

General Conditions of the Contract

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General Conditions of the Contract

ARTICLE 1. DEFINITIONS

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

- 1.06 **Journeyman:** A person working in an apprentice occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation. "Established industry practices" means the number of years of training required by the majority of registered program standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."
- 1.07 **Project Manager:** An employee of The School Board of Broward County, Florida, referred to hereinafter as the "**Project Manager**" who is assigned by the Associate Superintendent to manage the Project during the development of design and construction contract documents through the construction process, and who serves as the Owner's liaison to school based personnel and the public.
- 1.08 **Inspector of Record:** A UBCI (See also 1.09) employed by The School Board of Broward County, Florida, assigned by the Director of Facilities and Construction Management to assist in the management of the Project as a direct representative of the Owner during Phase V (Construction).
- 1.09 **Uniform Building Code Inspector (UBCI):** Employees of The School Board of Broward County, Florida, and others designated by the Facilities and Construction Management Department who are certified as a UBCI by the Florida Department of Education (DOE). UBCI's may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager and Project Consultant.
- 1.10 **Other Contractors:** Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by the Contract.
- 1.11 **Owner's Representative:** The Deputy Superintendent of Facilities and Construction Management, Sawgrass Technology Park 1643 North Harrison Parkway, Bldg H Sunrise, FL 33323
- 1.12 **Phase:** A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.
- 1.13 **The Project:** The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.
- 1.14 **Punch List:** A list of items of work required by the Contract Documents which after inspection by the Project Consultant, the Owner, and the Contractor has been termed to be deficient and/or inconsistent with the Contract Documents.

- 1.15 **Subcontractor:** A person or entity other than a material man or laborer who enters into a Contract with Contractor for the performance of any part of Contractor's Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.16 **Sub-subcontractor:** A person or entity other than a material man or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.
- 1.17 **Submittals:** Are prepared by the Contractor or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Contractor's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, workmanship bonds, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.18 **Substantial Completion:** The term Substantial Completion as used herein, shall mean that point at which, as certified in writing by the Project Consultant, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase.
- 1.19 **Sub-consultant:** A person or organization of properly registered professional architects, engineers or other design professionals who has entered an agreement with the Project Consultant to furnish professional services in support of the Project Consultants agreement with the Owner.
- 1.20 **Superintendent:** The executive representative for the Contractor present on the work at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant and capable of superintending the work efficiently.
- 1.21 **Superintendent of Schools:** The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.

- 1.22 **Surety:** The firm, corporation, or individual which is bound by the Contract Bond with and for the Contractor, and which engages to be responsible for the Contractor's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.23 **Work:** The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
- 1.24 **Written Notice:** Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail, fax or other traceable delivery service to the last business address known to him who gives notice.

ARTICLE 2. THE WORK.

- 2.01 The Contractor shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.
- 2.02 When completed the Work shall conform to the requirements of the Contract Documents and be completely ready for occupancy and finally completed.
- 2.03 The Contractor represents and warrants to the Owner that:
- 2.03.01 It is financially solvent and has sufficient working capital to perform the obligations under this Construction Contract;
- 2.03.02 It is experienced and skilled in the construction of the type of project described in the Contract Document;
- 2.03.03 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;
- 2.03.04 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Contractor" in the Construction Contract;
- 2.03.05 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and

surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines. The Contractor acknowledges receipt and has reviewed the site geotechnical report as provided by the Owner.

- 2.03.06 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.
- 2.03.07 It will comply with the Workforce Composition requirements, M/WBE program requirements, and the requirements of Document 00425, Certificate of Intent.

ARTICLE 3. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

- 3.01 The Contractor represents that:
 - 3.01.01 The Contractor and Subcontractors have fully examined and compared all Drawings, Specifications and other Contract Documents including but not limited to those relating to the architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.
 - 3.01.02 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Contractor is aware of as a result of the examination and comparison of the Contract Documents have been either corrected or clarified to the satisfaction of the Contractor prior to execution of this Construction Contract.
 - 3.01.03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be functional and in accordance with the requirements of the Contract Documents.
 - 3.01.04 The Contract Time is adequate for the performance of the Work.
- 3.02 The Contractor is responsible for all means, methods, techniques and sequencing of construction.
- 3.03 If, after execution of this Construction Contract, the Contractor detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owner prior to proceeding with the specific portion of the Work.

ARTICLE 4. INTENT AND INTERPRETATION.

- 4.01 With the respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:
 - 4.01.01 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project Consultant of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work.
 - 4.01.02 The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all.
 - 4.01.03 The intent of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. The Contractor shall continually refer to drawing, specifications and other Contract Documents in this regard.
 - 4.01.04 In the event of a conflict among the Contract Documents, the most stringent requirement to the Contractor shall control.
- 4.02 The Project Consultant shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance there under.
 - 4.02.01 The Project Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
 - 4.02.02 Interpretations and decisions of the Project Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents.
 - 4.02.03 In the capacity of interpreter the Project Consultant shall endeavor to secure faithful performance by both the Owner and the Contractor, and shall not show partiality to either.

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

- 5.01 Subject to any rights the Project Consultant may have, the Contract Documents and each of them, as well as any other documents, intellectual property, software, computer-assisted material or disks relating to or regarding the Work, shall be and remain the property of the Owner. This shall be the case even if prepared, created or provided by the Project Consultant, Contractor, Subcontractor or others.

- 5.02 The Contractor shall have the right to keep copies of same upon completion of the Work; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of same on other projects without the Owner's prior written authorization.
- 5.03 The Contractor agrees to provide any and all items referred to in this Paragraph to Owner upon demand by Owner. In the event Contractor fails to provide same to Owner as demanded, Contractor acknowledges that the Owner will need same and will be irreparably harmed and be subject to an injunction to provide same.

ARTICLE 6. TEMPORARY UTILITIES.

- 6.01 Water for Building Work: The Contractor shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 6.02 Electrical Energy: The Contractor shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 6.03 Temporary Sanitary Facilities and Sewers:
- 6.03.01 The Contractor shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.
- 6.03.02 No nuisance will be permitted.
- 6.03.03 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- 6.03.04 Contractor is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 7. PROGRESS.

