In Progress.** During the course of Project, the CM shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or

regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

**8.1.1** The CM shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The CM shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

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

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

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

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

## **ARTICLE 9** **CHANGE ORDERS AND CHANGES TO THE WORK**

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

**9.1.1** With respect to such requests for changes by the CM, the CM shall prepare and submit change order requests to the Design Professional.

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

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

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

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

scope of this Contract, and the CM, upon written direction from the Owner, shall proceed with such change.

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

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

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

**9.5.1** If price quotations for change order requests are determined by the Design Professional to be unreasonable, the CM shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Design Professional determines the quotation is unreasonable, the Owner may determine the reasonable cost of the change.

**9.5.2** Unless otherwise specifically permitted by this Contract, the CM and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

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

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

**9.7 Disputes Regarding Changes.**

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

decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

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

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

## **ARTICLE 10** **FINANCIAL CLAIMS AND LIENS**

**10.1 Notification Regarding Claims.** The CM shall immediately notify the Owner and the Design Professional, both orally and in writing, of the nature and details of any claims of any type made by anyone against the Owner, the Design Professional, the CM or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

**10.2 No Rights Of Construction Liens.** The CM acknowledges that Owner is a governmental entity and therefore the provisions of the Florida Construction Lien Law, Chapter 713, Florida Statutes shall not apply to the Project. The CM shall reasonably notify its subcontractors and suppliers that such provisions do not apply and agrees to take all steps reasonably necessary to correct any attempts to invoke such provisions.

## **ARTICLE 11** **OWNER'S CONSULTANT(S), DESIGN PROFESSIONAL AND CONSTRUCTION ADMINISTRATION**

**11.1 Owner's Design Representative.** Unless otherwise directed by the Owner, the Design Professional shall act as the Owner's design representative.

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

**11.1.2** The Design Professional will act as initial interpreter of the requirements of this Contract and as the Owner's advisor on claims.

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

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

**11.4 Design Professional Evaluations.**

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

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

**11.5 Design Professional Submittal Activities.** The Design Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions in a timely manner so as to not impact the construction schedule, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract; and (iii) the Owner's budgeted Total Project Construction Cost. The Design Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The CM remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.

**11.6 Design Professional Interpretations.** The Design Professional will, when requested to do so in writing by the CM, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. The Design Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract.

**11.7 Design Professional Change Order Activities.** The Design Professional will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.

**11.8 Design Professional Relationship To CM.** The duties, obligations and responsibilities of the CM under this Contract shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Design Professional. The CM shall not be a third-party beneficiary of any agreement by and between the Owner and the Design Professional. The duties of the CM to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of the Design Professional to the Owner.

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

**12.1 Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

**12.1.1** When the CM believes that the Work is substantially complete, it shall notify the Owner and the Design Professional that it's Work is ready for a Substantial Completion inspection.

**12.1.2** Prior to the Substantial Completion inspection, the CM will prepare and furnish to the Design Professional a Declaration of Substantial Completion, which at a minimum must:

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

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

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

- .1 inspect the Work;
- .2 list additional items to be completed or corrected; and

.3 determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

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

**12.1.6** Prior to the required date of Substantial Completion, the CM shall deliver to the Design Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Design Professional will obtain and review Substantial Completion documentation and items, and will inform the CM of any deficiencies.

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

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

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

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

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

.1 inspect the Work;

.2 determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;

.3 determine whether the Work complies with (a) this Contract; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and



quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

.4 determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and

.5 determine, in consultation with the Owner, whether the Work is finally complete.

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

**12.2.5** Prior to the date of Final Completion, the CM shall deliver to the Design Professional One (1) set of as-built, red-lined drawings and markups for use by the Design Professional in preparing the final as-built drawings for the close-out package

**12.2.6** The date of Final Completion shall be determined by the Owner at such time as all as-built and close-out documents in conformance with the Close-out requirements described on the Construction Services Website (under Guidelines section) are complete and have been submitted to the Construction Services Project Manager for review and approval.

