

**Contract Between Owner and Design / Builder
For Design and Construction Services
Where the Basis of Payment is
Cost of the Work Plus a Fee**

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 Design/Builder (DB) _____
Sarasota, FL _____

The Project is **{name of campus}** _____
{name of project} _____
Sarasota, FL _____

Project Description Summary: _____

The Owner and Design/Builder agree as follows.

RECITALS

WHEREAS, the Owner and DB entered into a Non-exclusive Two Year Continuing Contract Between Owner and Design / Builder for Assigned Design / Construction Projects dated **1/22/2019 (Item #41)** which authorizes the Owner to assign subprojects to the DB; and

WHEREAS, the Owner has previously assigned to the DB, as a subproject, the scope of Work contemplated in this Contract; and

WHEREAS, the Owner and DB have negotiated a Guaranteed Maximum Price (GMP) for the DB to provide all labor, material, equipment, and services necessary to complete the Work included in this Contract; and

WHEREAS, the Owner's engagement of the DB is based upon the DB's representations to the Owner that it; (i) is experienced in providing design and 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 design and construction management services for the Project; and (iv) has the expertise and ability to provide design and 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.

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"- "Design/Builder 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"- "Design and 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 DESIGN SERVICES

2.1.1 The DB's design services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The DB has prepared the attached Exhibit "E", "Design and Construction Schedule" which includes a minimum of two weeks for review by the Owner after each submission by the DB. Time limits

established by this schedule shall not, except for reasonable cause, be exceeded by the DB.

2.1.2 The DB shall comply with the Florida Building Code, the Construction Procedures Guidelines as promulgated by the Construction Services Department which are accessible at <http://www.sarasota.k12.fl.us/construction>, and any Owner issued Project Educational Specifications.

2.1.3 The DB shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.1.4 The DB shall advise the Owner of any need for securing any tests, analysis, studies, reports, or consultants' services in connection with the design of the Project.

2.1.5 Based on the "Design and Construction Schedule", Exhibit "E", the DB shall prepare, for approval by the Owner, Schematic, Design Development, and/or Construction Documents.

2.1.6 Schematic Documents shall consist of drawings and other documents illustrating the scale and relationship of Project components.

2.1.7 Design Development Documents shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.1.8 Construction Documents shall consist of Drawings and Specifications setting forth, in detail, the requirements for the construction of the Project. The DB shall furnish layouts, to scale, of all rooms or areas in which equipment, built-in or fixed furnishings, machinery, switchgear and food services equipment is located, showing all pertinent dimensions, services to and from and their characteristics. Layouts shall be part of the Construction Documents.

2.1.9 Upon submission to the Owner of each scheduled deliverable, conferences will be arranged by Construction Services Staff to review and discuss the submissions. Modifications, deletions, or additions reasonably requested by Construction Services Staff shall be incorporated into revised documents and resubmitted to Construction Services Staff, provided such changes are consistent with previously approved submissions.

2.1.10 Minimum Flood Criteria: All structures located within flood boundaries as shown on Flood Insurance Rate Maps published by the Federal Emergency Management Agency shall be designed to comply with any and all applicable ordinances, regulations and rules.

2.1.11 The DB shall be responsible for showing the extension and connection of new work to existing sanitary sewers, manholes, septic tanks, water mains and all other utilities and appurtenances. The Owner will furnish to the DB the latest site deed description and any surveys available.

2.1.12 The DB understands and acknowledges that the Owner has established a construction budget for the project. The DB agrees to design the project so that the cost

of construction shall not exceed the construction budget. The DB shall review the budget at each stage of preparation of drawings and if the DB's proposed GMP is in excess of the budget:

2.1.12.1 The Owner may instruct the DB to modify the drawings as required to meet the approved budget figure; or

2.1.12.2 The Owner may revise the budget and authorize the DB to proceed based upon the DB's estimate.

2.2 PRECONSTRUCTION SERVICES

2.2.1 Based on the "Design and Construction Schedule", Exhibit "E", the DB shall prepare, for approval by the Owner, pre-construction deliverables. Any reports shall include a complete discussion and summary for the services provided in accordance with subparagraphs 2.2.2 through 2.2.9 herein below.

2.2.2 The DB shall review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics.

2.2.3 The DB shall update, for the Owner's review and approval, the "Design and Construction Schedule" that coordinates and integrates the DB's services and the Owner's responsibilities.