- 7.01 Contractor shall provide the Owner with full information in advance as to its plans for performing each part of the Work. This shall include, but not be limited to; schedules provided to the Owner as Post-Award Information and subsequently updated

schedules submitted to the Owner on a monthly basis as required elsewhere in the Contract Documents.

- 7.01.01 Such schedule shall be in a form acceptable to the Owner.
- 7.01.02 The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project.
- 7.01.03 Each such revision shall be provided to the Owner and the Project Consultant.
- 7.01.04 Compliance with the requirements of this Subparagraph shall be a condition precedent to payment to the Contractor, and failure by the Contractor to comply with said requirements shall constitute a material breach of this Contract.
- 7.01.05 By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but it is simply reviewing same for its own informational purposes.
- 7.02 If at any time during the progress of Work, the Contractor's actual progress is inadequate to meet the requirements of the Contract Documents, such as the required completion dates, the Owner may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress so as to complete the Work on or before the required Substantial Completion Date.
 - 7.02.01 If within a reasonable period as determined by Owner, the Contractor does not improve performance to meet the requirements of the Contract Documents, such as the required completion dates, then the Owner may require an increase in any or all of the following: Contractor's Subcontractor crews and Contractor's own labor force, the number of shifts, overtime operation, Contractor's supervision and additional days of work per week, all without cost to Owner.
 - 7.02.02 Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Contract Documents.
- 7.03 Failure of Contractor to comply with the instructions of the Owner may be grounds for determination by Owner that Contractor is not prosecuting its Work with such diligence as will assure completion within the time specified.
- 7.04 Upon such determination, Owner, in addition to any and all other rights set forth in the Contract Documents and remedies afforded Owner under the Contract Documents or at law, may:
 - 7.04.01 Elect to proceed with the Work with its own employees, agents, contractors, subcontractors, suppliers and assess all costs, expenses or fees for same against contractors and/or

- 7.04.02 Terminate for cause Contractor's right to proceed with the performance pursuant to the Contract Documents, or any separable part thereof, in accordance with the applicable provisions of the Contract Documents.

ARTICLE 8. EXPEDITING.

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

ARTICLE 9. CONTRACT PAYMENTS.

9.01 General Information

- A. The contract payment process will be in accordance to the "Prompt Payment Act" s. 218.70 as amended. The following items will be observed;
- (1) Consultant or an Owner representative must approve the payment request or invoice, before the request is submitted for final payment or processing. Payment is due twenty-five (25) business days after the payment request and or invoice is stamped as received as provided in s.218.74(1)
 - (1) The governmental agency shall identify the its agent, consultant and or representative authorized to receive the payment request and or invoice NLT 10 days after the contract award. SBBC will use its NTP as the notification process.
 - (2) The Owner may withhold ten (10%) percent from each progress payment until 50% completion of the services or work is reached.
 - (3) This does not require the Owner to pay or release any amount that are the subject of a good faith dispute, being the subject of a claim brought pursuant to s.255.05, or otherwise the subject of a claim demand by the local governmental entity or contractor.

- (4) If the owner intends to pay for services with Federal Funds, shall not make commitments without reasonable assurance that the federal funds will cover the cost thereof and will be received. If the payments or the time of payment is contingent on received of federal funds or federal approval, any contract any solicitation to bid shall be clearly stated.

B. Definitions per s.218.73

- (1) **Payment Request-** means a request for payment for construction services which conforms with all statutory requirements and all requirements specified by the local government entity to which the payment request is submitted. Such requirements must be included in the contract for the project for which payment is requested.
- (2) **Proper Invoice-** means an invoice that conforms to all statutory requirements and all requirements specified by local government entity to which the invoice is submitted. Such requirements are included part of this contract and the invoice to be submitted.

C. Timely Payment for purchase of Construction Services-

Payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

Schedule of Values:

- 9.01.01 The Contractor shall maintain and update the Schedule of Values originally provided to the Owner as Post-Award Information.
- 9.01.02 The Contractor's Schedule of Values apportions the Contract Price among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.
- 9.01.03 The Schedule of values shall be presented with such detail, and supported with whatever information the Project Consultant or the Owner reasonably requests.
- 9.01.04 The Contractor shall not imbalance it's Schedule of Values nor artificially inflate any element thereof.
- 9.02. On or before the **15th** day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Contractor and Owner.

- 9.02.01 Said Application for Payment shall be in the format required elsewhere in the Contract Documents and include whatever supporting information as may be required by the Project Consultant, the Owner, or both. Therein, the Contractor may request payment for ninety percent (90%) [the remaining ten (10%) percent being the Retainage upon reaching 50% of the work, the Retainage will be reduce to 5%] of that part of the Contract Price allocable to Contract requirements properly provided, labor, material and equipment properly incorporated in the Project.
- 9.02. 02 Owner shall not be required to pay for stored materials or equipment except as set forth in Article 25 below.
- 9.02.03 Each Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the Work has been properly installed or performed in substantial compliance with the requirements of the Contract Documents, and that the Contractor knows of no reason why payment should not be made as requested.
- 9.02.04 Thereafter, the Project Consultant or Agent shall:
- a. Approve the payment request or invoice before the payment request is submitted to the local government entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). Therefore; ---
 - (1) If the payment request or invoice is not rejected within four (4) business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading
 - (2) If an Consultant or "Agent" need not to approve the payment request or invoice submitted by the contractor, payment is due twenty (20) business days after the date on which the payment request or invoice is stamped as received and govern by s. 218.74.
 - b. Approve in writing the amount which, in the opinion of the Project Consultant, is properly owing to the Contractor.
- 9.02.05 Government entity shall identify the agent or employee of the local government entity, or the facility or office, to which the contractor may submit its payment request or invoice, this information will form part of the contract or shall be provided by the local government entity through a separate written notice, as required under the contract, no later than ten (10) days after the contract award or notice to proceed.
- (1) A contractor's submission of a payment request or invoice shall be stamped as received as provided in s. 218.74(1) and shall commence the time periods for payment or rejection of a payment request or

invoice as provided in this subsection and section (2) of 9.02.06(1) and (2).