### **ARTICLE 13**

#### **CONSTRUCTION MANAGER'S WARRANTIES AND GUARANTEES**

**13.1 One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, the CM, upon request by the Owner or the Design Professional, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

**13.1.1** The CM shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the Owner, the Design Professional, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

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

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

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

**13.2.2** that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and

**13.2.3** that all management, supervision, labor and services required for the Work shall comply with this Contract and shall be and are performed in a workmanlike manner.

**13.3 Express Warranties And Guarantees - Subcontractors And Suppliers.** The CM shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the CM in a form identical to the warranties, guarantees and other undertakings set forth in this Contract, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the CM.

**13.4 Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

**13.5 Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the CM's obligations under this Contract. Paragraph 13.1 relates only to the CM's specific obligations with respect to the Work, and has no relationship to the time within which the CM's contractual obligations under this Contract may be enforced, nor to the time within which proceedings may be commenced to establish the CM's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

**13.6 Commencement Of Obligations.** Unless otherwise specified, all of the CM's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

## **ARTICLE 14** **OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

**14.1 Timely Compensation Of Construction Manager.** The Owner shall timely compensate the CM in accordance with this Contract.

**14.2 Payment For Testing.** Unless otherwise required to be provided by the CM pursuant to the terms of the Contract, the Owner shall secure and pay for all Project testing.

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

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

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

**14.5.1** The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for water which is expended without proper regard for ecological and conservation considerations.

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

## **ARTICLE 15 CONSTRUCTION MANAGER'S COMPENSATION**

**15.1 Unit Prices.** If any portion of the GMP is determined by the application of unit prices, the number of units contained in the CM's GMP is an estimate only, and the compensation to the CM shall be determined by the actual number of units incorporated in, or required by, the Work.

**15.2 Schedule Of Values.** The CM shall prepare and present to the Owner the CM's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. Upon the Owner's acceptance, the schedule of values shall be used to process and pay the CM's payment requests. The schedule of values shall only be changed upon the written approval of the Owner.

**15.4 Owner's Right To Refuse Payment.** In the event of a dispute, payment shall be made on or before the date payment is due for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the CM due to:

**15.4.1** the CM's failure to perform the Work in compliance with the requirements of this Contract or any other agreement between the parties;

**15.4.2** the CM's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;

**15.4.3** the CM's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;

**15.4.4** the CM's failure to use funds previously paid the CM by the Owner, to pay the CM's Project-related obligations including, but not limited to, the CM's subcontractors and suppliers;

**15.4.5** claims made, or likely to be made, against the Owner or its property;

**15.4.6** loss caused by the CM or the CM's subcontractors, or suppliers; or

**15.4.7** the CM's failure or refusal to perform any of its obligations to the Owner.

**15.6 Construction Manager's Right To Refuse Performance For Non-Payment.** If within thirty (30) calendar days from the date a payment is due the Owner, without cause or basis hereunder, fails to pay the CM any amounts then due and payable to the CM, the CM shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen (14) calendar days written notice to the Owner of its intent to cease work.

**15.7 Correction Of Past Payments.** All prior payments may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the date a payment is due, the Owner shall notify the CM in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the CM shall be due thirty (30) calendar days from the date the dispute is resolved.

**15.8 Interest On Outstanding Amounts Due.** Interest shall accrue on amounts owed by the Owner to the CM in accordance with the provisions of the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

**15.8.1** No interest shall accrue when payment is delayed because of a dispute between the Owner and the CM, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage which is withheld to assure performance of this Contract.