2.2.4 The DB shall prepare, for the Owner's approval, a detailed estimate of construction costs developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the DB. Update and refine this estimate periodically as the DB prepares Construction Documents. Notify the Owner if it appears that the construction cost may exceed the Project budget. Make recommendations for corrective action.

2.2.5 The DB shall coordinate Contract Documents by consulting with the Owner regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost, or schedules.

2.2.5.1 Advise on the separation of the Project into contracts for various categories of Work. If separate contracts are to be awarded by the Owner, review the Drawings and Specifications and make recommendations as required to provide that [1] the Work of the separate contractors is coordinated with that of the Trade Contractors, [2] all requirements for the Project have been assigned to the appropriate separate contract, [3] the likelihood of jurisdictional disputes has been minimized, and [4] proper coordination has been provided for phased construction.

2.2.5.2 Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Subcontractor. Provide the Project Construction

Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

2.2.5.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents. Expedite and coordinate delivery of these purchases.

2.2.6 The DB shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

2.2.7 The DB shall make recommendations for pre-qualification criteria for subcontractor bidders and develop subcontractor bidders' interest in the Project. Establish bidding schedules.

2.2.8 The DB shall schedule and conduct monthly meetings for the Project Team, and prepare and distribute minutes.

2.2.9 The DB shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The DB shall prepare all documents required for the approval of governmental authorities.

2.3 BIDDING SERVICES

2.3.1 Based on the "Design and Construction Schedule", Exhibit "E", upon completion of the Construction Documents, the DB shall provide to the Owner a final GMP proposal for all construction work contemplated by the Construction Documents. The DB's proposal will be based on bids solicited by the DB from as many subcontractors as required by the Owner's procurement policy.

2.3.2 Within fifteen (15) days of the Owner's receipt of the DB's proposal, the Owner will have the option, in its sole discretion, to either reject or accept the DB's proposal. If the Owner accepts the proposal, a change order will be issued to reflect any change to the "Guaranteed Maximum Price", Exhibit "C", and the Contract GMP.

2.3.3 If the Owner rejects the proposal, this contract shall be terminated in accordance with Article 24 of the Design / Builder Supplemental Conditions, Exhibit "A".

2.3.4 The Owner may request from the DB a modified GMP proposal utilizing the DB's suggested, and Owner approved, modifications to the Construction Documents, which are determined to be necessary to reduce the project costs to come within the project budget. All reasonable costs incurred to incorporate the approved modifications into the Construction Documents shall be the responsibility of the DB and DB hereby agrees to pay for all such costs.

2.3.5 Nothing contained in this Contract shall require the Owner to accept any of the DB's proposals. Further, the DB agrees that the Owner has the unrestricted discretion to

reject the DB's proposals if, based on the Owner's opinion and judgment, the rejection of the proposals is in the Owner's best interest.

2.3.6 The Owner's failure to specifically notify the DB of the Owner's decision not to accept the DB's proposal shall not be construed as the Owner's implicit acceptance of the proposal. Rather, in order for the DB's proposal to be accepted, the Owner must so specify such acceptance in writing.

2.3.7 Whether the Owner accepts or rejects any modified proposals, the Owner is not responsible for payment of any costs incurred by the DB in preparing revisions to the proposal or the modified proposal.

2.3.8 The DB agrees, notwithstanding any other provisions to the contrary, that should the Owner reject the DB's proposal, or modified proposal, the Owner has the discretion, but not the obligation, to procure construction management services for the Project through competitive bidding pursuant to Florida Statute 287.057, or competitive selection/negotiation pursuant to Florida Statute 287.055 and 1013.45(1)(c), using the documents generated and created during the pre-construction phase. The Owner agrees that if competitive bidding occurs, nothing in this Contract restricts the DB from bidding on the construction phase of the Project along with all other qualified bidders.

2.4 CONSTRUCTION SERVICES

2.4.1 Upon the Owner's acceptance of a GMP proposal from the DB and Owner's approval of a change order reflecting any change to the "Guaranteed Maximum Price", Exhibit "C", and the Contract GMP, the DB shall commence providing and performing construction services in accordance with the Contract Documents.