- (2) If a payment request or invoice does not meet the contract requirements, the local government entity must reject the payment request or invoice within twenty (20) days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1) and the rejection need to be in writing, and must specify the deficiency and the action necessary to make the payment request or invoice proper.
- (3) Each local entity shall have a procedure whereby each payment request or invoice received by the local government entity is marked as received on the date on which it is delivered to an agent or employee of the local government entity or of a facility or office of the local government entity.
- (4) If an improper payment request or invoice is submitted by a vendor, the local government entity shall, within ten (10) days after the improper payment request or invoice is received, notify the vendor, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper.

- 9.02.06 The amount of each such payment shall be the amount approved for payment by the Project Consultant less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents or reasonable business practices.
- 9.02.07 The Project Consultant's approval of the Contractor's Applications for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in the Contract Documents.
- 9.02.08 The submission by the Contractor of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance by any person whatsoever.
- 9.02.09 As a condition precedent to payment, the Contractor shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, properly executed documents that all subcontractors, material, suppliers or others having rights, acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any rights or other claims relating to the Project site.

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

ARTICLE 10. WITHHOLDING PAYMENT TO CONTRACTOR.

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

- 10.01.06 Claims filed by subcontractors, laborers, suppliers, material men or others;
- 10.01.07 Failure to comply with any and all insurance requirements;
- 10.01.08 Failure of the Contractor to make payment properly to Subcontractors or others;
- 10.01.09 Damage to the Owner or another contractor;
- 10.01.10 Reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion Date;
- 10.01.11 Failure of the Contractor to carry out any of its obligations in accordance with the Contract Documents;
- 10.01.12 Failure of the Contractor to submit the information or documents required by this Contract or reasonably required by Owner, including but not limited to schedules and daily logs.

ARTICLE 11. CONTRACTOR'S RIGHT UPON NONPAYMENT.

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

ARTICLE 12. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER.

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

ARTICLE 13. LICENSES AND PERMITS.

- 13.01 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Contractor.
- 13.02 Educational facilities constructed by The School Board of Broward County, Florida are exempt from all county, districts, municipal or local building codes and ordinances; therefore building permits will not be required. However, any and all other permits, bonds and/or other fees required for Work to be performed, including but not limited to Work in public right-of-ways and other Work otherwise outside the Owner's property line will be procured and paid for by the Contractor.

- 13.03 All easements and rights-of-way will be procured and paid for by the Owner unless otherwise specifically provided within the Contract Documents.

ARTICLE 14. CEASE AND DESIST ORDER.

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

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

- 15.01 The Contractor shall perform the Work in accordance with the Contract Documents.
- 15.02 The Contractor shall supervise the Work and bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.
- 15.03 The Contractor hereby warrants that all labor provided under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all material and equipment provided shall be new and of high quality, that the Work will be complete, of high quality, without defects, and in compliance with the requirements of the Contract Documents. Any Work not complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.
- 15.04 The Contractor shall obtain and pay for all required permits, fees, and licenses and shall comply with all legal requirements applicable to the Work.
- 15.05 The Contractor shall prepare and submit schedules and supporting documentation as required elsewhere in the Contract Documents.
- 15.06 Record Keeping on Site:

- 15.06.01 The Contractor shall keep a daily log, an updated copy of the Contract Documents, approved shop drawings and other submittals, and other documents and materials as required by the Contract Documents at the site.
- 15.06.02 All of these items shall be available to the Owner and the Project Consultant at all regular business hours.
- 15.06.03 upon final completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.
- 15.07 Shop Drawings and Other Submittals:
- 15.07.01 The Contractor shall submit for approval with reasonable promptness and in a timely manner so as to cause no delay in the Work, various submittals including shop drawings as required for the Work of the various trades.
- 15.07.02 These shop drawings and other submittals shall be in accordance with the requirements of the Contract Documents and shall be carefully checked in every respect and signed by the Contractor before submitting same to the Project Consultant.
- 15.07.03 Shop drawings and other submittals from the Contractor are not part of the Contract Documents but are documents prepared and utilized by the Contractor to coordinate the Work.
- 15.07.04 The Contractor shall not do any Work requiring shop drawings or other submittals unless such have been approved in writing by the Project Consultant.
- 15.07.05 All Work requiring approved shop drawings or other submittal shall be done in compliance with such approved documents. However, approval by the Project Consultant or the Owner shall not be evidence that Work installed pursuant thereto conforms to the requirements of the Contract Documents.
- 15.07.06 The Owner and the Project Consultant shall have no duty to review partial submittal or incomplete submittal except as may be provided otherwise within the Contract Documents.
- 15.07.07 The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any re-submittal, the date of any approval or rejection, and the reason for any approval or rejection.
- 15.07.08 The Contractor shall have the duty to carefully review, inspect and examine any and all submittal and re-submittals before submission of same to Owner or the Project Consultant.

- 15.08 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of debris, trash and excess materials or equipment. In the event the Project is located at or near occupied facilities, then Owner may establish additional rules and regulations regarding condition at the Project, including but not limited to, keeping the Project and the occupied premises clean, safe and secure.
- 15.09 At all times, the Contractor shall permit the Owner and the Project Consultant to enter upon the Project site and to review or inspect the Work.

ARTICLE 16. SUBCONTRACTS.

- 16.01 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor or the responsibilities of any such Subcontractor, it being understood that the Contractor shall fix the scope of all Work and responsibilities of the Subcontractor. Contractor shall not replace Subcontractor without good cause.
- 16.02 The Contractor shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- 16.02.01 The general form of Subcontract Agreement used by the Contractor within thirty (30) days of execution of the Construction Contract.
- 16.02.02 Updated listings of Subcontractors denoting changes to the list submitted as Post-Award Information within ten (10) days of said change.
- 16.02.03 Copies of executed Subcontractor Contracts within ten (10) days of their execution, will be delivered to the SBBC, contracting Department once it is submitted to the Administrative Office.
- 16.02.04 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application for Payment submitted by the Contractor.
- 16.03 All contracts with Subcontractors shall incorporate by reference the terms and conditions of this Construction Contract.
- 16.04 The Contractor shall require from all Subcontracts a provision or a clause for the benefit of the Owner; binding the Subcontractors to remain bound by the Subcontracts in the event the Contractor is replaced by another contractor pursuant to the term of the Contract Documents. The Contractor shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Contractor's termination, to consent to the assignment of their Subcontracts to the Owner.

