

MASTER AGREEMENT
CONSTRUCTION MANAGEMENT SERVICES
FOR _____

This Master Agreement made this ___ day of _____, 2024, by and between the School Board of St. Lucie County, Florida, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution (“School Board” or “Owner”) and COMPANY NAME, a [State] corporation (“Contractor”).

WITNESSETH:

WHEREAS, the School Board is authorized to enter into professional services agreements with construction management companies pursuant to Sections 1013.45 and 287.055, Florida Statutes; and

WHEREAS, the School Board finds that it is in the best interest of the School District to enter into this Master Agreement with COMPANY NAME, in order to set forth the general terms and conditions by which each individual project agreement will be governed.

NOW, THEREFORE, in accordance with the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

CONSTRUCTION TEAM, CONTRACT DOCUMENTS, AND DEFINITIONS

- 1.0 Contractor accepts agrees to act in good faith and fair dealing under this Agreement. Contractor covenants with the Owner to furnish Contractor’s best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. Contractor agrees to furnish efficient business administration and superintendence and use Contractor’s best efforts to complete the project (“Project”) in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.
- 1.1 The Construction Team. Contractor, the Owner and when applicable the Architect-Engineer and Commissioning Agent, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the design phase with support from Contractor and Contractor shall provide leadership to the Construction Team on all matters relating to construction.
- 1.2 Contract Documents. The Contract Documents consist of the Master Agreement between Owner and Contractor (hereinafter the Agreement), and for each specific project, the Project Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Project Agreement, other documents listed in the Agreement and Modifications issued after execution of the Project

Agreement. A Modification is (1) a written amendment to the Project Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Project Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, Contractor's bid or portions of addenda relating to bidding requirements).

1.3 Definitions.

Architect-Engineer - The design professionals responsible for preparing plans and specifications for each Project. Whether the Architect-Engineer is on the team shall be determined on a project by project basis.

County – St. Lucie County

Contractor – COMPANY NAME

Estimate - Contractor's latest estimate of probable project construction cost.

Notice to Proceed - A written notice issued by the Owner's Contract Administrator authorizing Contractor to proceed with a project pursuant to the terms of a Project Agreement.

Owner - The School Board of St. Lucie County, Florida or those persons designated by the School Board to act in its behalf.

Owner's Construction Budget - Owner's funds budgeted and requested for Project construction. The Owner's Construction Budget for each specific Project includes all Contractor fees, costs of the work and the Owner's and Contractor's construction and interface contingencies as defined herein. This acknowledgment of the Owner's budgeted funds is not to be construed as Contractor's Guaranteed Maximum Price. A Guaranteed Maximum Price will be set forth in the Project Agreement.

Owner's Project Budget - The Owner's funds budgeted for the development of a project including the construction budget and all other fees, furnishing and equipment and other costs necessary to develop the project. The Project Budget will be determined for each specific Project.

Owner's Representatives - The Project Manager and the Project Manager's superiors or designees.

Project - The Project is the total construction of the Work performed under the Contract Documents and may be the whole or a part and which may include construction by the Owner or by separate contractors.

Project Agreement - A written agreement whereby the specific terms and conditions for a specific project are set forth. There shall be a Project Agreement for each project contemplated under this Master Agreement which shall contain at a minimum: the guaranteed maximum price for the project; the number of days to substantial completion and final completion; the liquidated damages, if any; a list of all of the parties involved in the project; and a list of all of the documents, such as plans and specifications, incorporated into the Project Agreement.

Project Manager - The person designated by the Owner to provide direct interface with Contractor with respect to the Owner's responsibilities determined on a project by project basis.

Work - The term Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project

ARTICLE 2

CONTRACTOR'S SERVICES

2.0 The services which Contractor shall provide include, but are not limited to, those described or specified herein plus those identified in the Project Agreement. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS)

2.1.1 General:

- (1) Commencing immediately after execution of the Project Agreement, Contractor shall implement and shall utilize throughout the life of the Project all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- (2) The reports, documents, and data to be provided shall represent an accurate assessment of each current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner weekly, unless otherwise directed by Owner, and shall also accompany each pay request.
- (3) The PMIS shall be described in terms of the following major subsystems for projects. At the discretion of the Owner any of the following subsystems may be deleted, by providing a written directive:
 - (a) Narrative Reporting, on a weekly basis,
 - (b) Schedule Control, on a weekly basis,
 - (c) Cost Control, and estimating, in a frequency as directed by Owner
 - (d) Project Accounting, in a frequency as directed by Owner

2.1.2 Narrative Reporting Subsystem

- (1) Contractor shall prepare written narrative reports as or as directed by Owner:
 - (a) A Monthly Executive Summary.

- (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project;
- (c) A weekly Scheduling Narrative;
- (d) Other project reporting as directed by Owner to include, but not limited to: Submittal Log, Request for Information Log, and Change Management Log.

2.1.3 Scheduled Control Subsystem

Master Project Schedule - Within (10) ten days of executing a Project Agreement, Contractor shall submit, and the Construction Team shall approve, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. The master project schedule shall be produced and updated either weekly or monthly, as directed by Owner, throughout the Project.

2.1.4 Cost Control Subsystem

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates

- (a) At completion of Advanced Schematic Design Phase for each item or bid package.
- (b) At completion of Design Development Phase for each item or bid package.
- (c) At completion of 100% Construction Documents Phase for each item or bid package.
- (d) At establishment of the Guaranteed Maximum Price.
- (e) Construction Documents Estimates – Prior to the bid of each bid package, when the working drawings and specifications are complete, the Contractor shall prepare and submit a cost estimate based on a quantitative material take-off with current local cost for each bid group by subcontract package.

2.1.5 Project Accounting Subsystem

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project. The following reports shall be produced monthly on School Board approved forms:

- (1) Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.

- (2) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

2.2 Project Manual

- (1) Upon award of contract the Contractor shall develop a draft comprehensive Project Manual describing the services set forth in this Contract. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of key personnel, responsibilities of Contractor, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Five copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Contractor shall coordinate with the Owner and the Architect-Engineer.
- (2) Contents of Project Manual – The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - (a) Project Definition – The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - (b) Project Goals – The schedule, budget, physical, technical and other objectives for the project shall be defined.
 - (c) Project Strategy – A narrative description of the project delivery methods shall be utilized to accomplish the project goals, to include, but not limited to, project specific Safety Plan; Logistics Plan to include site access, delivery, storage, parking, trash, lifting plan, unless otherwise directed by Owner
 - (d) Project Work Plan – A matrix display of the program of work to be performed by the Contractor, the Architect-Engineer and the Owner during each phase of the project.
 - (e) Project Organization – A summary organization chart showing the interrelationships between the Owner, the Contractor and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Contractor, the Architect-Engineer, and Owner showing organizational elements participating in the project shall be included.
 - (f) Responsibility Performance Chart – A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Contractor shall develop a similar chart for the personnel within his own organization

who are assigned to the project, and for the personnel of the Owner and the Architect-Engineer from data supplied by each.

- (g) Flow Diagrams – These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
- (h) Written Procedures – The Contractor will provide written procedures for communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, and other necessary communications.

2.3 Design Review and Recommendations

- (1) Review and Recommendations and Warranty - Contractor shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from preliminaries through working drawings. Contractor shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. Contractor shall submit to the Owner, Permitting Authority, if necessary, and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. Contractor shall call to the Project Manager's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. Contractor shall prepare an estimate of the construction cost utilizing the unit quantity survey method.

CONTRACTOR'S WARRANTY:

AT COMPLETION OF CONTRACTOR'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, CONTRACTOR SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONTRACTOR SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

OWNER'S DISCLAIMER OF WARRANTY:

THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND

SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE.

- (2) Long Lead Procurements – The Contractor shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Contractor shall notify the subcontractors, the Project Manager and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Contractor has obtained permitting approval, the Contractor shall prepare invitations for bids. The Contractor shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Project Manager, Owner and Architect-Engineer of any problems or prospective delay in delivery.
- (3) Separate Contracts Planning - Contractor shall review the design with the Architect-Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the work in such manner as will permit Contractor to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
- (4) Interfacing - Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
- (5) Job-Site Facilities - At the Owner's option and direction, Contractor shall arrange for all job-site facilities necessary to enable Contractor and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction. This shall be determined by the Owner on a per project basis.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities which are planned to become the property of the owner at the conclusion of the project shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by Contractor obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. Contractor shall present its evaluation with recommendation to

the Owner for approval. The Owner shall have final authority in equipment lease purchase matters. With the Owner's approval, Contractor may supply Job-Site Facilities and equipment from Contractor's own equipment pool.

- (6) Weather Protection - Contractor shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. Contractor shall submit to the Construction Team its recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (7) Market Analysis and Stimulation of Bidder Interest
 - (a) The Contractor shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the project; the Contractor shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
 - (b) Within (15) fifteen days after receiving Notice to Proceed, the Contractor shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Contractor shall submit to the Project Manager and the Architect-Engineer a list of potential bidders. The Contractor shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
 - (c) The Contractor shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase

- (1) Contractor's Staff - Contractor shall maintain sufficient off-site support staff, and competent staff at the Project site authorized to act on behalf of Contractor to coordinate, inspect and provide general direction of the work and progress of the subcontractors and Contractor shall provide no less than those personnel during the respective phases of construction.
- (2) Lines of Authority - Contractor shall establish and maintain lines of authority for Contractor's personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the sub-

contractors, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between Contractor and its Subcontractors; however, such attendance shall not diminish either the authority or responsibility of Contractor to administer the subcontractors.

(3) Schedule and Project Manual Provisions – The Contractor shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Contractor's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Contractor shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. The Contractor shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

(4) Solicitation of Bids.

(a) Without assuming responsibilities of the Architect-Engineer, Contractor shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, for subcontractor contracts and for site utilities.

The Contractor shall obtain bids on all of the work, including third party bids on any work the Contractor desires to self-perform. The Contractor shall prepare and submit its own bids on any work it intends to self-perform. Such invitations for bids shall be prepared in accordance with the following guidelines:

1. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without bids or quotes when necessary to expedite work on the project, however, Contractor shall not divide or separate a procurement in order to avoid the requirements set forth herein.
2. Contracts over \$1,000 but not exceeding \$15,000 may be entered into by

Contractor with the firm which submits the lowest verbal quotation. Contractor shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer and to each firm. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.

3. Contracts exceeding \$15,000 but not exceeding \$200,000 may be entered into by Contractor with the firm who is qualified and submits the lowest responsive proposal. Contractor shall request at least three (3) firms to submit sealed written proposals based on written drawings and/or specification. The written proposals shall all be opened publicly at the location, date and time named by Contractor in the request for proposal. A tabulation of the results and copies of the bids shall be furnished to the Owner, Architect-Engineer and to each firm.
4. Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by Contractor with the firm who is qualified and submits the lowest responsive proposal. Contractor shall advertise these projects at least once, in a newspaper of general circulation in the county where the project is located, with the last advertisement appearing at least 21 calendar days prior to the established bid opening date. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement. A tabulation of the results and copies of the bids shall be furnished to the Owner, Architect-Engineer and to each firm.
5. Contracts exceeding \$500,000 may be entered in to by Contractor with the firm who is qualified and submits the lowest responsive proposal. Contractor shall advertise these projects at least once, in a newspaper of general circulation in the county where the project is located, with at least 30 calendar days prior to the established bid opening date and at least 5 days prior to any prebid conference. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement. A tabulation of the results and copies of the bids shall be furnished to the Owner, Architect-Engineer and to each firm.
6. Site utilities shall be acquired at market rates from the appropriate entity providing such utilities to the project site. As part of such preparation, Contractor shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by Contractor shall be brought to the attention of the Project Manager and Architect-Engineer in written form.

(c) For each separate construction contract exceeding \$25,000, Contractor shall unless

waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Manager. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Contractor shall transmit these to the Architect-Engineer. Upon receiving clarification or correction in writing, they shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(d) For all contracts exceeding \$25,000.00, the Contractor shall establish a pre-qualification procedure for applicable subcontract trades.

- (5) Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Contractor shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the GMP as set forth in the Project Agreement and inclusive of Contractor's fees.

To be acceptable to the School Board as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
 2. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
 3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
 4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
 5. The Surety Company must be rated excellent ("A-" or better) in the current A.M. Best Guide and qualified to do business within the State.
 6. In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, within five (5) days after Owner's written approval of the Bonds and before commencing the Construction Phase Work, Contractor shall record in the Public Records of St. Lucie County, Florida, a copy of the Performance and Payment Bonds. Contractor shall deliver to Owner certified copies of the recorded Bonds within ten (10) days of recording of the Bonds but, in any event, before commencing the Construction Phase Work. The proper recording and delivery of such Bonds are conditions precedent to Owner's obligation to make any progress payments to Contractor hereunder.
- (6) Quality Control - Contractor shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. Contractor

shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and Contractor shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner to not affect the efficient progress of the work. Should disagreement occur between Contractor and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Architect-Engineer or Owner shall be the final judge of performance and acceptability.

- (7) Subcontractor Interfacing - Contractor shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. Contractor shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, Contractor shall act immediately to remove the threat to health and safety. Contractor shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to Contractor who will then issue the shop drawings to the affected subcontractor for fabrication or revision. Contractor shall maintain a suspense control system to promote expeditious handling. Contractor shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of Contractor by the subcontractors and shall maintain a suspense control system to promote timely response. Contractor shall advise the Project Manager and Architect-Engineer when timely response is not occurring on any of the above.
- (8) Job Site Requirements - Contractor shall provide for each of the following activities as a part of Contractor's Construction Phase fee:
1. Maintain a log of daily activities, including manpower records, including hours worked (payroll), weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program as developed hereinabove.
 7. Provide miscellaneous office supplies that support the construction efforts which are consumed by Contractor's own forces.

8. Travel to and from Contractor's home office to the project site as the project requires.

In addition, Contractor shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:

1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by all necessary permitting authorities inspectors.
- (9) Job Site Administration - Contractor shall provide as part of Contractor's Construction Phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the schedules. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Contractor either biweekly or monthly, whichever is designated by the Project Manager. Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
 - (b) Shop Drawing Submittals/Approvals - Review shop drawings to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
 - (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
 - (e) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
 - (f) Document Interpretation – Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
 - (g) Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including

information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.

- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If Contractor wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with Contractor's own forces, the Architect-Engineer will prepare the pre-substantial punch list from which Contractor will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished.
- (i) Final Completion - Monitor the subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.
- (j) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
- (k) Record Drawings – During the progress of the work, the Contractor shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Contractor shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

Each drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be distributed except as noted above.

The Contractor shall review the completed As Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Contractor shall furnish true elevations and locations, all properly referenced by using the original

benchmark used for the institution or for this project. These As Built drawings shall be sent to the Architect-Engineer who will prepare final record drawings.