ARTICLE 3 **USE OF DESIGN / BUILDER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

3.1 Original Drawings and Specifications are the property of the DB; however, the Project is the property of the Owner, and the DB may not use the drawings and specifications therefor for any purpose not relating to the Project without the Owner's consent. Upon completion of the Work or any earlier termination of this Contract, the DB will revise Drawings to reflect changes made during construction and he will promptly furnish the Owner with a complete set of drawings. All such reproductions shall be the property of the Owner who may use them without the DB's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project. Should the Owner or any other person, firm or legal entity use, reuse or modify the DB's Drawings, Specifications or other documents prepared under this Contract for other than the Owner's use and occupancy of this Project, the Owner, to the full extent permitted by law, agrees to indemnify, defend, protect and hold the DB harmless from and against any and all claims, suits, costs and expenses accruing or resulting to any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons arising out of such unauthorized use, reuse or modification of the DB's Drawings, Specifications and other documents, except where the DB is found to be solely liable for such damages or losses by a court of competent jurisdiction.

3.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not be construed as publication in derogation of the DB's reserved rights.

ARTICLE 4

RELATIONSHIP OF THE PARTIES

4.1 The DB accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to cooperate with the Owner and exercise the DB'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 DB shall, in consultation with the Owner 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 DB and to make payments to the DB in accordance with the requirements of the Contract Documents.

4.2 The DB has prepared Exhibit "F" to this contract which lists the name, title, and hourly rate of the DB's primary employees, and all subcontractors and suppliers listed by company name and trade category, who will work on the Project. This Exhibit "F" shall be revised by an amendment to the Contract upon completion of bidding of the Owner approved Construction Documents. The DB 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 DB shall not make any changes without prior written approval of the Owner.

4.3 **Quality Control.** The DB shall develop and maintain a program, acceptable to the Owner to assure quality control of the design and construction. The DB 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 DB 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 5

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5.1 The date of commencement of the Work shall be the date of this Contract.

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

5.3 It is the intention of both parties that the DB shall achieve Substantial Completion of the entire Work not later than, _____, 20 subject to adjustments of this Contract Time in accordance with this contract.

5.4 **Liquidated Damages.** The DB 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 DB agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, the DB 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 DB 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 DB agrees that if Final Completion is not achieved within thirty (30) calendar days after the date certified as Substantial Completion, the DB 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 6 CONTRACT SUM

6.1 The Owner shall pay the DB the Contract Sum in current funds for the DB's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 8 plus the DB's Fee. The GMP and the GMP Qualifications are attached as Exhibits "C" and "D" and shall be used to monitor actual costs.

6.2 Design/Builder Fee

6.2.1 The DB's Fee is _____ percent (___ %) of the Cost of the Work.

6.2.2 The DB's Fee for Change Orders shall be determined as follows:

6.2.2.1 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 DB's Fee based on the same percentage used in the original Fee calculation.

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

6.3 Guaranteed Maximum Price (GMP)

6.3.1 The sum of the Cost of the Work and the DB's Fee is guaranteed by the DB not to exceed _____

Dollars and _____ Cents: \$ _____, 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 DB without reimbursement by the Owner.

6.3.2 Within the GMP, the Cost of General Conditions, and defined in Article 8.8, is guaranteed by the DB not to **exceed** _____ **Dollars and _____ Cents: \$ _____**, 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 DB without reimbursement by the Owner.

6.3.3 A list of all Construction Documents that the GMP is based upon to be included 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.

6.4 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 7 **SCHEDULE AND MODIFICATIONS**

7.1 The DB has prepared Exhibit "E" to this contract which includes the Design and Construction Schedule. The DB shall review the Design and 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.

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

7.3 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.

7.4 Supplemental Instructions. A Supplemental Instruction is a minor change or clarification in the scope of the Work, signed by the DB and the Owner, that does not affect the Contract Time, GMP, nor GCMP.

ARTICLE 8 **GENERAL CONDITIONS COSTS TO BE REIMBURSED**

8.1 Cost of the Work. The term Cost of the Work shall mean costs necessarily incurred by the DB 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 8.

8.2 Labor Costs

8.2.1 Wages of personnel directly employed by the DB to perform design and pre-construction services for the Project. Wages of construction workers directly employed by

the DB to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshop.

8.2.2 Wages or salaries of the DB's personnel, whether stationed at the site or the DB's office, while performing any work related to the project, including required clerical work, shall be reimbursed at actual cost.

8.2.3 Wages and salaries of the DB's supervisory or administrative personnel engaged at the DB'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.

8.2.4 Costs paid or incurred by the DB 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.

8.3 Subcontract Costs

8.3.1 Payments made by the DB to Subcontractors in accordance with the requirements of the Project and subcontracts.

8.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

8.4.2 Costs of materials described in the preceding Article 8.4.1 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 DB. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

8.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

8.5.1 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 DB 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 DB. Cost for items previously used by the DB shall mean fair market value.