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

ARTICLE 17. BONDING OF SUBCONTRACTORS.

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

- 17.03 The respective performance and payment bonds shall:
- 17.03.01 Require the Surety to perform the Subcontract and to pay all bills and invoices for labor done and materials provided in the performance of the Work, including any guarantee or warranty period provided for in the Contract Documents.
 - 17.03.02 Be on the forms as provided by the Owner, including the Bond Riders. No other forms will be acceptable.
 - 17.03.03 Executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact. The Owner may request the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
 - 17.03.04 In case of default or other proceedings on the part of the Subcontractor, actions for all expenses incident to ascertaining and collecting losses under the bond, including reasonable attorney's fees for same, shall be covered by the bond.
 - 17.03.05 Bonding companies acceptable to the Owner are bonding companies which are United States Treasury Department approved bonding companies, qualified and rated in accordance with Article 42.10 below and limited in bonding ability to the current United States Treasury Department standing for net limit on any one risk at the time of execution of the Subcontract.

ARTICLE 18. CONTRACTOR'S SUPERINTENDENT

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

- 18.05 The Superintendent shall maintain a daily log/report which shall include at least the following information: weather conditions; trades at site; manpower totals by trade; activities in progression; and inspections at site. Copies of the daily entries shall be provided to the Owner once per month or as required elsewhere in the Contract Documents.

ARTICLE 19. COOPERATION WITH OTHERS.

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

ARTICLE 20. SITE CONDITIONS.

- 20.01 Contractor shall have the sole responsibility to conduct reasonable inspection of the site and to satisfy itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of material; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions; location of underground utilities as depicted in the Contract Documents; governmental processes and requirements for obtaining permits other than issuance of the original building permits, certificates of occupancy and other regulatory/utility approvals; physical conditions at the work sites and the Project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quality of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Construction Contract; and all other matter which can in any way affect performance of the Construction Contract, or the cost associated with such performance.
- 20.02 The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating the duration, difficulties, or the costs of successfully performing the Work.

- 20.03 Contractor may reasonably rely upon site documentation provided by the Owner. In the event the site conditions are materially different than what Contractor anticipated as a result of Contractor's inspection of the property or tests, information or data supplied to Contractor by others such as design professionals or testing companies, then Contractor may seek an adjustment in time or price based upon same provided that Contractor gives Owner written notice within 10 days of discovery of the differing site condition. Said request for change in time or price shall be addressed in the same manner as a Change Order pursuant to Article 33 below.

ARTICLE 21. RESPONSIBILITY FOR WORK SECURITY.

- 21.01 Contractor shall at all times conduct, at its expense, all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.
- 21.01.01 Contractor shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.
- 21.01.02 Contractor shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.
- 21.02 Contractor shall comply with all applicable laws and regulations.
- 21.02.01 Contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Contractor and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Contractor or its personnel providing any services under the conditions described in the previous sentence. Contractor will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Contractor and its personnel. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in Contractor's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

Bidder agrees to indemnify and hold harmless Owner, its officers and employees from any liability in the form of physical or mental injury, death or property damage

resulting from Bidder's failure to comply with the requirement of this Section or Section 1012.32 and Section 1012.465, Florida Statutes in addition to any other indemnification obligations that may be imposed upon Bidder pursuant to Article 38 of the General Conditions and the laws of Florida.

- 21.02.02 Contractor shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.
- 21.02.03 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 21.02.04 Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining property security for the above noted items, nor shall it be constructed as limiting in any manner Contractor's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 21.03 Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

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

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

ARTICLE 23. ADMINISTRATION OF THE CONTRACT.

- 23.01 The Project Consultant will provide Administration of the Contract.
 - 23.01.01 For those projects for which the Owner's Facilities and Construction Management Division serves as the Project Consultant all references to the Project Consultant shall be considered to be the Field Construction Manager.
 - 23.01.02 In the event the Owner should find it necessary to replace the Project Consultant, the Owner shall retain a replacement and the role of the replacement shall be the same as the role of the original Project Consultant.
- 23.02 Unless otherwise directed by the Owner in writing, the Project Consultant will perform those duties and discharge those responsibilities allocated to the Project Consultant by the Owner.

- 23.03 Neither the Project Consultant nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Contractor, its Subcontractors or their agents or employees.
- 23.04 The Project Consultant and Owner will each have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing with prior approval by the Owner. Neither the Project Consultant's nor the Owner's authority to act under this Paragraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Consultant or the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 23.05 The Contractor shall forward all communications to the Project Consultant, with simultaneous copies to the Owner.
- 23.06 The Project Consultant will review and certify the Contractor's Application for Payments which the Owner must subsequently approve prior to Payment of the Contractor.
- 23.07 The Project Consultant shall approve shop drawings for design only, the Contractor being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 23.08 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Contractor, the Project Consultant, and the Owner.
- 23.09 Notwithstanding anything to the Contrary in these General Conditions or any other "Contract Document" as that term is defined in Article 1.09 of the Professional Services Agreement between The School Board of Broward County, Florida and the Project Consultant, it is not the intention nor shall any of the provisions of those documents act as a release, limitation or discharge of the obligations or responsibilities of the Project Consultant pursuant to its agreement with the Owner.

ARTICLE 24. MATERIALS.

- 24.01 The Contractor shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner.
- 24.01.01 Any such substitution must be approved by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.

- 24.01.02 Proposed substitutions must be submitted for consideration from the Contractor to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Contractor's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.
- 24.01.03 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner.
- 24.01.04 All additional costs incurred by the Owner as the result of any substitution will be the direct responsibility of and borne by the Contractor.
- 24.02 The Contractor shall make written request to the Project Consultant for and obtain his written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.
- 24.03 If, in the opinion of the Project Consultant, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Project Consultant shall request a Change Order Proposal from the Contractor for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

ARTICLE 25. STORED MATERIALS.