(10) Administrative Records - Contractor will maintain at the job site or home office, as agreed to by the Project Manager, on a current basis, files and records such as, but not limited to the following:

- "As-Built" Marked Prints (defined in 2.8.K)
- Bid Analysis and Negotiations
- Bid/Award Information
- Bulletin Quotations
- Contract Drawings and Specifications with Addenda
- Contract Changes
- Contracts or Purchase Orders
- Correspondence Files
- Cost Accounting Records
- Cost-Estimates
- Cost Proposal Requests
- Daily Progress Reports
- Design Handbooks
- Equipment Costs
- Equipment Purchase/Delivery Logs
- Inspection Reports
- Insurance Certificates and Bonds
- Lab Test Reports
- Labor Costs
- Material Costs
- Material Purchase Delivery Logs
- Meeting Minutes
- Monthly Progress Reports
- Operating & Maintenance Instruction
- Payment Request Records
- Payroll Records
- Project Status Reports
- PMIS Schedule and Updates
- Punch Lists
- Purchase Orders
- Sales Tax Recovery Status Reports
- Shop Drawing Submittal/Approval Logs
- Suspense (Tickler) Files of Outstanding Requirements
- Technical Standards
- Transmittal Records
- Warranties and Guarantees

The project records shall be always available to the Owner and Architect-Engineer for reference or review.

Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of ten (10) years from the date of termination of the Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Contractor shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Contractor's and any subcontractor's Project records and documentation as often as they deem necessary and Contractor shall cooperate in any audit, inspection, or copying of the documents. This access, inspection, copying and auditing rights shall survive the termination of the Contract. Without limitation of the foregoing, Contractor shall keep and maintain public records as defined under Chapter 119, Florida Statutes that ordinarily and necessarily

would be required by Owner. Contractor shall meet all requirements for retaining public records and transfer, at no cost, to Owner all public records in possession of Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with the information technology systems of Owner.

If at any time, Owner conducts such an audit of Contractor's records and documentation and finds that Contractor overcharged Owner, Contractor shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount. If the Overcharged Amount is equal to or greater than Ten Thousand and No/100 Dollars (\$10,000.00), Contractor shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred, not to exceed \$25,000 as a result of its audit of Contractor. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Contractor with regard to the Project or under any other agreement between Contractor and Owner. If such amounts owed by Contractor are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Contractor hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work. (11) Owner Occupancy:

Contractor shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. Contractor shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on line" in such conditions as will satisfy Owner operational requirements. Contractor shall conduct Contractor's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind. Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. Contractor shall provide operational training, in equipment use, for building operators. Contractor shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation. Contractor shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible. The Owner will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements have been completed to the Owner's satisfaction.

(11) Warranty:

Where any work is performed by Contractor's own forces or by subcontractors under

contract with Contractor, Contractor shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, Contractor further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. Contractor shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Warranty Inspections will be conducted nine (9) months after Owner Occupancy. These inspections will be conducted by Contractor, Owner and Architect-Engineer if applicable.

ARTICLE 3

OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding its requirements for each project.
- 3.2 Owner's Representative - The Owner shall designate a representative who shall be fully acquainted with the project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in any project. The Owner's Representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The Owner may retain an Architect-Engineer for design and to prepare construction documents for the project.
- 3.4 Site Survey and Reports - The Owner shall furnish for the project site all available surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description. Contractor shall verify locations of utilities with Dig Safe and other applicable sources and agencies. Contractor is responsible for verification of utilities and existing conditions.
- 3.5 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6 Drawings and Specifications - Contractor will be furnished a reproducible set of all copies of Drawings and Specifications necessary and ready for printing.
- 3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and Contractor shall be entitled to rely upon the accuracy and completeness thereof.

- 3.8 Project Fault Defects - If the Owner becomes aware of any fault or defect in the project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to Contractor and Architect-Engineer.
- 3.9 Funding - The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to Contractor that sufficient funds will be available and committed for the cost of each part of the Project. Contractor shall not commence any work, unless authorized in writing by the Owner.
- 3.10 Lines of Communication - The Owner and Architect-Engineer shall communicate with the subcontractors or suppliers only through Contractor while such method of communication is effective in maintaining project schedules and quality.
- 3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for the Owner's personnel and shall provide this definition to Contractor and all other affected parties.
- 3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with all necessary permitting authorities and expects Contractor to do the same.

ARTICLE 4

INSPECTION

Construction inspection for code compliance with drawing specifications and quality will be performed by inspectors working for the Owner. The building code inspection requirements shall be described as follows:

- 4.1 Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the Owner. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building. Inspection personnel will be provided by the Owner. Names, addresses, and phone numbers of the inspectors will be provided to Contractor by the Owner. Contractor shall notify the appropriate inspector(s), no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the permitting authority. All costs for uncovering and reconstruction shall be borne by Contractor. All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality. Cost for all reinspections of work found defective and subsequently repaired shall be borne by Contractor.

ARTICLE 5

SUBCONTRACTS

- 5.1 Definition - A subcontractor is a person or organization (other than the Owner) who has a direct contract with Contractor to perform any of the Work on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor. Except that it is the express intent of the Owner and Contractor that the Owner shall be an intended beneficiary of all of the contracts between Contractor and subcontractors and Contractor shall ensure that each subcontractor contract expressly states such intent.
- 5.2 Proposals - Contractor shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after Contractor has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.
- 5.3 Required Subcontractors' Qualifications and Subcontract Conditions.

- 5.3.1 Subcontractor Relations - By an appropriate written agreement, Contractor shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor by these Contract Documents, assumes toward the Owner and the Architect-Engineer. The subcontractor agreements shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with its sub-subcontractor.

Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article 5 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such Contract Documents available to its sub-subcontractors.

5.3.2 Subcontract Requirements

- (1) On all subcontracts where the bid exceeds \$100,000, Contractor, or Owner, may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If Contractor wishes to award subcontracts to contractors unable to supply this bonding, Contractor may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.
- (2) Subcontract bidders must submit a completed experience questionnaire and financial statement on a form acceptable to Contractor. The subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (3) Workforce - The subcontractor must agree to perform no less than (75%) seventy five percent of the project construction work utilizing its own employees unless this

requirement is waived by Contractor and Owner for good cause shown.

- (4) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of comparable size and complexity within the last five years unless this requirement is waived by Contractor and Owner for good cause shown.
- (5) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named foreman for each trade included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work. This experience requirement may be waived by Contractor for good cause shown.
- (6) All subcontracts shall provide:

- a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY** - That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, excluding delays caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on Owner's breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

The subcontract shall require that the subcontractor expressly agree that the foregoing constitutes its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

- b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which Contractor must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions - Contractor shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to Contractor.

5.5 Subcontracts to be provided. Contractor shall provide a copy of each subcontract including the general supplementary conditions.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established in the Project Agreement, a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule, shall also be established by the Construction Team. Contractor agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and owner occupancy date. Contractor acknowledges that failure to complete the project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

Failure to complete the work on time. It is mutually agreed by and between parties hereto that time shall be an essential part of this contract, and that in case of the failure on the part of the Contractor to achieve contractually schedule substantial milestones established in the Contractor’s project schedule within the time specified and agreed upon, which may be amended by Change Order, the Owner will be damaged thereby; and the amount of said damages, inclusive of expensed for inspection, Architect’s additional fees, as well as additional personnel superintendence, and necessary traveling expenses, being difficult if not impossible of definite sum set forth below in the Schedule of Liquidated Damages as liquidated damages for every calendar day delay in finishing the work in excess of the number of calendar days prescribed; and the Contractor hereby agrees that said sum shall be deducted from monies due Contractor hereby agrees to pay to the Owner as liquidated damages and not by way of penalty, such total sum as shall be due for such duly computed aforesaid.

Liquidated Damages:

Less than \$2,500,000	\$500 per day
Between \$2,500,000 and \$10,000,000	\$1,000 per day
Between \$10,000,000 and \$20,000,000	\$2,500 per day
Over \$20,000,000	\$5,000 per day

Liquidated damages daily rates after Substantial Completion are at 25% of the daily rate prior to Substantial Completion.

Warranties called for by this Agreement or by the drawings and specifications shall begin on the date of owner occupancy of the project as set forth in the Project Agreement.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 When the Documents are sufficiently complete to establish the scope of work for a project or any portion thereof, as generally defined by a design document which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price (“GMP”), or at such time thereafter designated by the Owner, Contractor will establish and submit in writing to the Owner for Owner’s approval a GMP , guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. Such GMP will be

subject to modification for changes in the project as provided herein. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined herein, plus Contractor's fees or the GMP, whichever is less when the work is complete.

- 7.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 7.3 When the project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the work completed. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order.
- 7.4 At the time of submission of a GMP, Contractor will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine Contractor's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Approved contingency items may be included in the Cost of Work after Owner's written authorization to proceed. The Contractor acknowledges and agrees that any work which is to be charged against the contingency that does not receive such prior written approval from the Owner shall be deemed to be part of Construction Contractor's basic Work compensated within the GMP and not chargeable against the Owner's Contingency. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency. If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, Contractor shall have the option to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONTRACTOR'S FEE

- 8.1 Contractor's fee shall be set forth in each **Project Agreement**.
- A. For all Pre-Construction Phase Services, including providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, and preparing cost estimates Monthly installment payments of the total lump sum compensation and reimbursement for reimbursable expense items (subject, however, to the "not to exceed" caps on such items)] shall be based upon the percent completion of the designated portion of the Pre-Construction Phase Services for each particular month as determined by Owner and an itemized statement of reimbursable expenses

incurred for such month, respectively, and Owner's receipt of Contractor's written invoice for such payment. Contractor's invoices shall be in a form acceptable to Owner and be accompanied by such other information, documentation, and materials as Owner may require. The final invoice shall not be submitted until either (i) the GMP is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate the Contract as hereafter, whichever occurs first.

- B. Construction Phase Services. With respect to the Construction Phase Services to be provided by Contractor hereunder, Owner shall reimburse Contractor for the Cost of the Work (hereinafter defined), and pay Contractor a fixed Construction Management Fee calculated as a percentage based on the estimated Cost of the Work (excluding Contractor Bonds and Insurance Costs). Allowances and Owner's Contingency will only be included in the Cost of Work once finalized and authorized by Owner. The Construction Management Fee and Cost of Work shall be estimated at the time the GMP (hereinafter defined) is initially adopted by the parties. The "Construction Management Fee" shall be Contractor's total compensation for all overhead not reimbursable as Cost of Work/Project under Article 9 below, as well as Contractor's total profit for Construction Phase Services.

Within sixty (60) days after the Owner's deems the Construction Documents sufficiently completed by the Design Professional and approved in writing by Owner, Contractor agrees to provide Owner with a GMP proposal for the total sum of the Construction Management Fee plus the Cost of the Work. To the extent that the Construction Documents are anticipated to require further development by Design Professional, Contractor shall provide in the GMP proposal for such further development consistent with the Contract Documents and inferable therefrom such that the GMP shall not be adjusted as a result of such further development of the Construction Documents. Such further development to be included in the GMP proposal does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order, or other method of adjustment available to Owner under the Contract Documents.

The GMP proposal shall be based upon the previous cost estimates provided by Contractor in its response to a request for qualifications issued by the Owner.

Contractor agrees that all of its books, records and files, with respect to its development of the GMP proposal, shall be open to Owner for review and copying. The final GMP mutually agreed upon by Owner and Contractor shall be set forth in the GMP Amendment. Contractor shall provide a detailed breakdown in a format acceptable to Owner of its GMP proposal. For each line item in the GMP, Contractor shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line item price incorporated into the GMP. Contractor guarantees that, in no event, shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders.

To the extent the Construction Management Fee and Cost of the Work exceed the GMP, Contractor shall bear such costs in excess of the GMP without reimbursement or additional compensation from Owner. In the event Contractor and Owner fail to reach an agreement on

the GMP, Owner may elect to terminate the Contract. In the event of any such termination, Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by Owner. Notwithstanding the foregoing, Contractor shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed.

8.2 Adjustments in Fee - For changes in the project as provided herein, the construction phase fee shall be adjusted as follows:

- (a) Contractor shall be paid an additional fee subject to negotiation if Contractor is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by Contractor.

Should the duration of the construction stipulated herein for Final Completion extend beyond the original duration due to no fault of Contractor, Contractor's Additional Construction Phase Fee will be adjusted by dividing the original fee by the number of original contract days multiplied by the number of days delayed.

Contractor will not be due any additional Overhead and Profit on increases in the GMP that do not exceed 5%. Should the GMP be increased by more than 5%, due to no fault of Contractor, Contractor's additional Overhead and Profit for the Construction Phase will be five percent of that portion of the accumulative increases in the GMP that exceed the GMP by more than 5%.

Contractor's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, Contractor's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided above.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition. The term Cost of the Project shall mean costs necessarily and incurred by Contractor during the Construction Phase for Construction services and paid by Contractor which are not included in the construction management fee. Such costs shall be at rates and amounts not higher than the standard paid at the place of the Project except with the prior written consent of Owner to that specific rate or amount being higher than the standard. Cost of the Work shall not include costs not necessarily incurred or incurred at higher than permitted rates or amounts. Cost of the Work includes only the items set forth in this Section, which shall all be subject to verification by audit.

9.2 Direct Cost Items

9.2.1 Labor Costs

9.2.1.1. Actual wages paid to construction workers as included in Subcontractors' lump sum contract and employed by Contractor to perform the construction of the Project. Contractor shall provide any documentation requested by Owner to verify wages and hours of Contractor's staff, and compliance with the wage rates identified in the Project Agreement. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the Contractor's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual.

9.2.1.2. Actual wages or salaries (inclusive of Labor Burden) of Contractor's supervisory and administrative personnel who are identified in the Project Agreement together with their Allowable Hourly Rate – but only for documented time when directly involved in performance of the Work. The salaries of Contractor's supervisory personnel are subject to a not-to exceed increase of 4.25% per year; the first year beginning on the date that Owner approves Contractor's Construction Phase Maximum Guaranteed Price proposal. The 4.25% increase shall be available to Contractor each year thereafter not to exceed seven years or at the completion or termination of this Agreement, whichever occurs first. The annual not-to-exceed increase of 4.25% is available hereunder only to the extent it reflects a concurrent and equal increase in the supervisory personnel's salaries or wages. Any increase or portion thereof not used in a given year shall expire and does not "bank" or "accumulate." Notwithstanding, Cost of the Work for purposes of calculating payment for Contractor's supervisory and administrative personnel when directly involved in performance of the Work shall be based on the "actual hourly pay rate" set forth in the Project Agreement. Projected wage increases should be reflected in the Guaranteed Maximum Price Proposal. Labor burden for overtime payments shall be eliminated or reduced to equal the Contractor's actual substantiated cost for such burden. Should Contractor require employees, other than those listed in the Project Agreement, Contractor shall provide written notice to the Owner setting forth all the information described above. If for any reason, Owner reasonably objects to any such employee, Contractor shall not use that employee to perform on the Project. Failing reasonable objection by the Owner, the employee, together with the employee's daily billing rate, shall automatically become a part of the Project Agreement. The Labor Burden rate shall be based on the actual cost of direct wages or salaries of Contractor's employees incurred in the interest of the Project. For billing purposes only, this rate shall be established annually, subject to verification by the Owner's auditors, based on the Contractor's labor burden for the previous year. The components which comprise the labor burden shall not change throughout the term of the Project. The Owner shall be allowed to audit the actual cost of labor burden each year, and Owner shall be entitled to a refund to the extent that it has paid Contractor more than its actual Labor Burden costs. Initially, the labor burden will be set at %, subject to verification by the Owner's auditors. It will be reset each year based on the audited rate for the prior year. Under no circumstances shall the Owner pay more for labor burden than the percentage established for billing purposes for any given year.