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

8.5.3 Costs incurred to provide site safety.

8.5.4 Costs of removal of legally disposed debris from the site.

8.5.5 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.

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

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

8.6 Miscellaneous Costs

8.6.1 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.

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

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

8.6.4 Fees of laboratories for tests required by the Contract Documents to be paid by the CM.

8.6.5 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 DB 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 DB's Fee.

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

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

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

8.6.9 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.

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

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

8.6.12 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.

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

8.7 Other Costs and Emergencies

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

8.7.2 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.

8.8 General Conditions Costs. The following costs shall be defined as General Conditions Costs and shall be included in the Control Estimate as such, shall be invoiced as such, and shall be totaled against the General Conditions Maximum Price (GCMP). The DB shall not be paid for any of these costs that exceed the GCMP.

8.8.1 All labor costs, as defined in Article 8.2, of the DB's supervisory, technical, administrative and clerical personnel engaged in design, preconstruction services, supervision and management of the Work on or off the Project Site, including all company overhead and expenses.

8.8.2 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the DB 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 DB. Cost for items previously used by the DB shall mean fair market value.

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

8.8.4 Costs incurred to provide site safety.

8.8.5 Costs of removal of legally disposed debris from the site.

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

8.8.7 That portion of the reasonable travel and subsistence expenses of the DB's

personnel incurred while traveling in discharge of duties connected with the Work.

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

8.8.9 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.

8.8.10 Sales, use or similar taxes imposed by a governmental authority and paid by the DB, and directly related to the General Conditions.

8.8.11 Fees and assessments for the building permit and for other permits, licenses and inspections for which the DB is required by the Contract Documents to pay.

8.8.12 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

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

8.8.14 Data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing.

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

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

8.8.17 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.

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

ARTICLE 9 **COSTS NOT TO BE REIMBURSED**

9.1 The Cost of the Work shall not include:

9.1.1 Salaries and other compensation of the DB's personnel or consultants not listed in Article 8.2.2, or those listed in Article 8.2.2 when their work is not related to the Project. Personnel bonuses and incentives.

9.1.2 Expenses of the DB's non-field offices, including operational expenses such as telephone service and long-distance telephone charges, office supplies, and other similar expenses.

9.1.3 Overhead and general operating expenses, except as may be expressly included in Article 8.

9.1.4 The DB's capital expenses, including interest on the DB's capital employed for the Work.

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

9.1.6 Cost of all non-project specific insurance.

9.1.7 Any costs or expenses incurred by the DB, 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.

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

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

ARTICLE 10 **DISCOUNTS, REBATES AND REFUNDS**

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

10.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 10.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11 **SUBCONTRACTS AND OTHER AGREEMENTS**

11.1 Those portions of the Work that the DB does not customarily perform with the DB's own personnel shall be performed under subcontracts or by other appropriate agreements with the DB. The Owner may designate specific persons from whom, or entities from which, the DB shall obtain bids. The DB 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 DB, which bids will be accepted. The DB shall not be required to contract with anyone to whom the DB has reasonable objection.

11.2 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 12
ACCOUNTING RECORDS

12.1 The DB 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 DB's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the DB shall preserve these for a period of seven (7) years after final payment.

ARTICLE 13
PAYMENTS

13.1 Progress Payments

13.1.1 Within 20 days after the execution of this contract and before the first Application for Payment, the DB 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.

13.1.2 Based upon Applications for Payment submitted to the Owner by the DB, the Owner shall make progress payments on account of the Contract Sum to the DB 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.

13.1.3 The period covered by each Application for Payment shall be one (1) calendar month ending on approximately the last day of the month.

13.1.4 Provided that an Application for Payment is received by the Owner not later than the fifth (5th) day of a month, the Owner shall make payment to the DB not later than the twentieth (20th) 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.

13.1.5 With each Application for Payment, the DB 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.

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

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

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

13.1.7.2 subtract from that total Cost of the Work a 10% 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;

13.1.7.3 add the proportionate amount of the DB's Fee applicable through the end of the period covered by the Application for Payment; and

13.1.7.4 subtract the aggregate of all previous payments made by the Owner to the DB.

13.1.8 When the DB's Subcontracts based on the Schedule of Values individual total completed amount of construction, as reflected on an Application for Payment, exceeds 50% of the adjusted GMP, the retainage in the calculation per paragraph 12.1.6.2 shall be reduced to 5%.