- 25.01 Contractor shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials and equipment required for the performance of the Contract.
- 25.01.01 Contractor is not entitled to payment for same except for those materials which in Owner's discretion are properly stored and are going to be installed or incorporated into the construction of the Project within thirty (30) days of delivery to the construction site.
- 25.01.02 The storage facilities and methods of storing shall meet Owner's approval and shall be in accordance with manufacturer's recommendations, or Owner will not be obligated to pay for same.
- 25.01.03 Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure provided by Contractor at its expense.
- 25.01.04 Owner may at its discretion require material to be stored in an air-conditioned location.
- 25.02 Provided the above conditions are met, the stored materials may be included in a subsequent Application for Payment if the Contractor also complies with the following:

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

ARTICLE 26. WORKFORCE COMPOSITIONA

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

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

ARTICLE 27. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

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

to be defective or not complying with the requirements of this Construction Contract, Owner or Project Consultant and / or Inspector will notify Contractor in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to **withhold payment** on any such item, deduct from the retained funds in the contract or seek compensation from Contractor and any additional re-inspections required from the Building Department or their Inspectors will be subject to a ***RE-INSPECTION FEE of \$100.00 per failed inspection ticket*** ***The fee shall be paid though the Building Department by a Cashier's check made out to the School Board (SBBC) of Broward County, Florida, prior to the approval of any inspection or re-inspection request from the contractor. Any delays to the contract work (related to the fail work) will be the sole responsibility of the Contractor or his sub-contractor.*** Thereupon, Contractor shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Contractor shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of either the Project Consultant or the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.

- 27.04 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 28. WARRANTY.

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

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

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

ARTICLE 30. PROJECT RECORD DOCUMENTS AND SURVEY.

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

ARTICLE 31. SALVAGE.

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

ARTICLE 32. CLAIMS BY THE CONTRACTOR.

- 32.01 Although Contractor acknowledges the No Damage for Delay clause set forth in Article 6 of Document 00520, Agreement Form, in the event the Contractor is entitled to assert a claim against Owner for any reason, claims by the Contractor against the Owner are subject to the following terms and conditions:
- 32.01.01 All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Project Consultant. Such claim shall be received by the Owner and the Project Consultant no later than fifteen (15) calendar days after the event, or the first appearance of the circumstances causing the claim, and

same shall set forth in detail all known facts and circumstances supporting the claim and the actual damages or injuries suffered;

- 32.01.02 The Contractor shall continue its performance hereunder regardless of the existence of any claims submitted by the Contractor;
- 32.01.03 In the event the Contractor seeks to make a claim, as a condition precedent to any such claim the Contractor shall strictly comply with the notice requirements above and such claim shall be made by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur, i.e., providing notice as required in Article 32.01.01 above, shall constitute a complete waiver by the Contractor of any claim for additional compensation or extension of time. This written notice requirement may not be waived by verbal representations or the acts of representatives of the Owner or Project Consultant;
- 32.01.04 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost of labor and materials incurred by the Contractor at the jobsite and shall in no event include indirect cost, overhead, loss of profit, or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties including, but not limited to, subcontractors, suppliers, laborers, etc.

ARTICLE 33. CHANGE ORDERS.

- 33.01 One or more changes to the Work within the general scope of this Contract may be ordered by the Owner by Change Order, Project Consultant's Supplementary Instructions, and Construction Change Directives.
- 33.02 The Contractor shall proceed with any extra Work or changes which alter the Contract by adding to, or deducting from the Contract Sum or Contract Time in strict accordance with the following terms and conditions:
- 33.02.01 Change Order shall mean a written order to the Contractor executed by the Owner and the Project Consultant after execution of this Contract, directing a change in the Work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;
- 33.02.02 Any change in the Contract Price or time resulting from a Change Order shall be determined as follows:
- a. By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price or time being set forth in Change Order in accordance with Article 33.02.08 below, and (b) the execution of the Change Order; or,

b. If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived based upon the Cost Plus Price basis (as set forth in Article 33.02.08 below) by determining the "total actual costs" (in accordance with Article 33.02.09 below), incurred or savings achieved, resulting from revisions in the Work. Such total actual costs or savings shall include a component for direct jobsite overhead and profit but under no circumstances shall it include non-job site overhead expenses or costs or any other indirect costs or components. Any such costs or savings shall be documented in the format and with such content and detail as the Owner or the Project Consultant requires. If agreement is not reached as to the change in time, Contractor shall be given a reasonable time based upon the scope of Work required by the change.

- 33.02.03 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work and the change in the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for issues or matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.
- 33.02.04 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approvals are required by the Owner, the Project Consultant, and the Contractor's surety or by laws. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.
- 33.02.05 The Owner, without invalidating the Contract, may require the change for any reason whatsoever. All such Work shall be executed under the terms of the original Contract.
- 33.02.06 All change orders and adjustments shall be in writing and executed by the Contractor and Owner; otherwise, no claim for additional compensation or time will be allowed.
- 33.02.07 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the total actual cost (as set forth in Article 33.02.09 below) saved as confirmed by the Project Consultant. The amount shall include an amount for the overhead and profit of the Contractor which the Owner is not required to pay as a result of the deletion or decrease. When both additions and credits covering related Work or substitutions are involved in a change, the overhead and profit shall be calculated on the basis of net increase, if any, with respect to that change.

33.02.08 The value of any change ordered under the Contract for extra Work and/or any reductions in Work required, shall be determined under one or more of the following procedures before a written Change Order is issued.

a. By **UNIT PRICES** named in the Contract or subsequently agreed upon by the Owner and the Contractor, which prices shall include Contractor's overhead and profit.

b. By **LUMP SUM PRICE** agreed upon actual reasonable costs and direct job site overhead by the Owner and the Contractor, which price shall include Contractor's overhead and profit but under no circumstances shall it include non job site overhead, expenses or costs or any other indirect costs; a breakdown of the estimated costs comprising the lump sum price may be required by the Project Consultant for his review. Percentage for overhead and profit shall be determined in accordance with the method listed for COST PLUS PRICE, subparagraph (c.) below.

c. By a **COST PLUS PRICE** based on total actual costs as defined in Article 33.02.09 below, plus an added percentage, all determined as follows:

OVERHEAD AND PROFIT:

JOB SITE OVERHEAD, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the work of subcontractors (whether performed by them or others) shall be considered to be just and fully compensated for, by adding an amount equal to five percent (5%) of the sum of material costs (as defined under Article 33.08.09(a) below) and labor costs (as defined under Article 33.08.09(b) below), and rentals (as defined under Article 33.08.09(c) below). There shall be no compensation for any non job site overhead, expenses or costs.