9.2.1.3. Contractor staffing reimbursed by Owner shall be based on project scope, size, and complexity, and approved by Owner. Contractor may provide staffing in excess of that to be reimbursed by Owner but shall do so at their own expense.

9.2.1.4. Actual out of town travel expenses of Contractor's personnel incurred directly and solely in support of the Project with prior written approval of the Owner or specifically identified in the

negotiated cost proposal but only to the extent permitted by Owner's policies on reimbursement for travel.

9.2.1.5. Actual costs paid or incurred by Contractor for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii) or as otherwise customary so long as such costs are based on the actual wages of construction workers properly included in the Cost of the Work as defined herein and are approved in advance by the Owner.

9.2.2 Subcontractor Costs

9.2.2.1. Payments actually made by Contractor to Subcontractors for prosecution of the Work in accordance with the requirements of their agreements with Contractor, but only for agreements to the extent they have been specifically consented to in writing by Owner. Consent to such agreements shall not create any liability for Owner and shall not excuse Contractor from complying with the terms of this Agreement.

9.2.3 Costs of Materials and Equipment incorporated in the Completed Construction

9.2.3.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.

9.2.3.2. Costs of materials described in the preceding subparagraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Contractor shall sell such materials and deduct the greater of fair market value or gross proceeds from the Cost of the Work.

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

9.2.4.1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the site and fully consumed in the performance of the Work; and if not fully consumed, then the cost shall be based on the cost of the item less its fair market value. Cost for items previously used by Contractor shall mean fair market value prior to use on the Project. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of Contractor.

9.2.4.2. Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The aggregate rental charges for an item used on this Project (including the rental charges for items used to replace it) shall not under any circumstances exceed 75% of the value of that item or 75% of any applicable option purchase price, whichever is lower. Machinery and equipment owned by Contractor, or any person affiliated with or owned or controlled by Contractor or persons affiliated with Contractor shall not be charged at more than the market rate for such equipment in the St. Lucie County area or 90% of current published rental rates of the Associated Equipment Dealers, for such equipment, whichever is less.

9.2.4.3. Costs of removal of debris from the Project site.

9.2.4.4. Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Project site and reasonable petty cash expenses of the Project site office, incurred directly and solely in support of the Work, and all incurred at the Project site.

9.2.4.5. That portion of the reasonable travel and subsistence expenses of Contractor's personnel that are consistent with the Owner's travel policies and incurred while traveling solely in the discharge of duties directly connected with the Work, but not including travel expenses or commuting expenses incurred within St. Lucie County and its extra-territorial jurisdiction.

9.2.4.6. Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations.

9.2.4.7. Any hazardous materials handling, abatement and disposal cost(s).

9.2.5 Miscellaneous Costs

9.2.5.1. Sales, use, or similar taxes imposed by a governmental authority that are related to the Work and for which Contractor is liable. Notwithstanding, Owner is a government organization and Contractor shall avail itself of all exemptions which may exist for such taxes based on Owner's status.

9.2.5.2. Fees and assessments for building permits and for other permits and inspections that Contractor is required by the Contract Documents to pay for or obtain.

9.2.5.3. Premiums for insurance and bonds to the extent directly attributable to this Agreement, including without limitation professional liability insurance and pollution insurance. Any premium allocation plan to this Project by Contractor must be approved by the Owner.

9.2.5.4. Testing fees pursuant to the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded.

9.2.5.5. Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work. If a particular design, process, or product of a particular manufacturer is required by Owner, then costs of payments made in accordance with legal judgments against Contractor resulting from suits for such infringement, payments of settlements made with Owner's written consent, and reasonable legal fees related to the infringement are eligible as a Cost of the Work and shall not be included in the calculation of Contractor's Fee or the Guaranteed Maximum Price (but shall still be subject to the limit covered by the Appropriated Funds). Notwithstanding the foregoing, if Contractor had reason to believe the required design, process, or product is an infringement, such payments and fees shall not be a Cost of the Work and Contractor shall be responsible for such payments, fees and losses unless Contractor notifies Owner of the potential infringement promptly before proceeding and in writing.

9.2.5.6. Utility company charges including meter fees, tap fees and utility consumption charges.

9.2.5.7. Contingency allowed by the Contract Documents and identified as a line item in the Schedule of Values.

9.2.5.8. Costs of cell phones and vehicles, not otherwise included in the labor burden, for those employees approved by the Owner.

9.2.5.9. Costs of on-site computers, printers, monitors, software, maintenance, and other electronic equipment approved in advance and in writing by the Owner, used solely for the Project.

9.2.5.10. That portion of the cost of subcontractor default insurance or similar product for enrolled subcontractors or suppliers, which comprises only the risk transfer premium, and not prefunded deductibles or any other deposits, prepayments, or charges of any type, and only as agreed to in advance by the Owner following full transparency into the policy and the charges.

9.2.5.11. Other costs approved in advance in writing by Owner at Owner's sole option and discretion

9.2.5.12. Contractor's "General Conditions" expenses, that are to be more particularly itemized in an Attachment to the GMP and incorporated therein by reference, are to be paid as the Work progresses with each Application for Payment based on the actual expense. Contractor shall promptly report to Owner any occasion in which the rates paid is lower than the estimated price included in the GMP for the General Conditions expense. Further, Owner reserves the right to audit Contractor's records and Contractor shall promptly make available to Owner all records necessary for such purpose. All items purchased shall become the Owner's property and shall be turned over at the completion of the project, unless directed otherwise by Owner.

9.2.6. Allowances

9.2.6.1. In the event it becomes necessary to prepare the GMP before all subcontract or material costs are established through the bidding process, an Allowance may be inserted within the GMP with prior written approval of the Owner. The Contractor shall note "Allowance" in place of the Subcontractor or Vendor name within the appropriate section of the GMP Summary and include an amount that represents the estimated value for this scope of work when a subcontract or purchase order is awarded.

9.2.6.2. The Contractor shall not proceed with any portion of the Work associated with the previously mentioned Allowance without first obtaining Owner's express written authorization to proceed.

9.2.6.3. In the case where the actual bid amount exceeds the Allowance, Contractor shall be entitled to that portion representing the difference between the bid amount and the Allowance, but shall not be entitled to any increase in Fee or General Conditions.

9.2.6.4. In the case where the actual bid amount is less than the Allowance, the portion representing the difference between the bid amount and the Allowance, shall be moved to a buyout line item. Funds established in the Buyout line shall be available for Contractors' use as needed provided the Owners' representative has been informed in advance of any such use. At the conclusion of the project any funds remaining in buyout shall be returned to the owner, including the tabulated fee

on the remaining amount.

9.2.6.5. Allowances may be included in the Cost of Work after Owner's written authorization to proceed.

9.3 Costs Not Included in the Cost of the Work

9.3.1 The Cost of the Work shall not include the items listed in this Section:

9.3.1.1. Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the Project site office.

9.3.1.2. Bonuses paid to any staff.

9.3.1.3. Overhead and general expenses.

9.3.1.4. Markup on other direct costs (ODCs) such as reimbursable expenses and pass-through costs from Contractor and its Subcontractors and Suppliers.

9.3.1.5. Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

9.3.1.6. Rental costs of machinery and equipment, except as specifically provided in this Agreement.

9.3.1.7. Costs due in whole or in part to the fault or negligence of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to, costs of the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property.

9.3.1.8. Costs of entertainment.

9.3.1.9. Costs incurred or that should have been incurred for Preconstruction Phase Services.

9.3.1.10. With exception to Article 17.9 of this contract, any legal, accounting, and professional services necessary for the ordinary and customary performance of the contracted work, or other similar costs incurred by Contractor, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Project.

9.3.1.11. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Contractor.

9.3.1.12. Any costs not specifically and expressly described in Article 9.2, above.

9.3.1.13. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order).

9.3.1.14. Expenses of Contractor's principal office and offices other than the Project Site office.

ARTICLE 10

CHANGES IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating the Project Agreement, may order Changes in the Project within the general scope of the Project Agreement consisting of additions, deletions or other revisions, with the GMP and the Construction Completion Date being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- (1) A Change Order is a written order to Contractor signed by the Owner and issued after the execution of the Project Agreement, authorizing a Change in the Project, Contractor's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project.
 - (2) The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - b. by unit prices stated in the Project Agreement or subsequently agreed upon;
 - c. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - d. by the method provided in subparagraph (3).
 - (3) If none of the methods set forth in subparagraph (2) is agreed upon, upon receipt of a written order signed by the Owner, Contractor shall promptly proceed with the Work involved. The cost of such Work shall then be determined based on the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and under subparagraph (2) above, Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the GMP to be allowed by Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
 - (4) If unit prices are stated in the Project Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices and GMP shall be equitably adjusted.
 - (5) Should concealed conditions encountered in the performance of the Work below the at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those

ordinarily encountered and generally recognized as inherent in work of the character provided for in the Project Agreement, be encountered, the GMP and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order.

10.2 Claims For Additional Cost Or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided herein. If Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate contractor employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond Contractor's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine. Only delays which are determined to materially affect the critical path schedule for the Project will result in a time extension.

10.3 Minor Changes in The Project

The Owner or Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the GMP or an extension of the Construction Completion Date and consistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS.

10.4 Emergencies

In any emergency affecting the safety of persons or property, Contractor shall act at Contractor's discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by Contractor on account of emergency work shall be determined as set forth herein.

ARTICLE 11

DISCOUNTS, REBATES, REFUNDS AND PENALTIES

11.1

1. Cash discounts obtained on payments made by Contractor shall accrue to Owner if (i) before making the payment, Contractor included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Contractor with which to make payments; otherwise, cash discounts shall accrue to Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be secured. Contractor shall use its best efforts to obtain for the benefit of Owner all available discounts, rebates and refunds.
2. Amounts which accrued to Owner in accordance with the provisions of Article 9 above

shall be credited to Owner as a deduction from the Cost of the Work.

3. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project
4. All penalties incurred due to fault of Contractor for late payment of cost of the project will be paid by Contractor.

ARTICLE 12

PAYMENTS TO THE CONTRACTOR

- 12.1 Monthly Statements - Contractor shall submit to the Owner a sworn statement, along with the cost reports required herein, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of Contractor's fees due as provided in the Project Agreement. This data, along with all subcontractor sworn statements showing in detail all monies received, shall be attached to the Partial Pay Request form. Five percent (5%) retainage shall be held on all payments until the contract is complete, except, when approved by the Owner, certain suppliers and subcontractors may be paid the entire amount due when such payment is the practice of the industry.
- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and Contractor's fee, shall be due and payable after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that Contractor has verified by an authorized signature that Contractor has completed all items specified, and that the Project Agreement has been finally performed. However, if there should remain work to be completed, Contractor and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of Contractor's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Contractor, monthly, the amount retained for each incomplete item after each of said items is completed.
- 12.3 Payments to Subcontractors - Contractor shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of five percent (5%). If there should remain items to be completed, Contractor shall list those items required for completion and Contractor shall require the retainage of a sum equal to 150% of the estimated cost of completing any unfinished items upon substantial completion, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, Contractor shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

- 12.4 Delayed Payments by Owner - If the Owner should fail to pay Contractor within 30 days after the receipt of an approvable payment request from Contractor, then Contractor may, upon seven (7) additional days written notice to the Owner and the Architect-Engineer stop the Project until payment of the Amount owing has been received.
- 12.5 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion. Documentation for stored material shall include bill of sale, photographs, insurance certificate for stored material, any other documentation necessary to validate materials, and as may be directed by Owner.
- 12.6 Withholding Payments to Subcontractors - Contractor shall not withhold payments to subcontractors if such payments have been made to Contractor except in cases where the subcontractor has failed to pay sub-tier contractors or is in default. The such cases, the Contractor may withhold payments equivalent to the amount unpaid or the cost to cure default.. Should this occur for any reason, Contractor shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

ARTICLE 13

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity -

(A) to the fullest extent permitted by law, and except as set out in subparagraph (b) below, contractor shall indemnify, hold harmless and defend owner, and all of their board members elected officials, officers, directors, agents and employees, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys fees, arising out of or resulting from bodily injury or death of any person, or property damage, including loss of use of property, arising or alleged to arise out of or in any way related to this contract or contractor's performance of the work or other activities of the contractor, but only to the extent caused in whole or in part by any negligent act or omission of any subcontractor or anyone directly or indirectly employed by contractor or anyone for whole acts contractor may be liable.

(B) notwithstanding the foregoing, to the fullest extent permitted by law, contractor shall indemnify, hold harmless and defend owner, and all of their officials and board members, officers, directors, agents and employees (the "indemnitees"), from and against all claims, damages, losses and expenses, including, but not limited to, attorneys fees, arising out of resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of contractor for any of its subcontracts, regardless of whether such claim, damage, loss or expense is caused, or is alleged to be caused, in whole or in part by the negligence of any indemnitee, it being the expressed intent of owner, and contractor that in such event the contractor is to indemnify, hold harmless and defend the indemnitees from the consequences of their own negligence, whether it is or is alleged to be the sole or concurring cause of the bodily injury, sickness, disease or death of contractor's employee or the employee of any of its subcontractors. The indemnification obligations under this paragraph shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for contractor under workers compensation acts, disability benefit acts or other employee benefit acts.

Contractor shall procure liability insurance covering its obligations under this paragraph

(C) owner and contractor agree that contractor's obligation to indemnify and hold harmless the indemnities is a separate and distinct obligation of contractor for which owner and contractor have specifically negotiated and bargained. As consideration for such obligation, owner shall pay contractor the additional sum of one hundred and no/100 dollars (\$100.00), which consideration shall be separate from and in addition to all other sums to be paid by owner pursuant to the terms of the contract. This consideration for the indemnity-hold harmless obligation of contractor shall be due upon the execution of the contract. The monetary limitation of this duty to indemnify shall be _____ (as this sum bears a reasonable commercial relationship to the contract) as additionally set forth in the project specifications and bid documents submitted by the contractor to _____ (entity).

13.2 Contractor's Insurance

(1) Contractor shall not commence any construction work in connection with the Project Agreement until Contractor has obtained all the following types of insurance and such insurance has been approved by the Owner. All insurance policies shall be with insurers qualified and doing business in Florida

Coverage shall be at least as broad as:

(2) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

An additional insured endorsement listing the Owner must be provided and attached to the certificate of insurance and must include coverage for completed operations (should be ISO CG20101185 or current editions of CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of 10 years from the date of possession by owner or completion of contract. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the Owner. Policy shall contain no exclusion for third party action-over claims. If applicable, there shall be no exclusion for EFIS. Coverage for the hazards of explosion, collapse and underground property damage (xcu) must also be included. Coverage should extend to independent contractors and fellow employees. Contractual liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO Form Separation of Insureds clause. Policy is to include coverage for pollution release at location in which the insured is performing non-environmental operations. A "limited pollution liability extension endorsement" may be attached. There shall be no exclusion for mold, silica or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes or ash from a hostile fire.

(3) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage. Owner must be listed as Additional Insured. A waiver of subrogation must be provided. Coverage must apply on a primary basis.

(4) Workers' Compensation insurance as required by the State of Florida, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum for all Contractor's employees connected with the work of any Project governed by this Master Agreement and, in case any work is subcontracted, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor. A waiver of subrogation must be provided. Should scope of work performed by contractor qualify its employee for benefits under federal workers compensation statute, proof of appropriate federal act coverage must be provided.