13.1.9 In taking action on the DB's Applications for Payment; the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the DB 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 13.1.4 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 DB 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.

13.2 Final Payment

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

13.2.1.1 the DB has fully performed the Contract;

13.2.1.2 the DB has achieved Final Completion; and

13.2.1.3 a Final Application for Payment has been submitted to the Owner by the DB.

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

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

13.2.3 If the Owner determines the Cost of the Work as substantiated by the DB's final accounting records to be less than claimed by the DB, the DB shall be entitled to demand mediation of the disputed amount. Such demand for mediation shall be made by the DB within thirty (30) days after the DB'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 DB. Pending a final resolution by mediation, the Owner shall pay the DB all undisputed amounts due to the DB.

ARTICLE 14 **INSURANCE AND BONDS**

14.1 Insurance. The DB 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 DB or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

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

14.1.2 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 **Two Million Dollars (\$2,000,000.00).**

14.1.3 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.

14.2 Builder's Risk Coverage/Installation Floater: Builder's Risk Coverage on an All Risk basis, including coverage for 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 **\$100,000** all other perils per occurrence deductible or a higher named storm wind deductible if applicable. **Applicable deductibles shall be the sole responsibility of the OWNER.**

14.3 Bonds. In accordance with the provisions of Section 255.05, Florida Statutes, the DB 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:

14.3.1 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.

14.3.2 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.

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

14.3.4 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.

14.3.5 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.

14.3.6 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:

14.3.6.1 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.

14.3.6.2 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 15 GENERAL PROVISIONS

15.1 Representation and Notices

15.1.1 The Owner's representative is:

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

15.1.2 The DB's representative is:

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

15.1.4 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 DB and the original copy shall be retained by the Owner.

School Board of Sarasota County

(Name of Design/Builder Company)

OWNER (Signature)

DESIGN/BUILDER (Signature)

Jeffrey L. Maultsby, Asst.Supt./Chief Operating Officer
(Printed name and title)

(Printed name and title)

Approved for Legal Content: **1/28/2019** – MG
Matthews, Eastmoore, Hardy, Crauwels & Garcia
Attorneys for Sarasota County Schools
Signed: MG

SCS/CSD/FSD Use Only:
Reviewed & Approved for Design/Builder Signature:

PM / DATE: _____

CSD/D / DATE: _____

Reviewed & Approved for Asst. Supt./Chief Operating Officer Signature:

PM / DATE: _____

CSD/D / DATE: _____

EXHIBIT "A"

DESIGN/BUILDER SUPPLEMENTAL CONDITIONS

ARTICLE 1 CONTRACT DOCUMENTS

1.1 Additional Sets Of Documents. Any additional copies of the Construction Documents required by the DB for execution of the Work shall be made by the DB through an Owner provided vendor purchase order. Electronic copies will be provided by the DB for this purpose. All subcontractors will be responsible for reproduction of documents from electronic media provided by the DB 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 paid for preparation of 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 DB concerning such documents. The DB 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 DB or its subcontractors and suppliers do not constitute a part of this Contract.

1.6 Contract Changes. The DB 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
DESIGN / BUILDER'S REVIEWS AND EVALUATIONS

2.1 Sufficiency Of Construction Documents And Drawings. The DB acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner 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 DB 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 Owner and prior to receiving written authorization from the Owner to proceed, the DB 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 DB 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 Owner 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 Owner failed to receive written notice before the Work was performed.

2.2 Sufficiency Of Site. Prior to signing this Contract, the DB 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 DB 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 DB's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

ARTICLE 3
DESIGN/BUILDER'S DUTIES, OBLIGATIONS
AND RESPONSIBILITIES

3.1 Performance Of Work. The DB 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 DB may be required to provide professional services which constitute the practice of architecture or engineering.

3.1.2 All services rendered by the DB 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 DB 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 DB 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 DB 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 DB 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 DB damage, compromise or destroy any part of the Project or the Site, the DB shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 Compliance With Governmental Requirements. The DB 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 40CRF763, 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.

3.3 Safety. Safety shall be a prime concern of the DB at all times. The DB 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 DB shall, concurrently with performance, maintain detailed records of activities on the Site.

3.5 As-Built Drawings. The DB 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 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 DB 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 DB until the As-built drawings are determined to be current.

3.6 Bribes And Kickbacks. The DB 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 DB has a direct or indirect proprietary or other pecuniary interest.