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

**15.9.1** title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the CM, whichever occurs first;

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

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

**15.10 Construction Manager's Signature.** The signature of the CM on any Application for Payment constitutes the CM's certification to the Owner that (i) all costs included in the application have been incurred on behalf of the Owner for the sole purpose of completing the Work in accordance with the Contract; (ii) the CM has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

**15.11 Taxes.** The CM shall incorporate into the Contract Sum, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract, whether or not yet effective or merely scheduled to go into effect. The CM shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The CM shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or CM on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

**15.12 Compensation Of Construction Manager's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the CM shall pay each of its subcontractors and suppliers out of the amount received by the CM on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the CM on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the CM's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the CM and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the CM fails to pay or unreasonably withholds payment from one (1) or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

## **ARTICLE 16** **SCHEDULE REQUIREMENTS**

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

**16.1.1** Unless otherwise directed and approved by the Owner, the CM shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

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

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

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

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

**16.2 Delay In Performance.** If at any time the CM anticipates that performance of the Work will be delayed or in fact has been delayed, the CM shall (i) immediately notify the Owner and the Design Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

**16.3 Modifications To Time For Performance.** The CM shall determine and promptly notify the Owner and the Design Professional, in writing, when it believes adjustments to the expected dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and the Design Professional.

**16.4 Early Completion.** The CM may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the CM's sole convenience and shall not create any additional CM rights or Owner obligations under this Contract, nor shall it change the required dates of Substantial Completion or Final

Completion. The Owner shall not pay the CM any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the CM any compensation should the Owner cause the CM not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

**16.5 Modification Dates Of Substantial Completion Or Final Completion.** The CM may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the CM's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the CM's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

**16.6 Document Review.** The CM shall provide documents to the Owner and the Design Professional for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and the Design Professional reasonable time for review.

## **ARTICLE 17** **LIQUIDATED DAMAGES**

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

**17.2 Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the CM in the completion of the Work. If the CM inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract, the CM shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified previously in this Contract for each and every day after the required date of Substantial Completion until Substantial Completion is achieved. This liquidated damages provision shall apply and remain in full force and effect in the event that the CM is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing construction manager or contractor. If the CM fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the CM shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified previously in this Contract for each and every calendar day of unexcused delay in achieving Final Completion.

**17.3 Compensable Delay.** If the CM is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or the Design Professional; (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines

may justify the compensation of the CM for the delay, the CM's compensation may be equitably adjusted to cover the CM's actual and direct increased costs attributable to such delay.

**17.4 Excusable Delay.** If the CM is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or the Design Professional; (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the CM; (vi) unavoidable casualties; (vii) causes beyond the CM's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule may be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the CM or by any cause which the CM could reasonably control or circumvent; (b) the CM would have otherwise been able to timely perform all of its obligations under this Contract but for such delay; and (c) immediately but not later than seven (7) calendar days after the beginning of any such delay the CM gives notice of its delay claim to the Owner.

**17.5 Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the CM will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the CM the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.

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

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

## **ARTICLE 18** **CONCEALED AND UNFORESEEN CONDITIONS**

**18.1 Notification Regarding Unusual Conditions.** If (i) the CM encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the CM, the CM shall promptly, but in no event later than three (3) calendar days after first observance of the conditions, notify the Design Professional and the Owner before conditions are disturbed and give the Design Professional or the Owner opportunity to observe the condition in its undisturbed state.

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



**18.1.2** All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) calendar days from the date of observation of the changed conditions.

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

## **ARTICLE 19**

### **CONSTRUCTION MANAGER'S RECORDS**

**19.1 Preparation Of Records.** The CM shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

**19.2 Retention Of Records.** The CM shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

**19.2.1** The CM shall maintain substantiating records for seven (7) years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the CM receives notification of a dispute or the commencement of litigation regarding the Project within this seven-year period, the CM shall continue to maintain all Project records until final resolution of the dispute or litigation.

**19.2.2** The CM shall, upon seven (7) days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.

**19.3 Access To Records.** Upon the request of the Owner, the CM shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the CM's records at the copying party's reasonable expense, within adequate work space at the CM's facilities. Failure by the CM to supply substantiating records from itself and its subcontractors and suppliers upon

the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract.