(5) Professional Liability (if Design/Build), with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate

(6) Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, an \$2,000,000 policy aggregate.

Applicable to all insurance coverages: If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Owner requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds more than the specified minimum limits of insurance and coverage shall be available to the Owner.

(7) Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(8) Additional Insured Status

The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(9) Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(10) Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Owner.

(11) Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the Contractor shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.

(12) Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Owner for all work performed by the Contractor, its employees, agents, and subcontractors.

(13) Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Owner.

(14) Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The Retroactive Date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Owner for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

(15) Verification of Coverage

Contractor shall furnish the Owner with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Owner before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(16) Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

(18) Builders Risk: Builders Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form is required for property in the course of construction to cover subject property for all risks of loss (including flood, theft, sinkhole, windstorm & hail) with no coinsurance. Policy should include off site storage, transit, installation and equipment breakdown. Equipment breakdown coverage should include testing. Permission to occupy should be included. Policy is to cover the interest of all parties including Owner, all contractors and subcontractors. Contracts involving ground up new construction as well as renovations or additions to existing property should be referred to Risk Management who will make final determination as to the procurement of this coverage. _Owner shall be named as a loss payee.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATION

- 14.1 Termination by Contractor - If the Project is stopped for a period of sixty (60) cumulative days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor, then Contractor may, upon seven (7) days written notice to the Owner, request payment for all work executed, Contractor's fees earned to the date the Project was stopped, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery.
- 14.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause -
- (1) If Contractor fails to perform any of Contractor's obligations under this Agreement or any Project Agreement, including any obligation Contractor assumes to perform work with Contractor's own forces, the Owner may, after seven (7) days written notice during which period Contractor fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and Contractor's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
 - (2) If Contractor persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls thirty (30) days or more behind schedule) which has been adopted by the Construction Team, or if Contractor fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of this Agreement or the Project Agreement, then the Owner may, without prejudice to any right or remedy and after giving Contractor and Contractor's surety, if any, seven (7) days written notice, during which period Contractor fails to cure the violation, terminate the Project Agreement and Master Agreement and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor, and may finish the Project by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Project is finished nor shall Contractor be relieved from Contractor's obligations assumed herein. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing Contractor (excluding monies owed Contractor for subcontract work).
 - (3) If Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Contractor in conjunction with this Agreement or the Project Agreement, then the Owner may, without prejudice to any right or remedy and after giving Contractor and Contractor's surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, terminate the Project Agreement and Master Agreement and take possession of the site and

of all materials, equipment, tools, construction equipment and machinery thereon, owned by Contractor, and may finish the project by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Project is finished nor shall Contractor be relieved from Contractor's obligations assumed herein. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing Contractor (excluding monies owed Contractor for subcontract work).

14.3 Termination by Owner Without Cause

- (1) If the Owner terminates this Agreement or any Project Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), Owner shall reimburse Contractor for any unpaid Cost of the Project due Contractor under any Project Agreement in effect, plus that part of the unpaid balance of the Construction Phase Fee in an amount equal to the Construction Phase Fee multiplied times the percentage of the construction project completed. The percentage shall be determined by the project team. The Owner shall also pay to Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that Contractor has previously undertaken or incurred in good faith in connection with the Project. Contractor shall, as a condition of receiving the payments referred to herein, execute and deliver all such papers and take all such steps including the legal assignment of Contractor's contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of Contractor under such obligations or commitments.
- (2) After the establishment of the GMP or at the completion of the Design Phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate the Project Agreement and pay Contractor its proportionate fee due in accordance with the Project Agreement plus any costs incurred as allowed herein.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor Contractor shall assign its interest in this Agreement without the written consent of the other, which consent may be withheld for any reason, except as to the assignment of proceeds.

ARTICLE 16

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- 16.1 The Owner's liability to Contractor for any claims arising out of or related to the subject matter of this Agreement or any Project Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

- (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (b) Contractor must submit a Notice of Claim to Owner and to the Architect-Engineer within (5) five business days of when Contractor was or should have been aware of the occurrence of the event giving rise to the claim; and
- (c) Within 10 days of submitting its Notice of Claim, Contractor shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

Contractor agrees that the Owner shall not be liable for any claim that Contractor fails to submit as a Request for Change Order as provided in this paragraph, unless such claim was unknown or could not have been known at the time..

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to Contractor its written determination of the claim.
- 16.3 For work Contractor performs with its own forces, and in addition to the adjustments provided for in the Project Agreement, Contractor's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, Contractor's claim for adjustments in the contract sum is limited exclusively to its actual costs for such changes plus 5% for profit. Contractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17

MISCELLANEOUS

- 17.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Florida Statutes.
- 17.2 Harmony - Contractor is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Contractor and its subcontractors for work on any project shall work in harmony with and be compatible with all other labor being used by building and Contractors now or hereafter on the site of the project.

Contractor further agrees that this provision will be included in all subcontracts of the subcontractors as well as Contractor's own contract; provided, however, that this provision shall not be interpreted or enforced to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 17.3 Apprentices - If Contractor employs apprentices on the project, the behavior of Contractor and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. Contractor will include a provision like the foregoing sentence in each subcontract.
- 17.4 Invoices Submitted Under Article 9 - Invoices submitted shall be submitted in detail sufficient for a proper preaudit and post audit thereof.
- 17.5 Contractor's Project Records - Contractor's Project Records shall be maintained as prescribed hereinabove for the minimum period required by Federal Law, and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 17.6 Contractor's Payment Rights Contractor providing goods and services to the Owner should be aware of the following time frames. The Owner has thirty (30) days to inspect and approve the goods and services provided from the date of receipt of Contractor's pay request, and process pay requests for payment. Pay Requests which must be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The Pay Requests payment requirements do not start until a properly completed Pay Request is provided to the Owner.
- 17.7 This Agreement shall be governed by and construed in accordance with laws of the State of Florida and the parties agree to submit to personal authority and venue in the Nineteenth Judicial Circuit of Florida, St. Lucie County, and in the event of federal authority, in the United States District court, Southern District of Florida.
- 17.8 No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- 17.9 If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs and including, without limitation, all such fees, costs and expenses incident to appeals, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- 17.10 The Owner and Contractor each binds itself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party.
- 17.11 Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served (as elected by the party giving such notice) by any of the following methods:
- (i) Hand delivery to the other party; or

- (ii) Delivery by commercial overnight courier service; or
- (iii) Mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of notice the addresses are as follows:

Contractor:

Owner:

COMPANY NAME

Director of Maintenance, Building Services and Projects
School Board of St. Lucie County
327 N.W. Commerce Park Blvd.
Port St Lucie, Florida 34986

Notice given in accordance with the provisions of this Section shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

- 17.12 The Owner is exempt from payment of Florida State sales and Use Taxes. If requested, the Owner will sign an exemption certificate submitted by Contractor. Contractor shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Owner, nor is Contractor authorized to use the Owner's Tax Exemption Number in securing such materials.
- 17.13 Contractor shall be responsible for payment of all federal, state, and local taxes and fees.
- 17.14 Contractor shall not pledge the Owner's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17.15 Contractor is and shall be an independent contractor in the performance of all work, services, and activities under this Agreement and is not an employee, agent or servant of the Owner. All persons engaged in any of the work or services performed pursuant to this Agreement shall always and in all places be subject to Contractor's sole direction, supervision and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work and in all respects Contractor's relationship and the relationship of its employees to the Owner shall be that of an independent contractor and not as employees or agents of the Owner.
- 17.16 Contractor does not have the power or authority to bind the Owner in any promise, agreement or representation other than such power or authority which is specifically provided for in this Agreement.
- 17.17 Contractor warrants and agrees that it shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment on the basis of age, ancestry, citizenship status, color, disability, ethnicity, genetic

information, gender, gender expression, gender identity, marital status, medical condition, national origin, political beliefs, pregnancy, race, religion, religious beliefs, sex, sexual orientation, or veteran status

17.18 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the formality and of equal dignity herewith.

17.19 Contractor hereby represents and warrants that it shall always during the term of this Agreement fully comply with all federal, state, and local licensing and registration requirements and that it will always conduct its professional and business activities in a reputable manner.

Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including those dealing with safety (including the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

For federally funded projects, Contractor must comply with all federal rules and regulations including those defined in the Davis Bacon Wage Rate Act, the federal Education Department General Administrative Regulations (EDGAR), and those acts referred to by EDGAR, such as the Copeland Anti-Kickback Act (29 C.F.R. Part 3) and the Contract Work Hours and Safety Standards Act (28 C.F.R. Part 5). 35.4 Without limitation, Contractor shall comply with and remain in compliance with the Immigration and Control Act of 1986 as applicable to Contractor, including required employment and identity verification procedures and record keeping requirements. In the event Contractor fails to comply in any respect with the applicable requirements of the Immigration Reform and Control Act of 1986, Contractor agrees to indemnify and hold harmless Owner and its officers and employees for all penalties, fines, charges, assessments, claims, demands, actions, or causes of action by the United States Government or by any other entity or person.

Contracts and subgrants of amounts in excess of \$150,000 agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

Contractors that apply or propose for an award exceeding \$100,000 must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Byrd member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

Contractor further agrees to pay any expenses, including attorneys' fees, incurred by Owner as a

result such failure to comply with applicable federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act

As appropriate and to the extent consistent with law, the Contractor should provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- 17.20 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 17.21 Captions in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions.
- 17.22 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was accurately represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement which has been drafted by counsel for both the Owner and Contractor.
- 17.23 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes Section 112.311, F.S.. The Contractor further represents that no person having any interest shall be employed for said performance. The Contractor shall promptly notify the Owner in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance the nature of work that the Contractor may undertake and request an opinion of the Owner as to whether the association, interest or circumstance would, in the opinion of the Owner, constitute a conflict of interest if entered into by the Contractor. The Owner agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the Owner, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the Owner shall so state in the notification and the Contractor shall, at the Contractor's option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Owner by the Contractor under the terms of this Agreement.
- 17.24 This Agreement does not confer any right or obligation enforceable by a third party. Nothing in

this Agreement shall be construed as consent by an agency or subdivision of the State of Florida to be sued by a third party in any matter arising out of any contract.

17.25 The covenants, warranties, representations, indemnities, and undertakings of the parties that create obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement regardless of the reason for such expiration or termination.

17.26 The Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor, to solicit or secure this Agreement, and that the Contractor has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making this Agreement.

17.27 Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond the party's its reasonable control, (financial difficulty shall not be considered a cause beyond a party's control), all of which causes herein are called "Force Majeure", including, but without being limited to:, strikes, lockouts, or other industrial disturbances; fires; unusual climatic conditions, ("acts of God"); acts of a public enemy; or inability to obtain transportation or necessary materials in the open market. The party unable to perform as a result of force majeure promptly shall promptly notify the other party at of the beginning and ending of each such period, and parties shall mutually agree to an amendment to the schedule and, if appropriate, the fee schedule. Owner shall compensate Contractor at the rates set forth herein, for the services performed by Contractor hereunder, up to the date of the beginning of such period. If any period of force majeure continues for thirty (30) cumulative days of more, either party shall have the right to terminate this Agreement without penalty upon seven (7) days prior written notice to the other party. In the event of such termination by the Contractor, the Contractor shall be entitled to payment for all work executed up to the date of termination plus reasonable demobilization costs and any expenses related to commitments made to subcontractors and suppliers that cannot be cancelled. The Contractor's financial difficulty to complete the Project shall not be considered a cause beyond a party's control.

17.28 PUBLIC RECORDS

The Contractor shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Owner in conjunction with this Agreement. If the Contractor meets the definition of "Contractor" as set forth in Section 119.0701, Florida Statutes, the Contractor shall also:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;

(b) Provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

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

If Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to the Agreement, contact the custodian of public records at (772) 429-5546, 9461 Brandywine Lane, Port St. Lucie, FL 34986, or pr@stlucieschools.org

17.29 E-Verify.

A. Pursuant to Section 448.095(2), F.S., every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

B. Contractors shall use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement.

C. The Contractor must furnish to the Owner evidence of compliance with Section 448.095, F.S., by providing notice of the Contractor's E-Verify number, along with an affidavit stating the Contractor does not employ, contract with, or subcontract with an unauthorized alien, as defined by Section 448.095, F.S.

D. Subcontractors.

1. The Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.

2. Subcontractors shall provide the Contractor with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined by Section 448.095, F.S.

3. The Contractor shall provide a copy of its subcontractor's affidavit to the Board upon receipt and shall maintain a copy for the duration of the Agreement.

E. Failure by the Contractor or the Contractor's subcontractor, to comply with the provisions of this section during the term of this Agreement is a material breach of the Agreement and the Owner shall terminate the Agreement. The Contractor shall be liable for

all costs associated with the Owner securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary). In addition, the Contractor may not be awarded a contract with the Owner for at least one year after the date this Agreement is terminated.

ARTICLE 18

SPECIAL CONDITIONS OF THE OWNER

INTRODUCTION:

St. Lucie Public Schools will perform in the role of Owner for this project. The Owner's role for this project will consist of various duties. The primary role will be to oversee the performance of the work, contract administration, pay application process and to monitor the overall project schedule. The activities that the Owner will be involved in on this project are as defined herein. The Contractor shall fulfill all requirements and perform all duties and obligations as outlined in these Special Conditions of the Owner.

18.1 **REQUIRED PROJECT MANAGEMENT FORMS:** The following is a list of forms that the Contractor shall submit to the Owner. These forms will be used to facilitate monitoring of the overall progress of the project. Please note the following:

18.1.1 **Buyout Log:** This is a log that will show all material vendors/suppliers to be used for any particular scope of work. This log will help track the status of all materials that could be important to the overall project schedule. This log will show the suppliers' company name, the P.O. #, the date of release, the material need date, the lead time and finally the scheduled delivery date to the site. **The Buyout Log is to be submitted to the Architect and Owner for review and approval no later than fifteen (15) calendar days after the Contractor receives a notice to proceed from the Owner.** The Architect and Owner shall review within five (5) calendar days and return for modification or record. Any changes needed shall be made and a final version sent by the Contractor to the Architect and Owner for final approval within five (5) calendar days from receipt. The information provided shall be used to establish the submittal schedule for the project.

18.1.2 **Daily Work Force Form:** This is a form that will be used to track the forces of any particular Contractor on a daily basis. This form is to be submitted to the Owner at the end of each work week.

18.1.3 **Subcontractor/Vendor List:** This is to be submitted to the Owner for review prior to the awarding of the Contract. This form will also need to be updated monthly and submitted with the pay applications as part of the approval process.