3.7 Quality Control And Testing. The DB shall develop and implement a quality management program to insure quality construction. The DB shall coordinate all tests and inspections required by the Construction Documents, and the DB 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 DB shall immediately notify the Owner, 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 DB shall immediately notify the Owner, 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 DB encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the DB 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 DB shall perform the Work so as not to interrupt any operations of the Owner on the Site.

3.10.1 The DB understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the DB'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 DB shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The DB 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 DB 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 DB 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 DB 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 DB 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.

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

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

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

4.1.2 The DB 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 DB shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.1.3 The DB 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 DB 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 DB 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 DB 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 DB that the obligations of the DB's subcontractors and suppliers flow to the benefit of the Owner and the DB.

4.2.1 The DB 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 DB 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 DB, and that it will abide by those terms, conditions and requirements.

4.2.3 The DB's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner. The DB'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 DB's subcontractors and suppliers will perform services for the Owner.

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

4.4 Security. DB 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 DB 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 DB, 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 DB 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 DB does not comply with this provision.

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 DB, 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 DB. If a sub-contractor fails to terminate said employee/independent contractor, the DB shall terminate its agreement with the sub-contractor. If the DB 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 devise, 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 DB, 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 DB 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 DB 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 DB 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). Any person who is on the Sexual Predator/Offender Registry shall not be allowed on the project, and DB shall immediately remove such person from the project and the property. DB 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 DB, 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 DB'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 DB. If a sub-contractor fails to terminate said employee/independent contractor, the DB shall terminate its agreement with the sub-contractor for the project shall be terminated. If the DB 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. DB 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. DB's employees, agents and subcontractors will coordinate with the Owner to arrange a mutually convenient time for the Owner to conduct the fingerprinting and agrees 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.

4.4.7 Security For The Project. The DB 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 DB 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 DB shall so inform the Owner and shall proceed as directed by the Owner. The DB 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 DB shall inform the Owner of goods, products, materials, equipment or systems which the DB 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 DB, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner if such items should be defective or not as previously represented. Should the DB 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 DB 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 DB with information reasonably necessary to assist the DB 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 DB shall resolve all questions concerning the Construction Documents with the Owner.

6.3 Processing Of Documents. When requested to do so by the Owner, the DB 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 DB; 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 DB shall not relieve the DB of responsibilities contained elsewhere in this Contract to evaluate

information and documents provided by the Owner and the DB shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the DB to perform the Work.

ARTICLE 7 **SUBMITTALS**

7.1 Submittal Schedule. The DB shall timely prepare and transmit to the Owner 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 Owner; and (iii) set forth specific dates for submission of the listed submittals. The DB shall review and approve all submittals prior to submission to the Owner.

7.2 Processing Of Submittals. The DB shall in timely fashion review, approve if appropriate and forward submittals to the Owner for review and approval along with such detail and information as the Owner 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 Owner is not responsible to the DB 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 Owner shall not relieve the DB from complying with this Contract, including all plans and specifications, except as changed by Change Order.

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

8.1 Rejection And Correction Of Work In Progress. During the course of Project, the DB 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 DB 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 DB 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 DB 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 DB's correction or removal of rejected Work.

8.2 Covered Or Concealed Work. If a portion of the Work has been covered, the DB shall, if notified to do so by the Owner, 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 to requirements specifically expressed in the Construction Documents, the DB 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 that it remain uncovered, the DB 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 DB, the DB shall prepare and submit change order requests to the Owner.

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

9.1.3 When requested to do so, the DB shall prepare and submit to the Owner 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 DB 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 DB, upon written direction from the Owner, shall proceed with such change.

9.3 DB Directed Changes. The DB, with the Owner's prior approval, may 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 DB shall promptly carry out such changes. Any such minor changes shall be implemented by written Supplemental Instruction and executed by the DB and the Owner.

9.4 Administration Of Changes. The DB 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 DB, the DB 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 Owner.

9.5.1 If price quotations for change order requests are determined by the Owner to be unreasonable, the DB shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Owner 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 DB 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 DB 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.

9.8 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 DB 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 DB shall immediately notify the Owner, both orally and in writing, of the nature and details of any claims of any type made by anyone against the

Owner, the DB 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 DB 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 DB 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

CONSTRUCTION ADMINISTRATION

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

11.2 Site Visits. The Owner 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 Rejection Of Work. The Owner 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 Evaluations.

11.4.1 The Owner 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.

11.4.2 The Owner 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.

11.5 Submittal Activities. The Owner 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 Owner'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 DB 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.