PROFIT, may then be added by the subcontractor to the above material costs and labor costs, including the JOB SITE OVERHEAD allowance, at the rate of 10% of the sum of those costs.

JOB SITE OVERHEAD, including general supervision and the furnishing, use and maintenance of small equipment incidental to and required for the Work of the General Contractor (including that of his subcontractors) shall be considered to be just and fully compensated for by adding an amount equal to ten percent (10%) of the sum of material costs (as defined under Article 33.08.09(a) below) and labor costs (as defined under Article 33.08.09(b) below) and rentals (as defined under Article 33.08.09(c) below). There shall be no compensation for any non job site overhead expenses or costs.

PROFIT may then be added by the Contractor to the above material costs and labor costs, including the JOB-SITE OVERHEAD allowance, at the rate of five percent (5%) of the sum of those costs.

a. BOND ALLOWANCE, for maintaining the Performance Bond at 100% of the contract amount, a sum of one percent (1%) of the total cost of the change, (including material, labor, overhead and profit, and equipment rentals) shall be allowed on all change orders. *The forms to use will be the ones provided by the Owner, including the Bond Riders. No other forms will be acceptable.*

33.02.09 The total actual costs of materials, labor and equipment rentals may include the following only:

a. Material costs actually recorded by the Contractor and/or subcontractors as they are delivered to the site and as evidenced from originally receipted invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and available to the Project Consultant at all times.

b. Labor costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed and on the extra Work required, including the net cost of insurance, Social Security and Workmen's Compensation. The furnishing, use and maintenance of small tools and ordinary equipment normal to the work of individual workmen in the trades will be considered part of the labor costs. Records in proper form shall be maintained and available to the Project Consultant at all times.

c. Rentals for special equipment or machinery such as power driven roller, tractors, trucks, shovels, drills, mixers, pumps, hoists, etc., required for the economical performance of the Work, at reasonable rental prices agreed upon before work commences, shall be allowed the Contractor and/or his subcontractors by the Project Consultant for each and every hour such special equipment is in use on the particular work.

33.02.10 The Contractor is obligated to proceed with the Work for a Change Order, even though there has not been an agreement reached with the Owner as to an adjustment to the Contract Price or time, and even if there is a dispute as to same. In such instances the Project Consultant will issue Document 01250e, Construction Change Directive as specified elsewhere in the Contract Documents. A Change Order or proposed Change Order shall not be the basis of the Contractor not performing pursuant to the Contract Documents.

33.02.11 The Contractor, Owner and Project Consultant shall administer and document the Change Order process by utilizing the documentation system specified elsewhere in the Contract Documents, including Document 01250e, Construction Change Directive.

- 33.03 The Project Consultant will have authority to order minor changes in the Work not involving an adjustment to the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order on Document 01250f, Project Consultant's Supplemental Instructions and such changes shall be binding on the Owner and the Contractor.
- 33.04 The Owner has authorized the following approval thresholds for Change Orders in the Name of The School Board of Broward County, Florida under Board Policy 7006, the rules of which are incorporated below:
- A. The Superintendent or the Associate Superintendent of Facilities and Construction Management is authorized to approve change orders up to the cumulative total of 5 percent of the original construction contract amount.
- B. When the cumulative total of all change orders on a project has exceeded the ceiling established in 33.04A above, all subsequent change orders will require prior Board approval, except in emergency cases as declared by the Superintendent, or where the change order in question would be in the form of a credit, thereby reducing the adjusted contract amount.
- C. Approval of change orders under this policy shall be for the purposes of expediting the work in progress and shall be confirmed by Board action at the next regular meeting of the Board.

ARTICLE 34. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

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

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

ARTICLE 35. SAFETY, PROTECTION OF WORK AND PROPERTY.

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

35.08 Safety Precautions and Programs:

35.08.01 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

35.08.02 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Contractor and Project Consultant.

35.08.03 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

35.09 Safety of Persons and Property

35.09.01 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a. Employees on the Work and other persons who may be affected thereby;

b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

35.09.02 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of person or property or their protection from damage, injury or loss.

a. The Contractor and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health Act (OSHA) of 1970.

b. The Contractor shall prominently post and maintain on the jobsite:

1) OSHA 200: Log and summary of occupational injuries and illnesses.

2) OSHA 2203: Provisions of the Act poster.

35.09.03 The Contractor shall implement and maintain a continuing safety program applicable to all Contractor employees, Subcontractors, and Sub-subcontractors, to include:

a. Designating a responsible member of the Contractor's organization at the site as the Contractor's "Safety Officer" whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.

b. Holding weekly safety meetings with employees and Subcontractors.

c. Implementing OSHA Voluntary Protection Programs.

d. Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.

e. Compliance with the Drug Free Work Place Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.

f. Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

g. Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their rights in these regards.

35.09.04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

35.09.05 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to properly caused in whole or in part by the Contractor, a Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is reasonable, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.

35.09.06 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

- 35.09.07 Building materials, Contractor's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which he shall store all materials which would be damaged by weather. This shall in no manner relieve the Contractor from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force.
- 35.10 **Emergencies:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 36. ROYALTIES AND PATENTS.

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

ARTICLE 37. TAXES.

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

ARTICLE 38. INDEMNITY AND HOLD HARMLESS.

- 38.01 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its members, officers, employees and agents (hereinafter collectively "Related Parties") from and against any and all liability, claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), losses, damage, costs, expenses and fees (including but not limited to reasonable fees of attorneys, expert witnesses and other consultants), which are or may be imposed upon, incurred by or asserted against Owner and/or the Related Parties to the extent said liability, claims, causes of action, losses, damages, costs, expenses and/or fees are caused by the Contractor's negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission.
- 38.02 In any and all claims against the Owner by any employee of the Contractor, or anyone for whose acts the Contractor may be liable, the obligations for Contractor to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workman's compensation acts, disability acts, or other employee benefit acts.
- 38.03 In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Contractor further agrees to pay, at the sole expense of the Contractor, the attorney's fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. However, if the claims or actions are covered by insurance and such coverage is acknowledged by the insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions against the Owner which are within the insurance policy limits and are paid by the insurance company solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole

authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

- 38.04 The Contractor recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Contractor under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 39. TERMINATION BY THE CONTRACTOR.

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

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

- 40.01 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;
- 40.02 In the event the Owner directs a suspension of performance under this Paragraph through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of the following items only:
- 40.02.01 Demobilization and remobilization, including such costs paid to subcontractors;
- 40.02.02 Preserving and protecting Work in place;
- 40.02.03 Storage of materials or equipment purchased for the Project, including insurance thereon;
- 40.02.04 Performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 41. TERMINATION BY THE OWNER.

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

- 41.02 The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience:
- 41.02.01 The Owner shall give written notice of such termination to Contractor 7 days before it becomes effective.
- 41.02.02 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop work when such termination becomes effective.
- 41.02.03 The Contractor shall also terminate outstanding orders and subcontracts.
- 41.02.04 The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders.
- 41.02.05 The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee.
- 41.02.06 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.
- 41.02.07 When terminated for convenience, the Contractor shall be compensated as follows:
- a. The Contractor shall submit a termination claim within one year to the Owner and the Project Consultant specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Project Consultant. If the Contractor fails to file a termination claim with the Owner's Project Consultant within one (1) year from the effective date of termination, the Owner shall have no further obligation to the Contractor and Contractor waives any and all rights for compensation based upon the termination.
 - b. The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
 - c. Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
 - 1. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - 2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead (and not home office or other overhead) and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would

have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

3. Reasonable costs of settling and paying claims arising out of the termination of subcontractors or orders pursuant to this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

4. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 41.03 The Owner may terminate this Contract for cause in accordance with the following terms and conditions:
- 41.03.01 If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor for cause upon seven (7) day written notice and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.
- 41.03.02 In such case, the Contractor shall not be paid further until the Work is complete.
- 41.03.03 After final completion has been achieved, if any portion of the Contract Price (as it may be modified hereunder) remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Contractor. Otherwise, the Contractor shall pay the Owner any and all costs, fees, damages or expenses which the Owner has paid or is obligated to pay in excess of the contract price (as it may be modified hereunder). This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the terms of Article 41.02 shall apply.

ARTICLE 42. CONTRACTOR'S INSURANCE

- 42.01 The Contractor shall maintain such insurance as will protect the Contractor and Owner its members, officers, employees and agents (hereinafter collectively "Related Parties") from any claims for damages for Bodily Injury, [Personal Injury including death] and Property Damage, which may arise from operations, products and completed operations under this Contract, whether such operations are committed by Contractor, or by any subcontractor or anyone directly or indirectly employed by either, as more fully set forth below and in the amounts provided herein. Prior to commencement of the Work, all Certificates of Insurance shall be

- in the form as approved by Insurance Standards Office (ISO), unless approved by owner and such certificates shall be executed by authorized representatives of the insurance company shall be filed with the Owner and shall be subject to its approval for accuracy of protection. In addition, the Owner may at any time require that Contractor or its insurer provide any other documentation regarding insurance to Owner including, but not limited to, the policy. All required insurance shall be primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. The Contractor shall not commence Work under this Contract until the provisions of this paragraph have been complied with. Owner may withhold payments due to Contractor in accordance with this Contract or terminate or suspend this Contract with all costs or expenses associated with same to be paid by Contractor in the event Contractor fails to comply with any requirement in the Contract regarding insurance. In the event of cancellation of any policy, Contractor is obligated to immediately notify Owner of same and obtain policy(s) in accordance with the Contract Documents.
- 42.02 Contractor shall comply with any and all insurance obligation required by law, rules, regulations, etc., including but not limited to those required by State Regulations for Educational Facilities.
- 42.03 The Contractor will be required to provide a Certificate of Insurance indicating that Workers' Compensation Insurance is in compliance with Chapter 440 of the Florida Statutes. The Contractor shall maintain Workers' Compensation Insurance for all of its employees connected with this contract and in accordance with Florida Statutory limits and Employers Liability insurance with a limit of not less than Five Hundred Thousand (\$500,000) Dollars per Occurrence.
- 42.04 The Contractor shall procure and carry Comprehensive General Liability Insurance, including Products & Completed Operations, Property Damage, Personal & Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein, with limits of not less than \$2,000,000 each occurrence. If the General Liability contains a General Aggregate Limit, such coverage shall apply separately to each project. The Owner, its members, officers, employees and agents shall be named as an Additional Insured.
- 42.05 The Contractor shall also procure and carry Owners and Contractors Protective Liability insurance with limits of not less than \$1,000,000 per occurrence.
- 42.06 The Contractor shall carry at no additional expense to the Owner, Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief and those included in extended coverage, such as windstorm / Hurricane, theft and building collapse. Insured in the amount of one hundred per cent (100%) of the contract value to include both hard and soft costs.
- 42.07 All Contractors shall maintain Automobile Liability covering all Owned, Non-Owned and Hired vehicles in the amount of not less than one million dollars (\$1,000,000) per occurrence Combined Single limit for Bodily Injury and Property Damage and

shall not be any less restrictive than the standard ISO Business Auto Policy CA 00 01.

In the event the Awardee does not own any vehicles, we will accept hired and non-owned coverage in the amounts listed above. In addition, we will require an affidavit signed by the Awardee indicating the following:

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

- 42.08 The Owner is not maintaining any insurance on behalf of Contractor covering against loss or damage to the Work or to any other property of Contractor. In the event Contractor maintains insurance against physical loss or damage to Contractor's construction equipment and tools, such insurance shall include an insurer's waiver or rights of subrogation in favor of Owner, its members, officers, employees and agents.
- 42.09 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.
- 42.10 The policies of such insurance in force shall be issued by companies qualified to do business in the State of Florida. The companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service. All policies must remain in effect during performance of the Work and for a period of three years after final completion with the exception of Builders Risk once the Project is Substantial Completed. The certificate must contain a provision for written notification to Owner in accordance with policy provisions as outlined in the current ISO Accord (2009/09) form; or should older ISO versions be available, provide a minimum of 30-days notice of material changes or cancellation to Owner. The contractor shall be responsible for providing written notification to SBBC 30 days in advance of cancellation, expiration, reduction in coverage limits or any material change in the specified coverage required by this contract.
- 42.11 Uninsured Claims. If any action by any person, firm or corporation is brought or threatened against the Owner or against the Contractor and the Owner for any alleged loss, damage or injury arising out of or in the consequence of the performance or nonperformance of the Contract which, in the reasonable opinion of the Owner, may not be covered by the contingent liability, public liability or property damage insurance policy, or, which together with other such actions or claims seeks a recovery in excess of the amount payable under such policies, the amount of such recovery sought or so much thereof as the Owner reasonably deems necessary, may be withheld by the Owner from any money due the Contractor. The Owner in its sole discretion may permit the Contractor to

substitute other satisfactory security in lieu of the monies so withheld. If the liability of the Owner is determined by judgment or award of a court or other tribunal of competent jurisdiction, of if such recovery sought shall have been admitted by the Contractor to be valid, the Owner may pay such judgment, award of admitted recovery out of the monies retained by the Owner under the provisions of this subparagraph and return the remaining balance, if any, to the Contractor.

- 42.11.1 Adequate funds shall be retained for the insurance costs listed in the Schedule of Values attached to the Contractor's respective Applications for Payment to account for insurance coverage renewals on multi-year projects coupled with invoices to substantiate the annual costs.

ARTICLE 43. RIGHT TO AUDIT PROVISIONS

- 43.1 Contractors records, ("Records") are defined herein to include, but not be limited to any and all accounting records, payroll time sheets, cancelled payroll checks, W-2's, 1099's, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of both successful and unsuccessful bidders), original estimates, revised estimates, estimating worksheets, correspondence, change order files (including documentation concerning or regarding negotiated settlements), and any other evidence or documentation deemed necessary by Owner to substantiate charges related to this contract shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent(s) or its authorized representative(s), to the extent deemed necessary by Owner. Such Records subject to examination shall also include, but not be limited to, documents deemed necessary by Owner to evaluate and verify both direct and indirect costs (including overhead allocations), **and specifically include those costs associated with the negotiated cost of this agreement subsequent to the execution of this agreement.**
- 43.2 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent(s) or authorized representative(s) shall have access to Records from the effective date of this contract through and including 5 years after the Owner makes Final Payment to Construction Manager pursuant to this contract.
- 43.3 Owner's agent(s) or its authorized representative(s) shall have access to the General Contractors facilities, shall have access to all necessary Records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article. Owner's agent or its authorized representative shall give auditees reasonable advance notice of intended audits.
- 43.4 General Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude

some or all of the related payees' costs from amounts payable to the Construction Manager pursuant to this contract.

- 43.5 If an audit inspection or examination performed in accordance with this Article discloses overcharges by the General Contractor to the Owner in excess of 2% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the General Contractor. If the audit discloses contract billing or charges to which General Contractor is not contractually entitled General Contractor shall pay over to Owner said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing. In addition as part of the responsibilities of the General Contractor he must be the keeper of the Administrative Records which will be audited and;
- 43.5.(1) The General Contractor will maintain at the job site, unless agreed to otherwise by the Facilities Project Manager, on a current basis, files and records such as, but not limited to the following:
- 43.5.(2) Contracts or Purchase Orders, Shop Drawing Submittal/Approval Logs, Equipment Purchase/Delivery Logs, Contract Drawings and Specifications with Addenda, Warranties and Guarantees, Cost Accounting Records, Sales Tax Recovery Status Report, Labor Costs, Material Costs, Equipment Costs, Cost Proposal Requests,
- 43.5.(3) Payment Request Records, Meeting Minutes, Cost-Estimates, Lab Test Reports, Insurance Certificates and Bonds, Contract Changes, Purchase Orders, Material Purchase Delivery Logs, Technical Standards, As-Built Marked Prints, Operating & Maintenance Instruction, Daily Progress Reports, Monthly Progress Reports, Correspondence Files, Transmittal Records, Inspection Reports, Bid/Award Information, Bid Analysis and Negotiations, Punch Lists, Project Manual,
- 43.5. (4) The project Records shall be available at all times to the Owner and Project Consultant for reference or review

ARTICLE 44. LAWS AND REGULATIONS

- 44.01 Contractor and its employees and representative shall at all times, comply with all applicable laws, ordinances, statutes, rules and regulations (including but not limited to the State Requirement for Educational Facilities, 1999 (SREF)) in effect at the time Work is performed pursuant to the Contract Documents.
- 44.02 If, during the term of this Construction Contract, there are any changed or new laws, ordinances or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Contractor shall within fifteen (15) days of the discovery of said law, ordinance or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction Contract. Upon concurrence by Owner as to the

effect of such changes, an adjustment in the compensation and/or time of performance may be made at Owner's discretion.

- 44.03 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Contractor shall within fifteen (15) days of discovery of same report the same in writing to Owner who will issue such instructions as may be necessary.

ARTICLE 45. DISPUTE RESOLUTION

- 45.01 The Owner and Contractor agree that, in the event of a dispute, the parties will attempt to resolve such dispute without litigation and that resolution through mediation procedures will be encouraged.
- 45.02 The existence of a dispute between the parties shall not be the basis of the Contractor unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 46. GOVERNING LAW

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

ARTICLE 47. RIGHTS AND REMEDIES

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

ARTICLE 48. SUCCESSORS, ASSIGNS AND ASSIGNMENT

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

ARTICLE 49. NON-DISCRIMINATION

- 49.01 The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, religion, color, gender, national origin, marital status, disability or sexual orientation.