- 18.1.4 A monthly weather log tracking the daily temperature, weather conditions, rain totals and days lost to inclement weather will also be required. This form should show monthly averages on temperature and rain totals at the bottom. A comparison of this data with the local climatological data history will be required to be submitted with the pay applications.
- 18.1.5 A weekly observation report shall be issued by the Contractor documenting that the SWPPP is adequately and properly installed and maintained to meet the requirements of the Authority having Jurisdiction (AHJ). In the case of rain events yielding rainfall of .5” or greater, within a 24-hour period, a separate report shall be issued.
- 18.1.6 A log tracking the Contractor and all its’ subcontractor’s insurance, will also need to be updated and submitted with each pay application before the pay application will be processed. The log shall list the name of each company with columns for each type of coverage and the corresponding expiration date for each coverage listed in the columns.
- 18.1.7 Other lists & logs as required monitoring project status: During the progress of the project, other logs or lists may be needed to track the status of the project. The Owner reserves the right to request, and the Contractor agrees to provide, additional information as needed.
- 18.2 PROJECT SAFETY: The following is a list of safety requirements for all Contractors that will be participating on this project. Please note the following:
- 18.2.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.
- A. Safety: The Contractor and Subcontractors working on this project shall be responsible for implementing and maintaining their own Safety and Health Program in accordance with OSHA and applicable state and local authorities. The Contractor for this project shall prepare a written safety program and submit it to the Owner for review within 10 calendar days of Project Award/Notice to Proceed.
- B. In the case of those contractors and their respective subcontractors who have over fifty (50) employees on the project site, they shall be required to have a fulltime Safety Manager on site during execution of the work. It shall be the Contractor’s responsibility to flow this requirement down to their subcontractors. Owner reserves

the right to review the qualifications of those proposed to execute the duties of Safety Manager and accept them.

- C. Contractor shall be responsible for initiating the safety program, ensuring that jobsite safety requirements and procedures are being accomplished, conducting safety inspections of work being performed, conducting at a minimum weekly safety meeting with craft employees and compiling a weekly report documenting safety activities. The Contractor will also be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or accident are controlled, and that operating equipment, tools and facilities are used, inspected, and maintained as required by applicable safety and health regulations.
- D. Owner shall have the right to stop work whenever safety violations are observed which could jeopardize the well-being of personnel and equipment. The expense of any such work stoppage and resultant standby time shall be at the Contractor's expense. The failure or refusal of Contractor to correct the observed violation may result in the termination of the Contract, and/or the dismissal from the jobsite of those responsible for such failure or refusal. Contractor shall provide to Owner, within 24 hours, a copy of all reports provided to government agencies or insurance companies relating to any jobsite accident or injury during Contractor's performance of the Work.
- E. Hazardous Substances: Contractor shall comply with applicable hazardous substance disclosure requirements set forth by the occupational Safety and Health Administration (OSHA) and any other state and federal regulations.
- F. OSHA Permits and Programs: Contractor shall initiate and maintain such permits and programs as may be necessary to comply with requirements set forth by the Occupational Safety and Health Administration (OSHA) and by any other state and federal regulations. A copy of all permits shall be available upon request.

18.3 SITE UTILIZATION:

- 18.3.1 The Owner shall pay for temporary power consumption for construction. The cost of providing service (pole, meter, etc.) will be the responsibility of the Contractor, if necessary, to provide power over and above that which is readily available at the Project Site. The Contractor is responsible for providing and paying for their job trailer power.
- 18.3.2 The Owner shall pay for temporary water consumption. The Contractor is responsible for providing and paying for their job trailer water and sewer.
- 18.3.3 The Contractor shall provide and maintain temporary toilets during construction.

18.4 DEFINITIONS:

- 18.4.1 SPECIAL CONDITIONS: Additional special or Prime requirements of the Contract that are necessary and peculiar to the particular project and which are not included in the parts of the Prime Conditions of the Contract.
- 18.4.2 SURETY: The corporate body, licensed under the laws of Florida, bound with and for the Contractor for the full and complete performance of the Contract and also for the payment of all claims recoverable under the Contract Bonds.
- 18.4.3 PRIME AND SPECIAL CONDITIONS: Where both Prime and Special Conditions relate to the same thing, the Special Conditions will prevail; that is, the specific language will take precedence over the more Prime wording; however, where both the Prime and Special Conditions may be given reasonable effect, both are to be retained, and should the Prime and Special Conditions be contradicting, the more stringent requirement shall be enforced.
- 18.5 SUPERINTENDENT: The Contractor shall submit to the Architect within five (5) days following award, the name, qualifications and experience of the Superintendent who will be in charge at the work site. The Contractor shall similarly submit to the Architect and Owner for any change in Superintendent prior to the change.
- 18.6 EMPLOYEES: All labor shall be performed in the best and most workmanlike manner by persons skilled in their respective assignments or trades. Workmen whose work is unsatisfactory to the Owner or the Architect, or who are considered unfit or unskilled, or otherwise objectionable, shall be dismissed upon notice to the Contractor from the Owner or the Architect.
- 18.7 PROGRESS SCHEDULE: The Contractor shall provide a comprehensive construction schedule of appropriate detail and format, to monitor all aspects of the progress of the project
- 18.8 DELAYS: Calculation of rain days shall be in accordance with the following:

POLICY FOR GRANTING TIME EXTENSIONS DUE TO RAIN

- 18.8.1 Obtain precipitation data from an approved Weather Station in Florida for purposes of determining rain days and the five-year average for rain days in any given month.
- 18.8.2 A “rain day” is any day with a measured precipitation of more than 0.1 inch.
- 18.8.3 Determine the average number of days per month with a measured precipitation of more than 0.1 inch for the five-year period preceding the start of the project in question.

- 18.8.4 Compare the number of rain days during each month of the Project Contract Time to the monthly five-year average. The Contractor may be granted an extension for rain days during the contract period which exceeded the five -year average (excessive rainfall). The number of days granted will vary depending upon whether Critical Path schedule activities were delayed as a result of excessive rainfall.
- 18.8.5 At the end of the contract period a change order will be issued granting a time extension if the procedure described above determines the Contractor is due additional days.
- 18.9 INSURANCE: Refer to PRIMECONDITIONS of the CONTRACT.
- 18.9.1 The policy shall name “The School Board of St Lucie County, Florida” as an additional insured.
- 18.10 PROJECT SAFETY: Contractor shall provide, institute, and/or implement the following:
- 18.10.1 Security Program: Contractor is responsible for the security of its workers, tools, materials, and equipment on (and to and from) the jobsite. All small tools and construction equipment belonging to Contractor must be clearly identified as such. Tools including personal tools are subject to inspection. Owner shall make no representation about the security of the jobsite and disclaim all responsibility for the security of Contractor’s workers, tools, materials, and equipment on (and to and from) the jobsite.
- 18.10.2 Joint Occupancy: the road into the work site on the Project will be used jointly by all contractors.
- 18.10.3 Construction Area Limits: Owner and or the Architect will designate the boundary limits of access roads, parking areas, storage areas, and construction areas. Contractor shall not trespass in or on areas not so designated. Contractor shall be responsible for keeping all its personnel out of areas not designated for Contractor’s use. The Contractor shall provide adequate trash receptacles, maintain, and keep the areas clean and free of trash and debris (construction or otherwise).
- 18.10.4 Contractor’s Temporary Buildings: All temporary construction buildings shall be fire retardant. The location, size(s), and quantity of temporary buildings shall be subject to Owner’s review and approval.
- 18.10.5 No Smoking: No Smoking will be allowed in the work area(s) or outside of the designated smoking areas. Contractor will determine designated smoking areas with the Owner’s Approval.
- 18.10.6 Lunch Facilities: Contractor shall provide any necessary lunch facilities for construction personnel outside the new or renovated construction buildings, but within the Construction

Contract Limits. No vending machines or vending trucks of any kind will be permitted on the construction site.

18.10.7 Personnel Clothing and Equipment: Contractor's personnel must wear proper hard hats clearly marked with company logo, safety boots, safety glasses and all other necessary and required safety equipment and clothing as regulated by OSHA standards.

18.10.8 Ventilating: Prevent hazardous accumulations of dust, fumes, mist, vapors, or gases in area occupied during construction. Provide local ventilation to prevent harmful accumulation of hazardous substances into atmosphere of occupied areas. Dispose of materials in manner that will not result in harmful exposure to persons or disrupt or otherwise effect operation of existing facilities. Ventilate storage spaces containing hazardous, volatile, or high temperature sensitive materials.

18.10.9 Site Signs: Identification signboards and notices for safety or instruction are permitted on site only after approval of Owner or for format, location, and quantity.

18.11 CONSTRUCTION SAFETY: The Contractor shall be required to jointly coordinate the overall project safety with each of the other Prime Contractors employed on the project. Below as a minimum are the standards for safe practices that shall be used in these coordination efforts by all personal assigned to this project.

18.11.1 PERSONAL PROTECTIVE EQUIPMENT (PPE)

- A. **Eye Protection: 100% Eye Protection must be utilized at the point in which you enter the site (gate-to-gate).** Safety glasses must meet ANSI (Z87.1) requirements. Prescription glasses must meet ANSI (Z87.1) requirements and be worn with rigid side shields. **Face Shields** are required to be worn in addition to safety glasses when drilling, burning, cutting, grinding, chipping, sawing, grouting and when otherwise required by your competent supervisor or similar activities as outlined in OSHA 1926.102. Tinted (sunglasses) lenses are not permitted inside dark or enclosed buildings. Site visitors and periodic inspection personnel wearing standard prescription glasses must utilize rigid side shields or "over-the-glass" type eye protection. **WELDING HELMETS** are mandatory for all arc welding activities.
- B. **Hard Hats:** Hardhats meeting the requirements of OSHA 1926.100 shall be utilized and unaltered. Hardhats are required for all site personnel and must be worn at all times. Hardhats shall be properly worn at all times, with suspension and bills facing forward, without exception. **For operations that require the use of a welding hood, the hardhat must have the suspension in the appropriate orientation according to the manufacturer** (See Section 12 G.) Hardhats shall be inspected daily and replaced when defects are apparent. Hard Hats that contain offensive

language and/or imagery shall not be worn. Such offenses shall include disciplinary action which may include immediate and permanent dismissal from this job site.

- C. **Proper Clothing:** Each employee must arrive at the project site ready to work and clothed appropriately. Shirts must have a minimum of a 4" sleeve and full-length TROUSERS must be worn by all personnel at all times while on this jobsite. Tank tops, sleeveless shirts, shorts, extremely baggy, loose or ragged clothing is prohibited. Material that contains offensive language and/or imagery shall not be worn. Such offenses shall include disciplinary action which may include immediate and permanent dismissal from this job site.

- D. All personnel are required to wear high visibility fluorescent yellow-green or orange warning apparel at all times on the project site (i.e. vests, jackets, etc.) must meet ANSI Class II requirements for retro-reflectivity. All warning apparel will be required to be worn (gate-to-gate) on the project. This apparel is to be worn as the outer most layer of clothing.

- E. **Footwear:** BOOTS or SHOES shall be industrial grade with hard soles and required to be worn at all times. Safe Footwear shall also support the ankle and guard against potential puncture and/or crush wounds. More substantial protective footwear including, but not limited, steel toe/metatarsal guards may be required for manual and mechanized hammering, compaction, drilling, cutting, chipping, grinding, sawing, and grouting and when required by your competent supervisor. Roofers are required to wear approved industrial grade footwear. Athletic/non-safety type shoes are prohibited and those employees wearing such will be removed from site.

- F. **Work Gloves:** Gloves are required when handling materials. For proper glove selection, review the appropriate MSDS or contact your competent supervisor. Specific Work Gloves shall be worn when handling material with sharp and/or rough edges to prevent cuts or punctures as directed by your competent supervisor. FINGER RINGS, WRISTWATCHES, and OTHER JEWELRY impose a potential hazard. All workers shall be trained about such potential hazards. Safe practices shall be enforced by your competent supervision.

- G. **Respiratory Protection:** When cutting or grinding cementitious materials or cleaning in enclosed environments, respirators equal to NIOSH N-95 should be worn for protection. All other areas or operations will be evaluated by project supervision. Prime will be responsible for their own employees and shall provide all Contractor's with their program elements and identifications of competent persons. Where conditions warrant, air sampling may be required to ensure the correct selection of respiratory protection.

- H. **Hearing Protection:** Use hearing protection in high-noise areas, and at times when use of elevated voice is required. Hearing protection is required when operating grinders, air tools, jackhammers, hammer drills, powder-actuated tools, cut-off saws, and similar tools or when exposed to noise at or above OSHA action levels. Contractor is responsible for their own employees and shall provide all Contractor's with their program elements and identification of competent persons. Where conditions warrant, noise sampling may be required to ensure the correct use and selection of hearing protection.

- I. **Cement Burns:** Are a potential hazard, particularly in warmer weather. Be sure cement does not get inside your boots or gloves. Use recommended barrier cream on hands and wrists. Wash off any cement or concrete that gets on exposed skin as soon as possible. Subcontractors must report any burns, no matter how slight, to their Supervisor.

18.12 FALL PROTECTION

- 18.12.1 Contractor shall be required to provide 100% fall protection for all work 6 feet and above walking/working surfaces where guardrail protection is not in place (see Scaffold, Ladder, and Stairway sections).
 - A. Steel Erectors/Pre-cast Erectors – 100% Fall Protection is required at 6 feet and above walking/working surfaces.
 - B. Scaffold Systems – 100% Fall Protection is required at 6 feet and above walking/working surfaces.
 - C. All other work - 100% Fall Protection is required at 6 feet and above walking/working surfaces 100% fall protection

- 18.12.2 Fall protection equipment shall be utilized in accordance with the manufacture's requirements and/or per a registered professional engineering's stamped fall protection plan.

- 18.12.3 A safe means of access shall be maintained to structural activities.

- 18.12.4 A guardrail system consisting of a top rail (39"– 45") and mid-rail will be constructed at all **unprotected sides, edges and floor openings where a recognized fall hazard to a lower level exists**. The guardrail system will be capable of supporting 200 lbs and have a toe board installed for the protection of those working below.

- 18.12.5 Wire rope guardrail and perimeter slab edge systems will consist of a top rail, mid-rail and be flagged at not more than 6-foot intervals with high-visibility material. A minimum of three (3) U-bolt wire rope clips will be used and installed such that the "U" section is in contact with the dead end of the rope. Wire rope guardrail systems will be maintained to ensure the lowest point

above the walking/working surface is no less than 39-inches and highest point no greater than 45-inches.

18.12.6 Openings in floors and roofs shall be provided with a guardrail fall protection system that includes 4" toe-boards unless a HOLE COVER is used.

18.12.7 Only roofers may use the Warning Line System set back a minimum of 6 feet from an unprotected edge on a low-sloped roof (a roof less than or equal to 4V in 12H). No roofer will be allowed in the area between the roof edge and the warning line without personal fall arrest system.

18.13 SCAFFOLDS and ELEVATED PLATFORMS

18.13.1 All scaffolding shall be inspected, constructed, dismantled, or altered by a designated competent person. This inspection shall be performed daily and prior to the shift.

18.13.2 100% Fall Protection is required while erecting scaffold at six feet and above unless it is determined to not be feasible. (Feasibility to provide appropriate protection is not determined by cost.)

18.13.3 All scaffolds will be fully planked, braced, and guardrail systems installed (**six- feet and above**) per the manufacturer requirements. Employees shall be tied- off when guardrails cannot be installed at heights of six feet or greater.

18.13.4 Scaffolding is to be supported on a firm subgrade and sound mudsill material. Base plates are required for all fixed scaffolds.