## **ARTICLE 20** **PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

**20.1 Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the CM (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the CM; and (v) shall not be used by the CM on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the CM a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

**20.2 Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the CM for the Project are the sole property of the Owner free of any retention rights of the CM. The CM hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the CM for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

**20.3 Disclosure Of Information.** The CM shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract.

**20.4 Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the CM shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

**20.5 Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

## **ARTICLE 21** **GENERAL INSURANCE REQUIREMENTS**

**21.1 General Insurance Requirements.** Unless otherwise required, each insurance policy:

**21.1.1** shall be issued by an insurance carrier acceptable to the Owner;

**21.1.2** shall be kept in force throughout performance of the CM's services and for one (1) year after the end of such performance;

**21.1.3** shall be an occurrence policy; and

**21.1.4** shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight (28) calendar days' prior written notice to the Owner.

**21.2 Certificates Of Insurance.** Prior to performance of services on the Project, the CM shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The CM shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the CM's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the CM or its subcontractors and suppliers. Upon the request of the Owner, the CM shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.

**21.3 Effect Of Insurance.** Compliance with insurance requirements shall not relieve the CM of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract, and the Owner shall be entitled to pursue any remedy in law or equity if the CM fails to comply with the contractual provisions of this Contract. Indemnity obligations specified elsewhere in this Contract shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

**21.4 Waiver Of Subrogation.** The CM hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the CM, and to anyone claiming by, through or under the CM, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

## **ARTICLE 22** **GENERAL BOND REQUIREMENTS**

**22.1 General Bond Requirements.** As to the performance and payment bond(s) required by this Contract, the penal sum of each bond shall be in an amount not less than the GMP, as adjusted by any change order(s), and each bond shall:

**22.1.1** be in a form approved by the Owner and which complies with the provisions of section 255.05, Florida Statutes;

**22.1.2** incorporate by reference the terms of this Contract;

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

**22.1.4** be executed by a company licensed and authorized to do business in the State of Florida; and

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

**22.2 Delivery Of Bonds.** The CM shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

**ARTICLE 23**  
**OWNER'S RIGHT TO STOP WORK**

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

**23.1.1** The CM shall not be entitled to an adjustment in the Contract Time, the GMP, or the Contract Sum under this clause since such stoppages are considered to be the fault of the CM.

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

**23.1.3** In the event the Owner issues instructions to cease and desist, and in the further event that the CM fails and refuses with seven (7) calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another construction manager or contractor, and the CM shall be responsible for the cost of performing such Work by the Owner.

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

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

**24.1 Termination For Cause By Owner.**

**24.1.1** The Owner may terminate this Contract for cause if the CM materially breaches this Contract by:

- .1** refusing, failing or being unable to properly manage or perform on any Project;
- .2** refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;

.3 refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

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

.5 refusing, failing or being unable to substantially perform in accordance with the terms of the Contract as determined by the Owner, or as otherwise defined elsewhere herein, or

.6 refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and CM.

**24.1.2** Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the CM setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the CM fails to initiate the cure or if the CM fails to expeditiously continue such cure until complete, the Owner may give written notice to the CM of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

.1 complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

.2 contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

.3 take such other action as is necessary to correct such failure;

.4 take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the CM;

.5 directly pay the CM's subcontractors and suppliers compensation due to them from the CM;

.6 finish the Work by whatever method the Owner may deem expedient; and

.7 require the CM to assign the CM's right, title and interest in any or all of CM's subcontracts or orders to the Owner.

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

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

## **24.2 Termination For Cause By Construction Manager.**

**24.2.1** The CM may terminate this Contract for cause if the Owner materially breaches this Contract by:

- .1 refusing, failing or being unable to make prompt payment to the CM without just cause;
- .2 disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Contract or any other agreement between the Owner and the CM.