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 DB believes that the Work is substantially complete, it shall notify the Owner that its Work is ready for a Substantial Completion inspection.

12.1.2 Prior to the Substantial Completion inspection, the DB will prepare and furnish to the Owner 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 DB 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 and the DB.

12.1.3 Upon receipt of notification from the DB, the Owner and the DB will coordinate 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 Owner will:

- .1 inspect the Work;
- .2 list additional items to be completed or corrected; and
- .3 determine 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 DB shall deliver to the Owner 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 Owner will review Substantial Completion documentation and items, and will inform the DB of any deficiencies.

12.1.7 When the Owner and the DB agree that the Work has passed the Substantial Completion inspection and the DB 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 DB 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 DB 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 DB.

12.2.1 When the DB believes the Work is finally complete, the DB shall notify the Owner that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the DB, the Owner will coordinate with the DB 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 Owner 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 whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the DB 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 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
DESIGN / BUILDER'S WARRANTIES AND GUARANTEES

13.1 One-Year Warranty. In addition to the warranties and guarantees set forth elsewhere in this Contract, the DB, upon request by the Owner, 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 DB 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 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 DB 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 DB shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the DB's failure to correct the failure or defect.

13.2 Express Warranties And Guarantees – Design / Builder. In addition to the warranties and guarantees set forth elsewhere herein, the DB 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 DB shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the DB 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 DB.

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 DB's obligations under this Contract. Paragraph 13.1 relates only to the DB's specific obligations with respect to the Work, and has no relationship to the time within which the DB's contractual obligations under this Contract may be enforced, nor to the time within which proceedings may be commenced to establish the DB'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 DB'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 Design / Builder. The Owner shall timely compensate the DB in accordance with this Contract.

14.2 Payment For Testing. Unless otherwise required to be provided by the DB 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 DB 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 DB 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 DB, 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 DB 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 DB of the use of the Owner's water, gas and electrical energy constitutes a release from the DB to the Owner of all claims and liability for any damages or losses which may be incurred by the DB as a result of water, gas and electrical energy outages or voltage variations or surges.

ARTICLE 15
DESIGN / BUILDER'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 DB's GMP is an estimate only, and the compensation to the DB shall be determined by the actual number of units incorporated in, or required by, the Work.

15.2 Schedule Of Values. The DB shall prepare and present to the Owner the DB'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 DB'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 DB due to:

15.4.1 the DB'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 DB's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;

15.4.3 the DB'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 DB's failure to use funds previously paid the DB by the Owner, to pay the DB's Project-related obligations including, but not limited to, the DB'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 DB or the DB's subcontractors, or suppliers; or

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

15.6 Design / Builder'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 DB any amounts then due and payable to the DB, the DB 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 DB in writing of such defect or impropriety. Any disputed

amounts determined by the Owner to be payable to the DB 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 DB 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 DB, 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 DB 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 DB, 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 DB, 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 DB, or its subcontractors or suppliers.

15.10 Design / Builder's Signature. The signature of the DB on any Application for Payment constitutes the DB'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 DB 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 DB 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 DB 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 DB shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or DB on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.12 Compensation Of Design / Builder's Subcontractors And Suppliers. Upon receipt of payment from the Owner, the DB shall pay each of its subcontractors and suppliers out of the

amount received by the DB 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 DB 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 DB's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the DB and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the DB 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 DB 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 does not assume any of the DB'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 DB shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The DB shall discuss the status of the Work weekly with the Owner so that proper overall management may be provided.

16.1.5 The DB shall periodically and in all instances when the DB 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 DB anticipates that performance of the Work will be delayed or in fact has been delayed, the DB shall (i) immediately notify the Owner 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 DB shall determine and promptly notify the Owner, 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.

16.4 Early Completion. The DB may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the DB's sole convenience and shall not create any additional DB 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 DB any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the DB any compensation should the Owner cause the DB 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 DB may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the DB'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 DB'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 DB shall provide documents to the Owner for review in accordance with schedule requirements and with sufficient lead time to allow the Owner 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 DB 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 DB in the completion of the Work. If the DB inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract, the DB 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 DB is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing construction manager or contractor. If the DB fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the DB 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 DB is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner; (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 DB for the delay, the DB's compensation may be equitably adjusted to cover the DB's actual and direct increased costs attributable to such delay.

17.4 Excusable Delay. If the DB is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner; (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 DB; (vi) unavoidable casualties; (vii) causes beyond the DB'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 DB or by any cause which the DB could reasonably control or circumvent; (b) the DB 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 DB 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 DB 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 DB 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 DB 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 DB 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 DB 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 DB 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 DB, the DB shall promptly, but in no event later than three (3) calendar days after first observance of the conditions, notify the Owner before conditions are disturbed and give 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 DB'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 DB's failure to notify the 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 **DESIGN / BUILDER'S RECORDS**

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

19.2 Retention Of Records. The DB 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 DB 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 DB receives notification of a dispute or the commencement of litigation regarding the Project within this seven-year period, the DB shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.2.2 The DB 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 DB 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 DB's records at the copying party's reasonable expense, within adequate work space at the DB's facilities. Failure by the DB 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.

19.4 Florida's Public Records Law. DB shall comply with Florida's Records Law including;

19.4.1 Keeping and maintaining public records that ordinarily and necessarily would be required by the OWNER in order to perform the service;

19.4.2 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;

19.4.3 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

19.4.4 Meeting all requirements for retaining public records and transfer, at no cost, to the OWNER all public records in possession of the DB 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.

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 DB (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 DB; and (v) shall not be used by the DB 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 DB 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 DB for the Project are the sole property of the Owner free of any retention rights of the DB. The DB 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 DB 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 DB 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 DB 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 DB'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 DB 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 DB 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 DB'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 DB or its subcontractors and suppliers. Upon the request of the Owner, the DB 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 DB 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 DB 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 DB hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the DB, and to anyone claiming by, through or under the DB, 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 DB 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 DB 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 DB 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 DB 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 DB 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 DB.

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 DB or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the DB 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 DB 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 DB.

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 DB 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 DB.

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 DB 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 DB fails to initiate the cure or if the DB fails to expeditiously continue such cure until complete, the Owner may give written notice to the DB 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 DB;
- .5 directly pay the DB's subcontractors and suppliers compensation due to them from the DB;
- .6 finish the Work by whatever method the Owner may deem expedient; and
- .7 require the DB to assign the DB's right, title and interest in any or all of DB'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 DB, the DB'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 DB 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 Design / Builder.

24.2.1 The DB 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 DB 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 DB.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the DB 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 DB, 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 DB 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 DB shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 Design / Builder's Compensation When Design / Builder Terminates For Cause Or Owner Terminates For Convenience. If this Contract is (i) terminated by the DB 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 DB 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 DB. Absent agreement on the additional amount due the DB, the Owner shall pay the DB:

24.4.1 reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the DB'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 DB 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 Design / Builder'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 DB until Final Completion of the Project. At such time, the DB 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 DB, including liquidated damages applicable thereto. The DB 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 DB 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 Design / Builder's Responsibility Upon Termination. Irrespective of the reason for termination or the party terminating, if this Contract is terminated, the DB shall, unless notified otherwise by the Owner,

24.7.1 immediately stop work;

24.7.2 terminate outstanding orders and subcontracts;

24.7.3 settle the liabilities and claims arising out of the termination of subcontracts and orders; and

24.7.4 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 DB 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 DB to exercise that right for the benefit of the Owner, the DB or any other persons or entities.

24.9 Limitation On Termination Claim. If the DB fails to file a claim within one (1) year from the effective date of termination, the Owner shall pay the DB 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:

25.2.1 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;

25.2.2 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;

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

25.2.4 the prevailing party in any action brought under, or arising from, this Contract 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 DB, 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 DB agree that pending the resolution of any dispute, controversy, or question, the Owner and the DB shall each continue to perform their respective obligations without interruption or delay, and the DB shall not stop or delay the performance of the Work.

ARTICLE 26
DAMAGES AND REMEDIES

26.1 Design / Builder's Repair. The DB 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 Design / Builder's Reimbursement. The DB shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the DB's failure to substantially perform in accordance with the terms of this Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to the DB or of which the DB 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 DB.

26.3 General Indemnity. As expressly permitted by section 725.06(2), Florida Statutes (2002), the DB 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 DB or persons employed or utilized by the DB in the performance of this Contract.

26.4 Intellectual Property Indemnity. To the fullest extent permitted by law, the DB 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 in writing. If the DB has reason to believe the use of a required design, process or product is an infringement of a patent, the DB 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 DB 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 DB 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 DB, 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 DB.

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 DB with any provision of this Contract shall operate to release, discharge, modify, change or affect any of the DB'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 DB.

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.