18.13.5 Provide toe-boards, screen systems, or similar to protect those working below elevated decks and structures.

18.13.6 Mobile scaffolds must be erected with cross, horizontal or diagonal braces (or a combination of these) to prevent racking and provide a rigid structure. The scaffold must be plumb, level and squared. All brace connections must be securely fastened. The scaffold casters must have positive wheel and swivel locks to prevent movement of the scaffold when it is in use. The manual force used to move the scaffold must be applied as close to the base as possible, but not more than five feet above the supporting surface. Employees shall not ride on mobile scaffold or be on the scaffold while it is being moved.

18.13.7 Follow manufacturer recommendations when using **Perry** or **Baker** type scaffold systems. Their requirements may be more stringent than OSHA.

18.13.8 Safe ladder/stair access shall be provided to the scaffold. Swing gates shall be provided on all working levels at ladder access.

18.13.9 Scaffolds shall be loaded according to its designed capacity.

18.13.10 Side brackets shall not be used to support materials.

18.13.11 100-percent fall protection is required when working from scaffolds placed near perimeter or slab edge protection when your waist is above the top-rail height. At all times scaffolds near perimeter and slab edge protection shall be secured to prevent displacement.

18.13.12 All work performed from a scissor lift must be accomplished with feet firmly on the deck. 100-percent fall protection must be maintained in a scissor lift.

18.13.13 Fall restraint devices are required while working from Aerial lifts/Articulating boom lifts. Fall restraint devices shall be secured to manufacturers anchorage points.

18.14 LADDERS and STAIRWAYS

18.14.1 Ladders must be inspected for defects prior to each use and equipped with safety feet. Ladders with broken/damaged components or missing/illegible manufacturer's instructional labels must be removed from service immediately.

18.14.2 Aluminum/Metal ladders are prohibited to be used for electrical work or where electrical hazards are present.

18.14.3 Persons shall never climb or descend a ladder with anything in their hands. Climbing up, down and working from ladders will be performed while facing the ladder. Use a hand line to raise tools and equipment. Always use a canvas bucket with hand lines. Do not suspend items in buckets or other containers that are not designed and engineered to be suspended.

18.14.4 Extension-ladders shall be used on firm foundation safely secured from displacement at the top and bottom and extend at least 3' above the landing when accessing elevated work areas. When extension ladders cannot be tied-off, another employee will be required to secure the base of the ladder. Extension ladders will be used at an angle of 1 horizontal to 4 vertical/ 75- degrees (Horizontal distances from support to the foot of the ladder $\frac{1}{4}$ the working length of the ladder).

18.14.5 Job built ladders will be constructed out of #1 grade lumber free of knots with cleats and blocking (filler blocks) will consist of 2x4 materials. Cleats will be uniformly spaced and parallel throughout the working height. Job built ladders will be used at an angle of 1 horizontal to 4

vertical/ 75-degrees (Horizontal distances from support to the foot of the ladder $\frac{1}{4}$ the working length of the ladder) unless the side rails are spliced. Angle must then be used at 1 horizontal to 8 vertical (Horizontal distance from support to the foot of the ladder $\frac{1}{8}$ the working length of the ladder). LADDERS SHALL NEVER BE PAINTED.

18.14.6 Work from the top two steps of stepladders is prohibited. Stepladders are designed to be worked from and not to gain access to elevated work areas.

18.14.7 **100-percent fall protection** is required when working from ladders placed near perimeter or slab edge protection when your waist is above the top-rail height. At all times ladders near perimeter and slab edge protection shall be secured to prevent displacement.

18.14.8 Prior to using stairways all tread pans must be filled, landings complete, and handrails in place. In the absence of these requirements, stairways are to be barricaded.

18.15 TRENCHING and EXCAVATING

18.15.1 All trench/excavations must be inspected daily by a designated competent person. This inspection will be performed daily prior to the shift and following major weather events. The creating-owner of the excavation shall maintain documentation indicating such inspections. The competent person is responsible to evaluate the trench/excavation for hazardous atmospheres that could result in it being classified as a confined space. Each contractor whose employees must enter excavations shall designate a competent person.

18.15.2 All trench/excavations greater than 5 feet deep shall be considered class "C" unless otherwise designated by a competent person.

18.15.3 Sloping or shoring methods must be employed for all excavations of **5-feet of depth or greater**.

18.15.4 Excavated material shall be stored at least 2' away from an excavated edge

18.15.5 Trench/Excavations greater than 4' in depth shall be provided with a ramp, stair or ladder that is safely secured from displacement, extending at least 3' above the excavated edge. Locate egress systems such that the travel distance from any point in the excavation is no greater than 25-feet.

18.15.6 A perimeter warning system will be used for all excavations not clearly visible or located near roadways and mobile equipment travel ways.

18.15.7 Employees will not be permitted to work underneath suspended loads or excavation equipment.

18.15.8 Trench boxes and shoring methods shall be used per the manufacturers' tabulated data or professional engineer's directions. Employees shall not leave the zone of protection.

18.15.9 All trenches and excavations twenty feet or greater in depth shall have sloping and shoring methods designed by a registered professional engineer (RPE).

18.16 ELECTRICAL

18.16.1 All ELECTRICAL EQUIPMENT shall be grounded. Three-pronged plugs and receptacles are required on all extension and three wire equipped cords. Double Insulated tools shall have original manufacturer's cord and plug. OSHA does not allow field repairs to Double Insulated tools. All electrical equipment must have legible decals listing warnings, type of service and other required safety information per OSHA standards.

18.16.2 Flexible cords (extension) shall be inspected daily prior to use and protected from damage. Flexible cords permitted for use must be No. 12 gauge or larger. Ensure all cords traversing areas subject to vehicular traffic and routed across aisle ways are protected from damage. Cords and leads run through doors and holes must be protected. Cords exhibiting damage, missing ground pins, broken strain relief, or exposed wires are to be taken out of service immediately. Field repairs to flexible cords are only authorized to be completed by a qualified licensed electrician.

18.16.3 Electrical Hazard shall be communicated legibly and readily visible on the outside of the circuit panel cover in English and Spanish.

18.16.4 GFCI protection shall be utilized when power is supplied from permanent building wiring. Protection shall be supplied via GFCI circuit breaker, receptacle or pigtail. Test and reset GFCI's before each use.

18.16.5 Temporary power stations will be inspected for defects and/or damage. Each breaker will be labeled and receptacles/devices in good condition. All open breaker or enclosure knockout spaces must be covered with manufacturer's blank plate. All defective components will be corrected immediately. Manufacturer supplied means must be used to lock panels when necessary.

18.16.6 Only qualified/authorized electricians will be permitted to work on energized electrical panels, rooms, and devices per the requirements of NFPA 70E. All energized electrical panels will be maintained with panel covers and dead front covers in place.

18.16.7 Utilize Lock-out/Tag-out procedures to render equipment inoperable or circuits de-energized during the construction process. Provide tags indicating ownership of the lockout device and the equipment/circuit de-energized.

18.16.8 All temporary power panels shall be locked.

18.16.9 Portable/vehicle mounted generators must be equipped with ground-fault receptacles (GFCI). Those not equipped with GFCI receptacles must utilize GFCI plug assemblies (pigtailed) for power supply to all tools, equipment or similar. Generators must be grounded in accordance with manufacturer's recommendations.

18.16.10 Properly utilize all Manufacturer Safety Guards as provided. The source of power shall always be disconnected whenever it is necessary to repair or adjust electrical tools/equipment. It is not sufficient to merely "shut-off" the operation switch/button of the equipment.

18.16.11 Adequate lighting will be maintained at all times including bulb guards, lamps, wiring, suspension means, and grounding.

18.17 FIRE PROTECTION

18.18 When cutting or burning, ensure an approved fully charged fire extinguisher is in close proximity. Know the condition of and where the nearest fire extinguisher is located. If the extinguisher is discharged, notify your supervisor for immediate replacement.

18.19 Gasoline and other liquid fuels must be kept in Department of Transportation (**DOT**) approved metal safety cans consisting of a flash arresting screen and spring closing lid/spout. Fuel cans will be stored in designated areas and labeled. Plastic fuel containers are not permitted.

18.20 All internal combustion engines must be shut off and cooled before fueling, oiling, cleaning or adjusting. Check oil when refueling. Do not use gas for cleaning parts and tools.

18.21 Smoking will be permitted in designated areas only.

18.22 Fire watches shall be provided for all hot work from elevated areas or for work where slag or sparks may fall through floor and wall penetrations. Fire watch personnel are required for thirty minutes after hot work is completed.

18.23 Signage such as "Flammable Materials" and/or "No Smoking" will be provided at all storage locations of flammable and/or combustible fuels as warning to those in close proximity. This signage is required at all storage/Conex locations where flammable materials or fuel

powered equipment is stored. Adequate fire suppression equipment shall be provided at each location.

18.24 TOOLS and EQUIPMENT

- 18.24.1 Hand tools are to be inspected daily prior to use. Hand tools such as, but not limited to, hammers, punches, wrenches, picks, chisels, etc. should be inspected for faulty handles, cracks, and/or mushroomed heads prior to the start of each job and shall be re-inspected at weekly intervals throughout the term of the job.
- 18.24.2 Damaged guards or similar components will require the tool to be removed from service and repaired per the manufacturer's requirements.
- 18.24.3 Employees using powder-actuated tools must have current certification indicating training completion by the manufacturer of the specific device and follow all requirements related to the safety of those in close proximity.
- 18.24.4 Compressed Air/Pressure hoses, including concrete pump hoses, must be secured at all couplings by means of pin or clip to prevent whipping or pull-out. Manufacturer's safety precautions and devices must be utilized.
- 18.24.5 Compressed Air/Pressure hoses should never be pointed at yourself or anyone else. Compressed air must be used for the prescribed operations only, with pressure levels kept as low as possible to adequately perform the job. NEVER use compressed air for removing dirt and debris from skin or clothing. An approved nozzle must be attached to the end of the hose limiting discharge to 30 p.s.i.
- 18.24.6 Side/angle grinders shall be used with the guards in place.
- 18.24.7 All equipment / machinery equipped with machine guarding devices must utilize these guards when the equipment is in operation.
- 18.24.8 Only industrial capacity rated chain hoists and cable winches (come-a-long) are permitted. Hooks must have operable self-closing safety latches. Load chains are not acceptable rigging devices.
- 18.24.9 Material or Equipment being transported by truck must be loaded, cinched, and flagged in a manner consistent with good loading and transporting practices and the truck shall only be driven by authorized employees holding valid Commercial Driver's License (CDL) of the proper class.

18.25 GUARDING/BARRICADING/SIGNAGE/BRACING

- 18.25.1 Use barricades to warn of holes in floor, missing handrails and other hazards created by work. **Plastic barricade tape (i.e. WARNING or CAUTION) is not an approved barrier/warning line. Fall protection is required if the fall exposure is six feet or greater.** At a minimum a warning line must be set back a minimum of **15 feet** or more from an unprotected edge (or nearest edge of a hole).
- 18.25.2 No employee shall be allowed in the area between roof edge, decks and other elevated surfaces and a warning line unless the employee is protected by a combination of warning line system and guardrail, warning line system and safety net or a warning line system and personal fall arrest system. **Warning lines may consist of ropes, wires, nylon tape or chains and supporting stanchions erected as follows:**
- 18.25.3 The rope, wire, nylon tape or chain shall be flagged at 6-foot intervals with high-visibility material;
- 18.25.4 The rope, wire, nylon tape or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than 34 inches from the walking/working surface and its highest point is no more than 39 inches from the walking/working surface;
- 18.25.5 The rope, wire, nylon tape or chain shall be attached to stanchions capable of resisting, without tipping over, a force of at least 16 pounds applied horizontally against the stanchion, 30 inches above the walking/working surface, perpendicular to the warning line, and in the direction of the floor, roof, or platform edge;
- 18.25.6 The rope, wire, nylon tape or chain shall have a minimum tensile strength of 500 pounds; and
- 18.25.7 The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections, causing all stanchions to tip over.
- 18.25.8 The line shall be a minimum of 15 feet from the perimeter edge.
- 18.25.9 **Warning DO NOT CROSS** signage shall be affixed a minimum of every 100 feet along the warning line.
- 18.25.10 Utilize barricade tape or proper signage to define areas including limited access zones, overhead work zones, and similar areas maintained for authorized personnel only.

- 18.25.11 Approved caps or covers shall be provided for all exposed vertical rebar, conduit and similar hazards. Provide protection for all horizontal rebar, conduit and similar hazards to prevent cut and scrape type injuries.
- 18.25.12 Provide HOLE COVERS for all floor openings, gaps or voids 2-inches or larger in its least dimension (including column block-outs). Hole covers may be used as long as the hole cover can support twice the intended workload (personnel, material, equipment, etc), the hole cover is secured from accidental displacement, and the hole cover shall be marked in English & Spanish **“HOLE & HUECO”**. Open-sided floors, and openings when not provided with hole covers, shall be provided with a guardrail fall protection system that includes 4” toe-boards. EXCAVATIONS must be safely guarded with barriers and warning lights at night.
- 18.25.13 Temporary bracing of freestanding masonry walls shall be adequate to support the wall for all reasonably expected loads.
- 18.25.14 Freestanding masonry walls shall have a controlled access zone (CAZ). This zone shall be the height of the wall plus four feet on the open side.
- 18.25.15 All freestanding Steel Columns shall be adequately guyed or braced to reasonably support all expected loads (i.e. wind loads).

18.26 WELDING and CUTTING

- 18.26.1 Fuel gas cylinders (oxygen/acetylene/LP gas, etc.) must be stored in their upright positions with Caps in place and secured when not in use. Oxygen and fuel gas cylinders must be kept a minimum of 20-feet apart or stored in an approved storage unit.
- 18.26.2 Oxygen/acetylene cylinders can be extremely dangers and shall be transported, used and stored in approved carts only. Approved carts consist of a noncombustible barrier at least 5-feet high between oxygen/acetylene cylinders which meets a fire-resistance rating of at least ½-hour. Oxygen/acetylene cylinders not in approved carts will be required to meet the storage requirements of OSHA. Always keep bottles shielded or at a safe distance from welding or cutting operations.
- 18.26.3 Gauges, gauge covers, valves, hoses and other torch set components will be inspected prior to each use. All defective components will be corrected prior to use of the assembly.
- 18.26.4 Gauges shall be removed and caps in place when transported in mobile equipment (i.e. trucks, cranes, forklifts, etc.).

18.26.5 Flashback arrestors will be required for all torches between torch head and hose assembly. Projects covered under EM 385 shall have flashback arrestors and reverse flow check valves installed.

18.26.6 Cutting torches shall be lit with strikers, do not use a cigarette or butane lighter.

18.26.7 **Welding Hoods:** Welding hoods should be attached to the hard hat. Soft hoods are not allowed. A minimum of No. 5 shade lens will be required in welding hoods and goggles while cutting or welding using oxygen/acetylene-cutting torches.

18.27 CRANES, HOISTING and LIFTING EQUIPMENT

18.27.1 Crane annual certifications and crane operator's qualifications must be available on site prior to commencing work.

18.27.2 All crane operators must be Certified Crane Operators (CCO) per ANSI B 30.5 standards. Each operator must be certified in the specific size and type of crane being utilized. Acceptable certifying agencies are:

1. National Commission for the Certification of Crane Operators (NCCCO)
2. North American Crane Bureau (NACB)
3. National Center for Construction Education and Research (NCCER)

18.27.3 All crane signal persons must be certified per OSHA 1926.1428 standards.

18.27.4 Every Contractor utilizing a crane must evaluate the Ground Conditions in accordance with OSHA 1926.1402, prior to travel or use that ground conditions are firm, drained and graded to a sufficient extent, at each location the equipment is intended to be use so that the equipment manufacturer's specifications for adequate support and degree of level of the equipment are met.

18.27.5 The operator will perform daily inspection of all cranes, rigging, and other components. These inspections will be documented and maintained for review by the contractor. Damaged equipment shall be tagged and immediately removed from service. Only certified persons will perform hoisting, signaling and rigging activities. Wood materials (i.e. pallets, crates dunnage, etc.) are not permitted for use in vertical hoisting/lifting operations.

18.27.6 Rigging Equipment such as CABLES, ROPES, SHEAVES, SHACKLES, BOOMS, LIFTING EQUIPMENT, etc., shall be checked and inspected each day by a competent person. All such **rigging equipment** shall always be tagged with legible capacity ratings. Worn or frayed items are to be replaced or repaired immediately. Inspection records must be available for review upon request.

- 18.27.7 **Outrigger Pads and Floats:** Cranes with outriggers shall ensure that all outriggers are fully deployed, in contact with sound surface and maintain crane in level position. Outriggers must be set to remove equipment weight from the wheels. Outrigger and stabilizer blocking must be placed under the float/pad of the jack. Blocking must also be sufficient to sustain the loads and maintain stability and must be properly placed. Monolithic floats/supplemental pads shall be larger than the outrigger pads, of substantial material to withstand imposed loads and will be required under each outrigger pad regardless of the type of surface being set up on.
- 18.27.8 Means of communication between crane operator, riggers, subcontractor employees, and all others exposed to overhead loads shall be agreed upon before work commences. Use of cellular phones or other devices that may distract the operator are prohibited while the crane is in operation.
- 18.27.9 Roadways and travel areas will be kept free of debris and stored materials.
- 18.27.10 Only employees actively engaged in the operations involving cranes or hoisting equipment should be around this equipment or in the areas served by the equipment. All site personnel should be aware of their surroundings and avoid walking beneath overhead loads. **STAY OUT FROM UNDER and IN FRONT OF SUSPENDED LOADS.** Do not cause or permit a load to be suspended over a person who is not authorized to be in such an area.
- 18.27.11 The swing radius of all cranes and similar lifting/hoisting equipment will be barricaded and maintained.
- 18.27.12 Maintain a minimum of Twenty feet of clearance from all overhead energized or potentially energized power lines while cranes/equipment are in operation. Insulating shields must be provided for all overhead lines where equipment could potentially enter this 20-foot zone. Coordinate installation of shields with local utility.

18.28 VEHICLES and MOBILE EQUIPMENT

- 18.28.1 **Only qualified and authorized personnel** will operate fork-lifts, cranes, scissor lifts, aerial lifts, loaders, skid steers, backhoes and similar heavy equipment. All such equipment will be operated safely and within safe speed limits. Seatbelts will be **worn at all times** while the operator is in the seat of equipment designed with seatbelts.
- 18.28.2 Operator shall possess documentation of operator competency.
- 18.28.3 All mobile equipment shall be inspected at mobilization and prior to each use. Copies of these inspection lists shall be provided upon request. Mobile equipment such as, but not limited to fork-lifts, cranes, scissor lifts, aerial lifts, loaders, skid steers, and backhoes require completion

of pre-shift safety inspection checklists. Mobile equipment that fails the pre-shift inspection must be Locked and Tagged Out to prevent operation.

18.28.4 Manufacturer's operation and safety manuals must be present and/or immediately available on the equipment for use by the authorized and trained operator.

18.28.5 All motorized equipment must have an audible backup alarm as well as a warning horn for forward movement. Equipment designed for bi-directional operation, such as a track hoe, must have an alarm that sounds when moving in either direction.

18.28.6 Sound horns when rounding corners or entering or exiting buildings. The use of flagging persons or similar means must be utilized when obstructed views exist.

18.28.7 Use of cellular phones or other devices that may distract the operator are prohibited for all types of mobile construction equipment when in use (Lifts, heavy equipment, mobile buggies and similar).

18.28.8 The number of persons that may ride in the cab of a truck at one time must not exceed the number of seatbelts available. SEAT BELTS, when provided by the manufacturer, shall always be worn. At no time shall persons be permitted to ride in the bed of a pickup truck or Rough Terrain Vehicle. Riding material hoists, crane loads, balls, hooks or excavation equipment is strictly prohibited.

18.28.9 Unattended forklifts (where the operator is more than 20' away) must have brakes set, Forks fully lowered, and engine turned off.

18.28.10 All company vehicles operated on the site must be road ready with operating lights, signals, mirrors, etc. in accordance with local ordinance.

18.28.11 Personal vehicles are prohibited in the construction site and must be parked in designated areas.

18.28.12 Maintain a minimum of 20 feet of clearance from All Wires (i.e. overhead energized or potentially energized power lines) which may come within any part of a proposed structure, scaffold, hoist/elevator, and/or construction equipment including, but not limited to, a fully-extended crane, fork-lift, backhoe, scissor lift, and/or aerial lift exists. Insulating shields must be provided for all overhead lines where equipment could potentially enter this 20-foot zone. Coordinate installation of these shields with local utility.

18.29 EMERGENCY RESPONSE/INCIDENT REPORTING

18.29.1 IMMEDIATELY REPORT ALL ACCIDENTS, INJURIES, NEAR HIT and UNSAFE CONDITIONS to the Contractor. This immediate reporting allows for prompt medical treatment and more complete investigation.

18.29.2 In the event of an emergency, use any available means to contact your supervisor.

18.29.3 In the event of an emergency that requires evacuation, all personnel will proceed in an orderly fashion to a designated assembly point. Remain in that area until instructed otherwise.

18.29.4 Contractor field management and contract partners are required to maintain first aid supplies in accessible locations. First aid logs must be maintained at the supply location.

18.29.5 Contractor field management including contract partners will coordinate, develop, revise, and communicate an emergency response plan for utilization in the event an emergency or accident occurs.

18.29.6 Contractor with two or more employees will have a minimum of two individuals certified in CPR and First Aid on-site.

18.30 CONTRACTOR'S SCHEDULE:

18.30.1 Contractor's Construction Schedule Development:

1. The Contractor shall within ten (10) days of Approval of the GMP Amendment/ Notice to Proceed, prepare and submit a Preliminary construction schedule to the Architect and Owner for review and acceptance. The Contractor shall within thirty (30) days of the GMP Amendment/ Notice to Proceed, prepare and submit an Initial construction schedule informing the Architect and Owner of the order in which the Contractor plans to carry out the Work contained in that Contractor's scope of work within the stipulated overall duration of the project and within any stipulated milestone dates for the project. Activities shall be broken down in sufficient detail to facilitate monitoring of the schedule on a weekly basis. This information shall be submitted to the Owner electronically in Microsoft Project format and in hard copy. This information shall include activities, activity durations, material lead time, and key predecessors for each activity.

2. Activity Duration: Define activities so no activity is longer than fifteen (15) days, unless specifically allowed by Architect and Owner. An exception will be granted for procurement activities.

3. Resource/Staffing: Should the Contractor's progress fall materially behind the accepted Initial schedule (30 days or more), the Owner can require the Contractor to incorporate resource loading into the recovery schedule to indicate required staffing levels for

each activity. This resource loading will show aggregate manpower requirements on a daily or weekly basis.

4. Contractor's Construction Schedule Updating: At two-week intervals, update schedule to reflect actual construction progress and activities. Issue printed and electronic versions of schedule one week before each regularly scheduled progress meeting.

5. The Owner reserves the right to reduce or withhold payments due to Contractor's failure to provide the schedule information described above within the time frames indicated and for all updating requirements specified herein.

6. The Owner's review of the Contractor's construction schedule shall be only for compliance with the specified format, Contract Time, milestones, and suitability for monitoring progress of the Work and shall not be construed as a representation that the Owner has analyzed the schedule to form opinions of sequences or durations of time represented in the schedule.

7. Format: The construction schedules shall be a detailed Critical Path

8. Method schedule with both tabular and graphic activity information shown side-by-side. Contractor shall show all activities necessary for the completion of the project broken down by building, area, floor, and trade. Schedule shall graphically indicate both activity bars and target bars for all activities. Indicate the following:

- A. Activity Number
- B. Activity Description
- C. Target Activity Duration
- D. Actual Activity Duration
- E. Remaining Activity Duration
- F. Percentage Complete
- G. Early Start
- H. Early Finish
- I. Late Start
- J. Late Finish
- K. Target Start
- L. Target Finish
- M. Actual Start
- N. Actual Finish
- O. Milestones

9. Float:

1. Float: Float is a shared resource, available to both parties as needed. The Contractor shall not sequester shared float through such strategies as (a) extending activity duration estimates to consume available float, (b) using preferential logic, or (c) using extensive crew / resource sequencing, constraints, unnecessary milestones, leads or lags on logic ties, and hammock type activities. Since Float within the Construction Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Owner delays on the project may be offset by Owner time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded and the contract completion date is also exceeded.
2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned Project completion date.

10. Weather Delays: The schedule must account for average weather delays for the local area. Weather delays will be calculated as days lost for events in excess of the NOAA five (5) year average for St. Lucie County, FL. Weather delays will not be granted for rain events less than 0.1 inches. Weather delays will not be granted for activities that are not shown to be on the Critical Path of the Schedule at the time of the event.

18.31 FIELD CONDITIONS:

18.31.1 Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare a detailed report. Submit with a Request for Information to the Architect and the Owner. Include a detailed description of the differing conditions and photographs illustrating the existing conditions, together with recommendations for changing the Contract Documents.

18.31.2 Construction Photographs: Photographs to document pre-existing conditions and to regularly document construction progress.

18.32 SUBMITTALS and SHOP DRAWINGS:

18.32.1 The Contractor shall check submittals and shop drawings for accuracy and verify with field measurements as necessary. Contractor shall submit to the Architect with its criticism and/or

approval, all layouts, detail schedules, shop drawings, and setting or erection drawings as required by the specifications or requested by the Architect or Owner for proper installation of materials, without causing delay in the work. The Contractor shall read, carefully study and check subcontractor's shop drawings and submittals for accuracy and see that work contiguous with and having bearing on work indicated on shop drawings shall be dated, numbered consecutively, show working and erection dimensions and as necessary details, and include complete information for connecting to other work. Any work required by shop drawings that is fabricated by the Contractor prior to receiving the appropriate approval from the architect and or engineer of record shall be done at the Contractor's sole risk.

18.32.2 All shop drawings and schedule are to be accompanied by a letter of transmittal containing the Owner's project name, number of drawings, titles, or other pertinent data, and shall be submitted to the Architect (the Onwer shall be carbon copied on all transmittals) electronically, unless hardcopies are required elsewhere by Contract, by the Contractor and stamped to indicate the Contractor's review and approval sufficiently in advance of construction requirements to allow checking, correcting, re-submitting and re-checking. If shop drawings show variations from the requirements of the Contract Documents because of standard shop practice or other reasons, specific mention of such variations shall be noted on the shop drawings as well as in the letter of submittal.

18.32.3 The approval of shop drawings, schedules, and setting or erection drawings will be Prime and shall not be construed

- A. as permitting any departure from contract documents.
- B. as relieving the Contractor of the responsibility for any error in details, dimensions, coordination with other work, or otherwise that may exist in the shop drawings and schedules.
- C. as approving departures from drawings and specifications or from additional details or instructions previously furnished by the Architect or Engineer of record, unless Contractor has in writing, called attention to such deviations at the time of submission, and secured written approval.

18.33 QUALITY ASSURANCE, CONTROL, & DOCUMENTATION

18.33.1 SUMMARY: This section includes administrative and procedural requirements for quality assurance and quality control.

18.33.2 GENERAL

- A. Control System: The Contractor shall establish and maintain a system for documenting, monitoring, inspecting, verifying, and testing of the work and that of his subcontractors to ensure that all applicable requirements of the contract documents are met. The Contractor shall be diligent to ensure that the quality of workmanship is satisfactory, that the installation meets all manufacturer requirements, that dimensional requirements are met, that defective materials are not used, and that all required protection and control and laboratory testing procedures are affected. Where specific testing procedures are not stipulated, the Contractor shall establish and conduct a test procedure to ensure adherence to specified quality.

- B. Chain of Control: The Contractor shall plan, coordinate, execute, and examine the work to ensure the complete, workmanlike, and warrantable installation of all materials in a system or element of the construction.
 - 1. The Contractor shall plan, coordinate, execute, and examine the work to ensure that all underlying, substrate, or contiguous work is installed as required to meet the tolerances and requirements for the correct installation of subsequent work.

 - 2. It is the responsibility of the Contractor to advise the Architect no later than the submittal phase of any discrepancies in the requirements or tolerances of materials or components in a system or element of the construction.

- C. Mock-ups: Mock-ups shall be used to judge workmanship, execution of details, and colors for all exterior material elements. No work shall be started on any of the exterior material elements until such time the mock-up is completed by the Contractor and accepted / approved by the Owner.

18.33.3 EXECUTION

- A. Documentation: The documentation shall be by specification section or by system or element of the construction. The documentation shall be formatted in a comprehensive and collated manner to ensure ease of use and reference. A Table of Contents shall be provided. The Contractor's system shall include, but is not limited to the following:
 - 1. Pre-Installation Conference
 - i. Review of 2 through 7 below
 - ii. Inspection and Testing requirements

- iii. Correct environmental conditions for execution of the work and protection of the completed installation.
- iv. Schedule including required inspections
- v. Requirements and tolerances of underlying, substrate, or contiguous work
- vi. Review of requirements to ensure an enforceable warranty

Manufacturers should be present whenever possible

- 2. Specifications
 - 3. Submittals, Product Data, and Shop drawings
 - 4. Test Results
 - 5. Manufacturer's recommendations, Requirements, and Instructions
 - 6. Packaging labels from Materials where possible
 - 7. Periodic, Dated Photos of the work being performed and any other documentation that pertains to the warranty of the material or structure
 - 8. Samples of the material when reasonable
- B. Pre-Work Quality Control Meeting: The Contractor shall setup a meeting with the Owner, Architect, Project Superintendent, and all major trade Superintendents to review the Contractor's proposed QA/QC system and requirements for compliance.
- C. Submittal of QA/QC Program:
- 1. The Contractor shall submit to Owner for review their program format within 10 (ten) business days after Notice to Proceed.
 - 2. Once work has begun, the QA/QC manual must be kept up-to-date and acceptable by Owner prior to the current Pay Application being approved.
- D. Inspections: The Contractor shall make an initial inspection of each phase of work as soon as a representative portion has been completed, and the Contractor shall make follow-up inspections as required, to ensure that an acceptable quality of work is established and maintained.
- 1. The Contractor shall perform a pre-final inspection, prepare a punch list, and work off all items prior to A/E inspection. Contractor shall provide copy of completed report, certifying it's completion to the Architect prior to the Architect beginning his inspections.

2. The Contractor shall coordinate and plan inspections by the Architect and Owner in a timely manner to ensure that all parties can be scheduled so as not to impede the flow of the work.
- E. Closeout: The documents generated through this process are to be turned in as part of the closeout documents.
1. Provide a list of following for all equipment including but not limited to the following:
 - i. Model Number
 - ii. Serial Number
 - iii. Description
 - iv. Contract Document Reference
 2. Filter and Belt list for each air-handler

18.34 PROJECT MANAGEMENT AND COORDINATION

18.34.1 SUMMARY

- A. This Section includes administrative provisions for coordinating construction operations on Project including, but not limited to, the following:
1. Coordination Drawings.
 2. Administrative and supervisory personnel.
 3. Project meetings.
 4. Requests for Interpretation (RFIs).
- B. Each Contractor shall participate in coordination requirements.

18.34.2 DEFINITIONS

- A. RFI: Request For Interpretation, Request from Contractor seeking clarification of the Contract Documents.

18.34.3 COORDINATION

- A. Coordination between Contracts: Owner should be informed of all coordination between contractors in the form of coordination plans for approval.

- B. Coordination of Work: The Contractor shall coordinate construction operations that depend on each other and by other contractors for proper installation, connection, and operation to ensure efficient and orderly installation of each part of the Work.
1. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
 2. Coordinate installation of different components with other contractors to ensure maximum accessibility for required maintenance, service, and repair.
 3. Make adequate provisions to accommodate items scheduled for later installation
 4. Where availability of space is limited, coordinate installation of different components to ensure maximum performance and accessibility for required maintenance, service, and repair of all components, including mechanical and electrical. Prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices, reports, and list of attendees at meetings.
 5. Prepare similar memoranda for Owner, Architect, and separate contractors if coordination of their Work is required.
- C. Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other construction activities and activities of other contractors to avoid conflicts and to ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:
1. Preparation of Contractor's Construction Schedule.
 2. Preparation of the Schedule of Values.
 3. Preparation of Submittal Schedule
 4. Installation and removal of temporary facilities and controls.
 5. Delivery, scheduling and processing of submittals.
 6. Weekly Coordination and Progress meetings.
 7. Pre-installation conferences.
 8. Closeout inspection and "Punch list" preparation.
 9. Project closeout activities.
 10. Startup and adjustment of systems.

- D. Conservation: Coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials.
- E. Salvage materials and equipment involved in performance of, but not actually incorporated into, the Work. Refer to Contract Documents for disposition of salvaged materials that are designated as Owner's property.

18.34.4 COORDINATION SUBMITTALS

- A. Coordination Drawings: The Contractor is responsible for the coordination of all work and is responsible for preparation of accurate coordination drawings. Contractor shall prepare Coordination Drawings if limited space availability necessitates maximum utilization of space for efficient installation of different components or if coordination is required for installation of products and materials fabricated by separate entities. Provide coordination drawings for the integration of the work in a timely manner, allowing sufficient time for review by the Architect, so as not to delay the progress of work. Include information developed by the Contractor during construction, and detailed information contained in related shop drawings or product data.
- B. Content: Project-specific information, drawn accurately to a scale that conveys the information in a legible form. Do not base Coordination Drawings on reproductions of the Contract Documents or standard printed data. Include the following information, as applicable:
 - 1. Indicate functional and spatial relationships of components of architectural, structural, civil, mechanical, and electrical systems.
 - 2. Indicate required installation sequences. Indicate dimensions shown on the Contract Drawings and make specific note of dimensions that appear to be in conflict with submitted equipment and minimum clearance requirements. Provide alternate sketches to Owner for resolution of such conflicts. Minor dimension changes and difficult installations will not be considered changes to the Contract.
 - 3. Sheet Size: At least 8-1/2 by 11 inches but no larger than 30 by 42 inches.

4. Number of Copies: Submit 4 copies of each submittal. Owner will return one copy.

- C. Key Personnel Names: Within 10 working days of starting construction operations, submit a list of key personnel assignments, including superintendent and other personnel in attendance at Project site. Identify individuals and their duties and responsibilities; Identify Emergency contacts listed in priority, list addresses and telephone numbers, including home, office, cellular and/or wireless telephone numbers. Provide names, addresses, and telephone numbers of individuals assigned as standbys in the absence of individuals assigned to Project. Post copies of list in Project meeting room, in temporary field office, and by each temporary telephone. Keep list current at all times.

18.34.5 ADMINISTRATIVE AND SUPERVISORY PERSONNEL

- A. General: In addition to Project superintendent, provide other administrative and supervisory personnel as required for proper performance of the Work. The Owner will have the right to request additional manpower should the need for additional personnel become apparent.

18.34.6 PROJECT MEETINGS

- A. General: Contractor shall schedule and conduct coordination, safety, training, progress conferences at Project site, unless otherwise indicated.
 1. Attendees: Inform participants and others involved, and individuals whose presence is required, of date and time of each meeting. Notify Owner and Architect of scheduled meeting dates and times.
 2. Agenda: Prepare the meeting agenda and submit to the Owner 1 day prior to the meetings.
 3. Minutes: Record significant discussions and agreements achieved. Distribute the meeting minutes to the Owner, within three days of the meeting. The meeting attendees will have the opportunity to respond to the Contractors minutes with any changes.

- B. Pre-construction Conference: After award of the construction contract and before the start of any construction work, the Owner will schedule and assist the Contractor with a pre-construction conference. The conference location shall be

specified by the Owner. The Owner will assist in the meeting to review responsibilities and personnel assignments.

- C. Attendees: Authorized representatives of Owner, Architect and their consultants; Prime Contractor and its superintendent; as well as representative of major subcontractors; shall attend the conference. All participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.
- D. Agenda: Responsible parties shall discuss items of significance that could affect progress, including but not limited to the following:
 - 1. Contractor's Construction Schedule - Preliminary network diagram will be discussed.
 - 2. Critical work sequencing and long-lead items.
 - 3. Authority of the Owner's Representatives
 - 4. Procedures for processing field decisions.
 - 5. Contract Modifications and Administrative Procedures
 - 6. Procedures for RFIs.
 - 7. Procedures for testing and inspecting.
 - 8. Procedures for processing Applications for Payment.
 - 9. Distribution of the Contract Documents.
 - 10. Contractor Insurance Requirements.
 - 11. Submittal procedures.
 - 12. Preparation of Record Documents.
 - 13. Use of the premises.
 - 14. Contractor's Safety Plan
 - 15. Contractor's Quality Control Plan
 - 16. Responsibility for temporary facilities and controls.
 - 17. Construction waste management.
 - 18. Contractor's Environmental Protection Plan
 - 19. Parking availability.
 - 20. Office, work, and storage areas.
 - 21. Equipment deliveries and priorities.
 - 22. First aid.
 - 23. Security.
- E. Minutes: Record and distribute meeting minutes.

18.34.7 Pre-installation Conferences: Contractor shall conduct a Pre- installation conference at Project site before each construction activity that requires coordination with other construction.

- A. Attendees: Installer and representatives of manufacturers and fabricators involved in or affected by the installation and its coordination or integration with other materials and installations that have preceded or will follow, shall attend the meeting. Advise Owner of scheduled meeting dates for scheduling. Owner may

be present at these meetings. Every effort shall be made to schedule pre-installation conferences on the Architect's regularly scheduled days for visiting the site.

- B. Agenda: Notification of conference and agenda shall be distributed 10 days in advance of meeting date. Review progress of other construction activities and preparations for the particular activity under consideration, including requirements for the following:
1. The Contract Documents.
 2. Options.
 3. Related RFIs.
 4. Related Change Orders.
 5. Deliveries
 6. Submittals.
 7. Review of mockups.
 8. Possible conflicts.
 9. Trade responsibilities
 10. Compatibility problems.
 11. Time schedules.
 12. Weather limitations
 13. Manufacturer's written recommendations.
 14. Warranty requirements.
 15. Compatibility of materials.
 16. Acceptability of substrates.
 17. Temporary facilities and controls.
 18. Space and access limitations.
 19. Regulations of authorities having jurisdiction.
 20. Testing and inspecting requirements.
 21. Installation procedures.
 22. Coordination with other work.
 23. Required performance results.
 24. Protection of adjacent work.
 25. Protection of construction and personnel.
- C. Record significant conference discussions, agreements, and disagreements, including required corrective measures and actions.
- D. Reporting: Contractor shall distribute minutes of the meeting to the Owner within 72 hours of meeting. Contractor to maintain on site record copies of all "Minutes of Meetings".

- E. Do not proceed with installation if the conference cannot be successfully concluded. Initiate whatever actions are necessary to resolve impediments to performance of the Work and reconvene the conference at earliest feasible date.

18.34.8 Weekly Progress Meetings: Owner shall hold weekly meetings to update key project concerns and issues. Coordinate dates of meetings with preparation of payment requests. Meeting frequency will be determined by the needs of the job and will be at the discretion of the Owner.

- A. Attendees: Contractor and Owner. Architect, subcontractors and suppliers are optional attendees but may attend if needed. All participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.

- B. Agenda: Review and correct or approve minutes of previous progress meeting. Review other items of significance that could affect progress. Include topics for discussion as appropriate to status of Project.

- 1. Overall Project Schedule: Review progress since last meeting. Determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to Overall Project Schedule. Determine how construction behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the review schedule for next period.

- 2. Review submittal schedule.

- i. Review present and future needs of each entity present, including the following:

- a) Sequence of operations.
- b) Status of submittals.
- c) Status of correction of deficient items.
- d) Field observations.
- e) RFIs.
- f) Status of proposal requests.
- g) Pending changes.
- h) Status of Change Orders.
- i) Pending claims and disputes.
- j) Documentation of information for payment requests.

- ii. Minutes: shall record the meeting minutes.

- iii. Reporting: shall distribute minutes of the meeting to all involved parties and maintain record copies of all “Minutes of Meetings”.
- C. Monthly O/A/C Project Status Review Meeting: Contractor shall provide comprehensive update on the project. This meeting will be held during the last week of each month. Contractor shall reserve one working day to attend this meeting.
 - 1. Attendees: Owner, Architect, and Contractor.
 - 2. Agenda: Contractor shall provide comprehensive review of the status of the project, project documentation, finances, schedule, and any issues that could affect project time, cost, or quality.
 - 3. Minutes: Contractor will record the meeting minutes.
 - 4. Reporting: Contractor will distribute minutes of the meeting to each party present and to parties who should have been present within 48 hours following the meeting.

18.35 REQUESTS FOR INTERPRETATION (RFIs)

- A. Procedure: Immediately on discovery of the need for interpretation of the Contract Documents, and if not possible to request interpretation at Project meeting, prepare and submit an RFI in the form specified.
 - 1. RFIs shall originate with Contractor. RFIs submitted by entities other than this will be returned with no response.
 - 2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors.
 - 3. RFI's shall be routed to the Architects and copy Owner. RFI's will be answered by the Architects and Owner will be copied.
- B. Identify each page of attachments with the RFI number and sequential page number.
- C. Content of the RFI: Include a detailed, legible description of item needing interpretation and the following:
 - 1. Project name.
 - 2. Date.
 - 3. Name of Contractor.
 - 4. Name of Owner.
 - 5. Name of Architect

6. RFI number, numbered sequentially.
 7. Specification Section number and title and related paragraphs, as appropriate.
 8. Drawing number and detail references, as appropriate.
 9. Field dimensions and conditions, as appropriate.
 10. Contractor's suggested solution(s). If Contractor's solution(s) impact the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
 11. Contractor's signature.
 12. Attachments: Include drawings, descriptions, measurements, photos, Product Data, Shop Drawings, and other information necessary to fully describe items needing interpretation.
 - i. Supplementary drawings prepared by Contractor shall include dimensions, thicknesses, structural grid references, and details of affected materials, assemblies, and attachments.
- D. Electronic RFIs: Electronic submittal of RFI's via E-Mail is acceptable if and only if followed-up by hard copies of the RFI.
- E. Form and Attachments shall be electronic files in Adobe Acrobat PDF format. Unless another format is agreed upon.
- F. Software-generated forms with the same content as indicated above will be accepted.
- G. Architect's Action: Architect will review each RFI, determine action required, and return it. Architect will prioritize responses to RFI's. Contractor shall allow sufficient time for adequate review of RFIs by the Architects and Owner and be submitted in a timely manner so as not to delay the progress of the work. Architect's response for each RFI. RFIs received after 1:00 p.m. will be considered as received the following working day.
- H. Owner's Action: Architects will review each RFI and forward to the Owner for review as appropriate. Allow 10 working days for response for each RFI. RFIs received after 1:00 p.m. will be dated and considered as received the following working day.
1. The following RFIs will be returned without action:
 - i. Requests for approval of submittals.
 - ii. Requests for approval of substitutions.
 - iii. Requests for coordination information already indicated in the Contract Documents.
 - iv. Requests for adjustments in the Contract Time or the Contract Sum.
 - v. Requests for interpretation of Architect's actions on submittals.
 - vi. Incomplete RFIs or RFIs with numerous errors.

- vii. RFIs that are presented directly to Owner, Architect, or Architects consultants.
- 2. Action may include a request for additional information, in which case time for response will start again.
- 3. Action on RFIs that may result in a change to the Contract Time or the Contract Sum may be eligible for Contractor to submit Change Proposal according to contract modification procedures.
 - i. If Contractor believes the RFI response warrants change in the Contract Time or the Contract Sum, notify Owner in writing within 10 days of receipt of the RFI response.
- I. On receipt of Action, immediately distribute the RFI response to affected parties. Review response and notify Owner within 5 days if Contractor disagrees with response.

ARTICLE 19

EMERGENCY AND/OR DISASTER RELIEF SERVICES

- 18.1 Services – Owner and contractor agree Article 19 may only be used after it is determined and found necessary to proceed with emergency services and/or repairs following a declared emergency, disaster, or name windstorm event. All other services and/or work immediately following the declared emergency, disaster, and/or named windstorm event shall be completed in compliance with the Master Agreement, with a Guaranteed Maximum Price, under separate project agreement.
- 18.2 Cost of Direct Supervision – In consideration of the performance and/or completion of the work for Emergency and/or Disaster Relief services, the Owner agrees to pay Contractor as compensation for Contractor’s services, the cost associated with actual labor hours associated with Direct Supervision as set forth herein. Work shall be quoted in fixed fee lump sums when feasible, however if a time and materials contract is suitable based on the emergency and only during the first 70 hours or less, the contract must include a ceiling price, that the contractor exceeds at their own risk.
- 18.3 These pre-negotiated fixed hourly rates shall be billed and paid in accordance with the following, which reflect wages, general and administrative expenses and profit for this portion of the work.
 - I. TBD
 - II. TBD
 - III. TBD
- 18.3 Cost of Work – The Owner agrees to pay the actual cost of the work plus Overhead and Profit. Cost of work shall be in line with industry standards. The contractor agrees to furnish supporting

documentation and invoices from subcontractors, vendors and suppliers. Contractor also agrees to complete and provide the supporting documentation utilizing the following attachments within the Project Agreement with actual expenses incurred; Exhibit D; Exhibit F; and Exhibit G.

18.4 Contractor shall be entitled to a fee associated with the direct supervision for the cost of work. The fixed fee percentage is . This fee may only be applied to verified cost of work and submitted and be paid proportionally to the actual cost of work that has been completed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST:

**THE SCHOOL BOARD OF ST. LUCIE
COUNTY, FLORIDA**

Dr. Jon R. Prince, Superintendent
and Ex Officio Secretary

(Seal)

By: _____
Print Name: _____
Chair

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

Date: _____