**24.2.2** Upon the occurrence of any of the events described in Paragraph 24.2.1, the CM may give written notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure the default within seven (7) calendar days, the CM, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

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

**24.4 Construction Manager's Compensation When Construction Manager Terminates For Cause Or Owner Terminates For Convenience.** If this Contract is (i) terminated by the CM pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three (3) months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the CM specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the CM. Absent agreement on the additional amount due the CM, the Owner shall pay the CM:

**24.4.1** reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the CM's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the CM would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

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

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

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

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

- .1 immediately stop work;
- .2 terminate outstanding orders and subcontracts;
- .3 settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- .4 transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the CM has.

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

**24.9 Limitation On Termination Claim.** If the CM fails to file a claim within one (1) year from the effective date of termination, the Owner shall pay the CM only for services actually performed and expenses actually incurred prior to the effective termination date.

## **ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION**

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

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

- .1 all legal actions hereunder shall be conducted only in the state Circuit or County Court in and for Sarasota County, Florida; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;

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

.3 the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and

.4 the prevailing party in any action brought under, or arising from, this Contract for Construction, shall be entitled to recover its attorneys fees and costs incurred from the non-prevailing party, including but not limited to attorneys fees and costs incurred at the trial and appellate courts.

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

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

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

**25.4.2** The parties shall not be required to mediate for a period greater than ninety-one (91) calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

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

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

**25.4.5** The Owner, the Design Professional, the CM, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract or an agreement that incorporates this Contract by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one (1) mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.



**25.5 Conflicting Dispute Resolution Provisions.** Neither party to this Contract shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

**25.6 Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract, no party to this Contract shall be required to participate in or be bound by, any arbitration proceedings.

**25.7 Performance During Dispute Resolution.** The Owner and the CM agree that pending the resolution of any dispute, controversy, or question, the Owner and the CM shall each continue to perform their respective obligations without interruption or delay, and the CM shall not stop or delay the performance of the Work.

## **ARTICLE 26** **DAMAGES AND REMEDIES**

**26.1 Construction Manager's Repair.** The CM shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract, or any other applicable warranty or guarantee.

**26.2 Construction Manager's Reimbursement.** The CM shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the CM's failure to substantially perform in accordance with the terms of this Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to the CM or of which the CM was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract or any other applicable warranty or guarantee; or (iv) other acts or omissions of the CM.

**26.3 General Indemnity.** As expressly permitted by section 725.06(2), Florida Statutes (2002), the CM agrees to indemnify and hold harmless the Owner, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CM or persons employed or utilized by the CM in the performance of this Contract.

**26.4 Intellectual Property Indemnity.** To the fullest extent permitted by law, the CM shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or the Design Professional in writing. If the CM has reason to believe the use of a required design, process or product is an infringement of a patent, the CM shall be responsible for such loss unless such information is promptly given to the Owner.

**26.5 Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one (1) or more remedies for breach of this Contract contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract or by law.

**26.6 Waiver Of Damages.** The CM shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

**26.7 Interest.** The Owner is entitled to interest on all amounts due from the CM that remain unpaid thirty (30) days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 15.8.

## **ARTICLE 27** **MISCELLANEOUS PROVISIONS**

**27.1 Integration.** This Contract represents the entire and integrated agreement between the Owner and the CM, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract may be amended only by written instruments signed by both the Owner and the CM.

**27.2 Severability.** If any provision of this Contract, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

**27.3 Waiver.** No provision of this Contract may be waived except by written agreement of the parties. A waiver of any provision on one (1) occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract.

**27.4 Strict Compliance.** No failure of the Owner to insist upon strict compliance by the CM with any provision of this Contract shall operate to release, discharge, modify, change or affect any of the CM's obligations.

**27.5 Third-Party Beneficiaries.** This Contract shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract, nothing contained in this Contract is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the CM.

**27.6 Survival.** All provisions of this Contract which contain continuing obligations shall survive its expiration or termination.

**27.7 Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract.