

ATTACHMENT U
GENERAL CONDITIONS

**DESIGN BUILD
DOCUMENT 00700
GENERAL CONDITIONS OF THE CONTRACT**

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ARTICLE 1. DEFINITIONS

- 1.1 **Chief Facilities Officer, Office of Facilities & Construction.:** An employee of the School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief Facilities Officer.
- 1.2 **Design Criteria Package, the Contract Documents and the Construction Documents:** Are those mentioned as such in the RFP.
- 1.2.1 **Design Criteria Package:** Consists of the Proposal Documents, the Design Criteria Requirements, and Material and Quality Standards and the Program Requirements, all incorporated in the Design/Build Contract before its execution.
- 1.2.2 **Contract Documents:** The Contract Documents consist of the executed version of the Design Criteria Package, including Agreement Form, Addenda, Contract Conditions, Agreement, Bonds, Certificates, General Conditions, Supplementary Conditions, Special Conditions, Specifications, drawings, and all modifications issued after execution of the Contract.
- 1.2.3 **Construction Documents:** Shall consist of the Bidding Requirements and Contract Documents by the DESIGN/BUILDER and approved by the Owner, Design Criteria Professional, and permitted by the Building Department.
- 1.3 **Owner, the Design/Builder, and the Design Criteria Professional:** Are those mentioned as such in the Contract Documents.
- 1.3.1 **Owner:** The School Board of Broward County, Florida, (also referred to as the "Board").
- 1.3.2 **Design/Builder:** The person, partnership, corporation, association, joint venture, or any combination thereof authorized to do business in the State of Florida with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.
- 1.3.3 **Design Criteria Professional (DCP):** The individual or firm retained and/or appointed by the Owner to develop the Design Criteria Package, represent the Owner and administer the Contract in compliance with the Florida law.
- 1.4 **Office of Facilities & Construction:** The Office of Facilities & Construction is the Owner's organizational entity which acts as liaison between the Design Criteria Professional, the Design/Builder and Owner and provides day to day management, plan review, inspection and other professional services on the Owner's behalf.
- 1.5 **Final Completion:** Means that date subsequent to the date of Substantial Completion at which time the Design/Builder has completed all of the Work in full compliance with the Contract Documents. The date established as Final Completion shall be no earlier than the date indicated as the "Completion Date" on page 2 of a fully-executed Certificate of Final Inspection (OEF 209).
- 1.6 **Journeyman:** A person working in an apprentice able occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years

required by established industry practices for the particular trade or occupation. "Established industry practices," means the number of years of training required by the majority of registered program standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."

- 1.7 **Project Manager:** An employee of The School Board of Broward County, Florida, referred to hereinafter as the "Project Manager" who is assigned by the Deputy Superintendent to manage the Project during the development of design and construction contract documents through the construction process, and who serves as the Owner's liaison to school based personnel and the public.
- 1.8 **Reviewing and Inspection Authority:**
- 1.8.1 **Building Code Inspector (BCI):** Employees of The School Board of Broward County, Florida and others designated by the Office of Facilities & Construction who are certified as a BCI by the Florida Department of Education (DOE). BCI's inspect for code compliance and report non-compliant work to the Project Manager, DCP and Design/Builder.
- 1.8.2 **Authority Having Jurisdiction (AHJ):** The Building Department and its staff who are registered professionals and are authorized to perform plan review and final inspection services.
- 1.9 **Other Contractors:** Any person, firm or corporation with whom a contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by this Contract.
- 1.10 **Owner's Representative:** Chief Facilities Officer or designee, Office of Facilities & Construction.
- 1.11 **Phase:** A designated subdivision of the Work, usually with its own requirements for Substantial and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors. Wherever completion is referenced throughout the documents, it shall include phased completion whether or not specifically noted.
- 1.12 **Project:** Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by Other Contractors.
- 1.13 **Punch List:** A list of items of work required by the Contract Documents which after inspection by the Design Criteria Professional, the Owner, and the Design/Builder has been termed to be deficient, incomplete and/or non-compliant with the Contract Documents.
- 1.14 **Subcontractor:** A person or entity other than a material supplier or laborer who enters into a contract with Design/Builder for the performance of any part of Design/Builder's Work. The term "Subcontractor" is referred to throughout the Design Criteria Package as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.15 **Sub-subcontractor:** A person or entity other than a material supplier or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.
- 1.16 **Submittals:** Are prepared by the Design/Builder or those working on his behalf (Material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and

installed. The Design/Builder's submittals include construction documents, shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, workmanship bonds, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the Contract Documents.

- 1.17 **Substantial Completion:** The term Substantial Completion as used herein, shall mean the date upon which the Work, or designated portion thereof, has reached a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee may legally occupy all structures and may use and operate all elements of the Project for their intended purpose. The date established for Substantial Completion shall be no earlier than the date indicated as the "Intended Occupancy Date" on a fully-executed Certificate of Occupancy (OEF 110B). In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase.
- 1.18 **Subconsultant:** A person or organization of properly registered professional architects, engineers or other design professionals who has entered an agreement with the Design/Builder's Design Professional to furnish professional services in support of the Design Criteria Document.
- 1.19 **Superintendent:** The executive representative for the Design/Builder present on the work at all times during progress, authorized to receive and fulfill instructions from the Owner, the Design Criteria Professional and Consultant capable of superintending the work efficiently.
- 1.20 **Superintendent of Schools:** The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.
- 1.21 **Surety:** Entity who guarantees the performance of the Design/Builder (Principal). The surety agrees to be bound to the obligations of the principal should the principal fail to perform. Also referred to as the bonding company.
- 1.22 **Work:** The totality of the obligations, including design, construction and other services, imposed upon the Design/Builder by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Design/Builder to fulfill the Design/Builder's obligations. The Work may constitute the whole or a part of the Project.
- 1.23 **Written Notice:** Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission shall not be considered as written notice.

ARTICLE 2. THE WORK

- 2.1 The Design/Builder shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.

- 2.2 When completed the Work shall conform to the requirements of the Contract Documents and be completely ready for occupancy and finally completed.
- 2.3 The Design/Builder represents and warrants to the Owner that:
- 2.3.1 It is financially solvent and has sufficient working capital to perform the obligations under this Contract;
- 2.3.2 It is experienced and skilled in the construction of the type of project described in the Contract Documents;
- 2.3.3 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;
- 2.3.4 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Design/Builder" in the Contract;
- 2.3.5 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines. The Design/Builder acknowledges receipt and has reviewed the site geotechnical report as provided by the Owner.
- 2.3.6 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.
- 2.3.7 It will comply with the Workforce Composition requirements, M/WBE program requirements, and the requirements of Section 00425-Certificate of Intent.
- 2.3.8 It is capable of providing appropriate schedules and determining design and construction sequences, means and methods and/or the like, to complete the project in accordance with the requirements of the Contract Documents.

ARTICLE 3. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

- 3.1 The Design/Builder represents that:
- 3.1.1 The Design/Builder and Subcontractors have fully examined and compared all Contract Documents including but not limited to those relating to the architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details and the various technical and administrative requirements of the Design Criteria Package.
- 3.1.2 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Design/Builder is aware of as a result of the examination and comparison of the Contract Documents have been either corrected or clarified to the satisfaction of the Design/Builder prior to execution of this Contract.
- 3.1.3 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be functional and in accordance with the requirements of the Contract Documents.
- 3.1.4 The Contract Time is adequate for the performance of the Work.
- 3.2 The Design/Builder shall be responsible for all means, methods, techniques, and sequencing of construction.

- 3.3 If, after execution of this Contract, the Design/Builder detects a conflict, discrepancy, error or omission in the Contract Documents then Design/Builder shall immediately notify Design Criteria Professional and Owner prior to proceeding with the specific portion of the Work.

ARTICLE 4. INTENT AND INTERPRETATION

4.1 With the respect to the intent and interpretation of this Contract, the Owner and the Design/Builder agree as follows:

4.1.1 The Design/Builder shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Design Criteria Professional of any conflict, ambiguity, error or omission which the Design/Builder may find with respect to these documents before proceeding with the affected Work.

4.1.2 The Contract Documents are complementary, and what is called for by any of the documents comprising the Contract Documents shall be as binding as if required by all documents.

4.1.3 The intent of the Contract Documents is to include all services, labor and materials, equipment and transportation necessary for the proper execution of the Work. The Design/Builder shall continually refer to all Contract Documents in this regard.

4.1.4 In the event of a conflict among the Contract Documents, applicable codes or referenced standards, the most stringent requirement, higher quality, or larger quantity is shall be required to be provided by the Design/Builder at no additional cost to Owner..

4.1.5 The requirements of the conditions of the contract (General Conditions and Special Conditions) govern over the requirements of referenced standards as long as the most stringent standards are met. When there is a conflict or discrepancy between a referenced standard and the specifications or with another referenced standard, the more stringent requirements shall apply.

4.1.6 Division 1 – General Requirements: Sections of Division 1-General Requirements govern the execution of the work of all sections of the specifications, Division 1 through Division 16.

4.2 The Design Criteria Professional shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance hereunder.

4.2.1 The Design Criteria Professional shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design/Builder, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question between the Owner and the Design/Builder relating to the execution or progress of the Work or the interpretation of the Contract Documents.

4.2.2 Interpretations and decisions of the Design Criteria Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents.

4.2.3 In the capacity of interpreter the Design Criteria Professional shall endeavor to secure faithful performance by both the Owner and the Design/Builder, and shall not show partiality to either.

4.2.4 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the," "a," and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

4.3 The Design Criteria Professional shall be the initial interpreter of the requirements of the Contract Documents. The Owner shall be the final arbiter of any disputes.

- 4.4 The Design Criteria Professional shall issue interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design/Builder, and shall render written decisions, within a reasonable time, on all claims, disputes, changes order requests, substitution requests, requests for interpretation and other matters in question between the Owner and the Design/Builder relating to the execution or progress of the work or interpretation of the Contract documents.
- 4.5 The Owner reserves the right to reject a Design Builder's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Design Builder's part. The Design Builder has the obligation to confirm the quantities shown in the Design Builder's proposals. The Owner has the right to require the Design Builder to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Design Builder has no right of claim to recoup proposal expenses. The Design Builder shall not include the following items in their proposal regardless of pricing structure:
- 4.5.1 Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.
- 4.5.2 The Design Builder's capital expenses, including interest on the Design Builder's capital employed for the work.
- 4.5.3 Costs due to the negligence or willful misconduct of the Design Builder, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.
- 4.5.4 Tools and equipment with an individual cost of \$500 or less.
- 4.5.5 Cell phone charges in excess of \$100 per authorized employee as approved by the Owner.
- 4.5.6 Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.
- 4.5.7 Overtime charges not previously authorized in writing by the Owner.
- 4.5.8 Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

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

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

- 5.4 The School Board of Broward County, Florida, for itself and such others as it deems appropriate, will have unlimited rights under this contract to all information and materials developed under this contract and furnished to the Owner and documentation thereof, reports, and listings, and all other items pertaining to the work and services pursuant to this agreement including any copyright.
- 5.5 Unlimited rights under this contract are rights to use, duplicate, or disclose text, data, drawings, and information, in whole or in part any manner and for any purpose whatsoever without compensation to or approval from the Design/Builder or Surveyor.
- 5.6 The Owner will at all reasonable times have the right to inspect the work and will have access to and the right to make copies of the above-mentioned items.
- 5.7 All text, electronic digital files, data, and other products generated under this contract shall become the property of the Owner.

ARTICLE 6. TEMPORARY UTILITIES

- 6.1 **Water for Building Work:** The Design/Builder shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and Construction Documents, and shall pay for all service connections and water used by the Design/Builder or Subcontractors unless the contrary is stated elsewhere in the Contract Documents.
- 6.2 **Electrical Energy:** The Design/Builder shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and Construction Documents, and shall pay for all service connections and electricity used by the Design/Builder or subcontractors unless the contrary is stated elsewhere in the Contract Documents.
- 6.3 **Temporary Sanitary Facilities And Sewers:**
- 6.3.1 The Design/Builder shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.
- 6.3.2 No nuisance will be permitted.
- 6.3.3 Upon completion of Work, such facilities shall be removed and the premises left in a clean and sanitary condition.
- 6.3.4 Design/Builder will not be permitted to use restrooms or other sanitary facilities within the Owner's on-site facilities unless the contrary is stated elsewhere in the Contract Documents.

ARTICLE 7. CONTRACT AWARD

- 7.1 The legal date of award by the School Board is the date the Board approves the Design/Builder Contract (or Contract Award). A Notice to Proceed will be issued after Contract Award and as stipulated in Document 00500, Standard Form of Agreement Between Owner and Design/Builder, Article 3.

ARTICLE 8. PROGRESS

- 8.1 Design/Builder shall provide the Owner with full information in advance as to its plans for performing each part of the Work. This shall include, but not be limited to schedules provided to the Owner as Post-Award Information and subsequently updated schedules submitted to the Owner on a monthly basis as required elsewhere in the Contract Documents.
- 8.1.1 Said schedule shall be in a form acceptable to the Owner.
- 8.1.2 The Design/Builder's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project.
- 8.1.3 Each such revision shall be provided to the Owner and the Design Criteria Professional.
- 8.1.4 Compliance with the requirements of this subparagraph shall be a condition precedent to payment to the Design/Builder, and failure by the Design/Builder to comply with said requirements shall constitute a material breach of this contract.
- 8.1.5 By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but Owner is simply reviewing same for its own informational purposes.
- 8.2 If at any time during the progress of Work, the Design/Builder's progress is inadequate to meet the requirements of the Contract Documents, such as the required completion or other milestone dates, including phased completions, the Owner may so notify Design/Builder who shall thereupon take such steps as may be necessary to improve its progress so as to complete the Work on or before the required Substantial Completion Date.
- 8.2.1 If within 15 calendar days of notice by Owner of a project delay, the Design/Builder has not improved performance to meet the requirements of the Contract Documents, including but not limited to required completion dates, and other milestone dates, then the Owner may require an increase in any or all of the following: Design/Builder's subcontractor crews, Design/Builder's own labor force, the number of shifts, overtime operation, Design/Builder's supervision and additional days of work per week, all without cost to Owner. In addition, Design/Builder shall provide Recovery/Plan and Schedule as noted below.
- 8.2.2 If at any time during the progress of the Work, the project falls behind schedule from 1 to 20 calendar days, the Design/Builder shall inform Owner in writing of the Design/Builder's Recovery Plan and Recovery Schedule showing what actions will be taken to make up the period of delay and the date by which delay will be cured.
- 8.2.3 If at any time during the progress of the Work, the project falls behind schedule more than 20 calendar days, the Design/Builder and Design/Builder's Surety shall, within 7 calendar days of notice from Owner, present to Owner, in writing, the Design/Builder's and Surety's Recovery Plan and Recovery Schedule to cure project delay. Said Recovery Plan and Recovery Schedule shall cure delay on or before a period of 60 calendar days unless there are less than 60 calendar days remaining until the required Substantial Completion date, in which case the delay shall be cured within the remaining time for Substantial Completion of the work.
- 8.2.4 Design/Builder's and Surety's Recovery Plan and Schedule shall include projected number of personnel, number of days, hours to be worked each day including overtime, by trade and company, that will work on the project during the recovery period and anticipated results. Recovery Plan and Recovery Schedule shall also include personnel information noted above for the previous 3 month period prior to recovery period. During Recovery Period, the design/Builder shall provide to DCP and Owner, signed and certified by Design/Builder and Surety, weekly personnel reports identifying hours worked by all personnel, by trade and company, working on the project.

- 8.2.5 Owner's failure to issue such notice, shall not relieve Design/Builder of its obligation to achieve the quality of work and rate of progress required by the Contract Documents.
- 8.3 Failure of Design/Builder to comply with the instructions of the Owner may be grounds for determination by Owner that Design/Builder is not prosecuting its Work with such diligence as will assure completion within the time specified.
- 8.4 Upon said determination, Owner, in addition to any and all other rights set forth in the Contract Documents and remedies afforded Owner under the Contract Documents or at law, may:
 - 8.4.1 Elect to proceed with the Work with its own employees, agents, Other Contractors, subcontractors, suppliers and assess all costs, expenses or fees for same against Design/Builder; and/or
 - 8.4.2 Terminate for cause Design/Builder's right to proceed with the performance pursuant to the Contract Documents, or any separable part thereof, in accordance with the applicable provisions of the Contract Documents.

ARTICLE 9. EXPEDITING

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

ARTICLE 10. CONTRACT PAYMENTS

- 10.1 Schedule of Values:
 - 10.1.1 The Design/Builder shall maintain and update the Schedule of Values originally provided to the Owner as Post-Award Information.
 - 10.1.2 The Design/Builder's Schedule of Values apportions the Contract Price among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Design/Builder's monthly Application for Payment.
 - 10.1.3 The Schedule of values shall be presented with such detail, and supported with whatever information the Design Criteria Professional or the Owner reasonably requests.
 - 10.1.4 The Design/Builder shall not imbalance it's Schedule of Values nor artificially inflate any element thereof.
- 10.2 The Owner shall pay the Contract Price to the Design/Builder in accordance with the procedures set forth in the Contract Documents, applicable Florida law, and the Florida Prompt Payment Act as set forth in Chapter 218. Financial Matters Pertaining to Political Subdivisions, under Title XIV- Taxation and Finance, Florida Statutes, as amended if any, to wit: 218.735 Timely payment for purchases of construction services.

- 10.3 On or before the 15th day of each month after commencement of performance, but no more frequently than once monthly, the Design/Builder may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Design/Builder and Owner. The Design/Builder shall submit for review, as stipulated elsewhere in the Contract Documents, a draft, or pencil copy of the Application for Payment for review by the Design Criteria Professional, the Project Manager and the Design/Builder prior to the submission of the typed, signed and notarized version for certification.
- 10.3.1 Said Application for Payment shall be in the format required elsewhere in the Contract Documents and include whatever supporting information as may be required by the Project Consultant, the Owner, or both. Said Application for Payment must include partial waivers of lien signed by subcontractors. Therein, the Design/Builder may request payment for 90 percent [the remaining 10 percent being the Retainage] of that part of the Contract Price allocable to Contract requirements properly provided, labor, material and equipment properly incorporated in the Project.
- 10.4 Owner shall not be required to pay for stored materials or equipment except as set forth in Article 26 below.
- 10.5 Each Application for Payment shall be signed by the Design/Builder, notarized and shall constitute the Design/Builder's representation that the quantity of work has reached the level for which payment is requested, that the Work has been properly installed or performed in compliance with the requirements of the Contract Documents, and that the Design/Builder knows of no reason why payment should not be made as requested.
- 10.6 Thereafter, the Design Criteria Professional or the Project Manager shall:
- 10.6.1 Within 7 days review the Application for Payment and the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.
- 10.6.2 Approve in writing the amount, which, in the opinion of the Design Criteria Professional, or the Project Manager, is properly owing to the Design/Builder or notify Design/Builder and Owner in writing of the Design Criteria Professional's reason for withholding approval in whole or part.
- 10.7 The Owner shall make payment or undisputed portion thereof to the Design/Builder within 25 business days, (excluding Saturdays, Sundays, Legal Holidays and other days The School Board of Broward County's Offices are closed) after the date on which the request for payment or invoice is stamped as received, following the Design Criteria Professional's or the Project Manager's written approval of each Application for Payment.
- 10.8 The amount of each said payment shall be the amount approved for payment by the Design Criteria Professional or the Project Manager less said amounts, if any, otherwise owing by the Design/Builder to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents or reasonable business practices. If the Design Criteria Consultant or the Project Manager does not approve all of the Design/Builder's Application for Payment based upon site investigation evidence leading to the contrary as put forth in the Design/Builder's affirmation of work in place according to the Contract Documents, the Owner will, based upon evidence shown, pay the amount for work which is in place and other work prescribed herein and shall withhold payment for portions of the Work which are not in place.
- 10.9 The Design Criteria Professional's or Project Manager's approvals of the Design/Builder's Applications for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in the Contract Documents.

- 10.10 The submission by the Design/Builder of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance by any person whatsoever.
- 10.11 As a condition precedent to payment, the Design/Builder shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, properly executed documents that all subcontractors, materialmen, suppliers or others having rights acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any rights or other claims relating to the Project site.
- 10.12 Furthermore, the Design/Builder warrants and represent that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner.
- 10.13 Dollar Value/Time Graphs: Each of the Design/Builder's Application for Payment shall be accompanied by a graph, prepared by the Design/Builder, that consecutively tracks the percentage of completion of both the Application for Payment's dollar value attained and the contract time (calendar days) elapsed, all coinciding with the date of the Application for Payment.
- 10.14 When payment is received from the Owner, the Design/Builder shall within 5 days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for all work covered by such payment. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid.
- 10.15 It is mutually agreed that payments made under this Contract shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.
- 10.16 Excess Funds: Any party receiving funds paid by SBBC under this Contract agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.
- 10.17 After satisfactory completion of 50% the project, one-half of the 10% retainage then being held shall be released to Design/Builder upon written request via proper invoice. The Owner shall continue to hold 5% retainage of the earned Contract Sum until Final Completion.

ARTICLE 11. WITHHOLDING PAYMENT TO DESIGN/BUILDER

- 11.1 In addition to the retainage, payments, including but not limited to Final Payment, may be withheld or reduced by the Owner in the Owner's sole discretion if any of the following exists:
- 11.1.1 The Work is not proceeding in accordance with the Construction Schedule or there is reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion Date. In these events, the Design Criteria Professional or the Owner will assess the anticipated delay and the Owner will use the amounts specified for Liquidated Damages as the basis for amounts withheld. Said funds shall be held until such time as the Design Criteria Professional or Owner determines that the Work is back on schedule. By making said funds available to Design/Builder, Owner does not waive its right to assess liquidated damages at the completion of the Project;

- 11.1.2 Liquidated Damages as set forth in this Contract;
- 11.1.3 Defective Work unremedied;
- 11.1.4 Punch-List items unremedied;
- 11.1.5 Subject to Owner's written notice to Design/Builder in accordance with the Contract Documents back charge items for work performed by Owner or another contractor at the request of Owner, which work is within the scope of the Work under this Construction Contract;
- 11.1.6 Claims filed by subcontractors, laborers, suppliers, materialmen or others;
- 11.1.7 Failure to comply with any and all insurance requirements;
- 11.1.8 Failure of the Design/Builder to make payment properly to subcontractors or others;
- 11.1.9 Damage to the Owner or another contractor;
- 11.1.10 Reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion Date;
- 11.1.11 Failure of the Design/Builder to carry out any of Design/Builder's obligations in accordance with the Contract Documents; and
- 11.1.12 Failure of the Design/Builder to submit the information or documents required by this Contract or reasonably required by Owner, including but not limited to schedules and daily logs.

ARTICLE 12. DESIGN/BUILDER'S RIGHT UPON NONPAYMENT

- 12.1 If within 25 days of the date payment to the Design/Builder is due, the Owner, without cause or basis hereunder, fails to pay the Design/Builder any amounts then due and payable to the Design/Builder, the Design/Builder shall have the right to cease work until receipt of proper payment after first providing 10 days written notice of its intent to cease work to the Owner.

ARTICLE 13. INFORMATION AND DOCUMENTS SUPPLIED BY THE OWNER

- 13.1 The Owner shall furnish to the Design/Builder, prior to the execution of the Contract, any and all written and tangible material, including but not limited to surveys and other information concerning existing conditions on the Site.
- 13.2 The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.
- 13.3 The Owner and DCP disclaim any responsibility for the accuracy of documentation prepared by others.

ARTICLE 14. LICENSES AND PERMITS

- 14.1 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Design/Builder.
- 14.2 The Design/Builder is required to comply with all requirements included in the District Design and Material Standards, and, Design Criteria, inclusive of the requirements in the Site Civil Engineering Criteria as it relates to on-site and off-site engineering, environmental, and related construction permits required by the authority having jurisdiction. Any and all permits, bonds and/or other fees required for Work to be performed, included in the District Design and Material Standards, and, Design Criteria shall be procured and paid for by the Design/Builder.

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

ARTICLE 15. CEASE AND DESIST ORDER

- 15.1 In the event the Design/Builder fails or refuses to perform the Work as required herein, the Owner may notify the Design/Builder to cease and desist from performing the Work in whole or in part. Upon receipt of such written notice the Design/Builder shall immediately cease and desist and shall not proceed further until the cause for the Owner's notification has been corrected and the Owner notifies Design/Builder in writing that the Work may resume.
- 15.2 In the event the Owner issues such notification to cease and desist, and in the further event the Design/Builder fails and refuses within 7 (seven) days of receipt of same to provide adequate assurance to the Owner and initiate appropriate action so that the cause of such notice will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Design/Builder shall be fully responsible and liable for the costs of performing such work by the Owner.
- 15.3 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Design/Builder.

ARTICLE 16. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE DESIGN/BUILDER

- 16.1 The Design/Builder shall perform the Work in accordance with the Contract Documents and Construction Documents.
- 16.2 The Design/Builder shall supervise the Work and bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Design/Builder.
- 16.3 The Design/Builder hereby warrants that all labor provided under this Contract shall be competent to perform the tasks undertaken, that all material and equipment provided shall be new and of high quality, that the Work will be complete, of high quality, without defects, and in compliance with the requirements of the Contract Documents. Any Work not complying with the requirements of this Subparagraph shall constitute a breach of the Design/Builder's warranty.
- 16.4 The Design/Builder shall prepare and submit schedules and supporting documentation as required elsewhere in the Contract Documents.
- 16.5 Record Keeping on Site:
- 16.5.1 The Design/Builder shall keep a daily log, an updated copy of the Contract Documents, approved shop drawings and other submittals, and other documents and materials as required by the Contract Documents at the site.
- 16.5.2 All of these items shall be available to the Owner, the Design Criteria Professional, and BCI during regular business hours.
- 16.5.3 Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.
- 16.6 Shop Drawings And Other Submittals:
- 16.6.1 Design/Builder shall provide a Shop Drawing Schedule of submittals along with critical dates. Design/Builder shall provide a schedule of submittals to allow for a timely and, if necessary segmented review of more complex submittals, such as, steel framing, columns and foundations,

- reinforcing bars, doors and door hardware. Design/Builder shall identify on all submittals lead time required for procurement of the given product/material after approval of shop drawings.
- 16.6.2 The Design/Builder shall submit for approval with reasonable promptness and in a timely manner so as to cause no delay in the Work, various submittals in English Language, including shop drawings as required for the Work of the various trades. Provide a complete drawing submittal schedule prior to and as a prerequisite to the first Submittal.
- 16.6.3 These shop drawings and other submittals shall be in accordance with the requirements of the Contract Documents and shall be carefully checked in every respect and signed and dated by the Design/Builder before submitting same to the Design Criteria Professional and Owner. Submittals that are not marked as checked for compliance with Contract Documents and approved by the Design/Builder, may be returned by the Design Criteria Professional without action.
- 16.6.4 DCP shall review shop drawings and submittals for conformance with Design Criteria Package. DCP's review of any submittal does not constitute approval of the entire assembly, of which any given item(s) are part.
- 16.6.5 Shop drawings and product submittals shall be forwarded to Design/Builder's A/E, reviewed, and stamped with action taken, prior to being forwarded to DCP. Only shop drawings and product submittals which have been approved by the Design/Builder's A/E shall be forwarded to the DCP. Review of shop drawings and product submittals by DCP shall not relieve the Documents, Construction Documents, Code Compliance, compliance with requirements of agencies having jurisdiction or any other Project requirements stated herein. All submittals shall clearly indicate specification section, paragraph, and article number under which is submitted.
- 16.6.6 Shop drawings and other submittals from the Design/Builder are not part of the Contract Documents but are documents prepared and utilized by the Design/Builder to coordinate the Work.
- 16.6.7 The Design/Builder shall not do any Work requiring shop drawings or other submittals unless such have been approved in writing by the Design Criteria Professional.
- 16.6.8 All Work requiring approved shop drawings or other submittal shall be done in compliance with said approved documents. However, approval by the Design Criteria Professional or the Owner shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Contract Documents. DCP's review of any submittal does not constitute approval of the entire assembly, of which any given item(s) are a part.
- 16.6.9 The Owner and the Design Criteria Professional shall have no duty to review partial submittal or incomplete submittal except as may be provided otherwise within the Contract Documents.
- 16.6.10 The Design/Builder shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.
- 16.6.11 The Design/Builder shall have the duty to carefully review, inspect and examine any and all submittal and resubmittals before submission of same to Owner or the Design Criteria Professional. Additional submittals beyond a submittal and a resubmittal shall be cause for the Owner's and Design Criteria professional's time to be back charged to the Design/Builder.
- 16.6.12 Shop Drawings and other submittals: Submittals returned for resubmission shall not be cause for a claim for time extension of the project schedule.
- 16.7 The Design/Builder shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Design/Builder shall thoroughly clean the Project site of debris, trash and excess materials or equipment. In the event the Project is located at or near occupied facilities, then Owner may establish additional rules and regulations

regarding condition at the Project, including but not limited to, keeping the Project and the occupied premises clean, safe and secure.

- 16.8 At all times, the Design/Builder shall permit the Owner and the Design Criteria Professional to enter upon the Project site and to review or inspect the Work.

ARTICLE 17. SUBCONTRACTS

- 17.1 The Contract Documents make no attempt to fix the scope of Work of any neither Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Design/Builder shall fix the scope of all Work and responsibilities of the Subcontractor. Design/Builder shall not replace Subcontractor without good cause.
- 17.2 The Design/Builder shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- 17.2.1 The general form of Subcontract Agreement used by the Design/Builder within 30 days of execution of the Construction Contract.
- 17.2.2 Updated listings of Subcontractors denoting changes to the list submitted as Post-Award Information within 10 days of said change.
- 17.2.3 Copies of executed subcontractor Contracts within 10 days of their execution.
- 17.2.4 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application for Payment submitted by the Design/Builder.
- 17.3 All contracts with subcontractors shall incorporate by reference the terms and conditions of this Contract.
- 17.4 The Design/Builder shall cause and require being included in all subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Design/Builder is replaced by another Design/Builder pursuant to the term of the Contract Documents. The Design/Builder shall also include in all subcontracts a provision requiring the subcontractor, in the event of the Design/Builder's termination, to consent to the assignment of their subcontracts to the Owner.
- 17.5 The Owner may at any time request from the subcontractors, or any of them, a sworn statement of account with the Design/Builder and the Design/Builder shall cause to be included in all Subcontracts a requirement that the subcontractors provide said sworn statement upon Owner's request.
- 17.6 Each subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Design/Builder and any legal or statutory provisions that apply to its work, materials or equipment.
- 17.7 Owner may at Owner's discretion require Design/Builder to have major subcontractors or suppliers comply with the requirements of this Article 17 or other provisions of the Contract Documents.
- 17.8 Any disputes which may arise in this connection between the Design/Builder and any subcontractor must be settled between the parties concerned and the Owner will not undertake, nor be in any way responsible for, the settlement of such disputes.

- 17.9 No subcontractor shall under any condition relieve the Design/Builder of his liabilities and obligations to the Owner under his Contract and the Design/Builder shall be solely responsible to the Owner as provided herein.

ARTICLE 18. BONDING OF SUBCONTRACTORS

- 18.1 The Design/Builder shall submit proof, in the form of copies of properly executed bond forms, that the following major subcontractors have provided a performance bond and a payment bond to the Design/Builder and Owner as dual obligees with a corporate surety approved by the United States Treasury Department and authorized to do business in the State of Florida and otherwise acceptable to the Owner:
- 18.1.1 HVAC/Mechanical.
 - 18.1.2 Electrical.
 - 18.1.3 Plumbing.
 - 18.1.4 Roofing.
 - 18.1.5 Shell Contractor.
- 18.2 If the value of a subcontract listed above is below \$200,000, the Subcontractor Bonding requirement for that respective subcontract may be waived by the Owner, at its sole discretion, for M/WBE Subcontractors participating in the Owner's M/WBE Subcontractor Programs as described elsewhere in the Contract Documents.
- 18.3 The respective performance and payment bonds shall:
- 18.3.1 Require the Surety to perform the Subcontract and to pay all bills and invoices for labor done and materials provided in the performance of the Work, including any guarantee or warranty period provided for in the Contract Documents.
 - 18.3.2 Be on the forms as provided by the Owner including the Bond Rider form. No other forms will be acceptable.
 - 18.3.3 Executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact. The Owner may request the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
 - 18.3.4 In case of default or other proceedings on the part of the Subcontractor, actions for all expenses incident to ascertaining and collecting losses under the bond, including reasonable attorney's fees for same, shall be covered by the bond.
 - 18.3.5 Bonding companies acceptable to the Owner are bonding companies which are United States Treasury Department approved bonding companies, qualified and rated in accordance with Article 44.9 below and limited in bonding ability to the current United States Treasury Department standing for net limit on any one risk at the time of execution of the Subcontract.

ARTICLE 19. DESIGN/BUILDER'S SUPERINTENDENT

- 19.1 Before starting the Work, Design/Builder shall designate an English speaking, competent, authorized representative (hereinafter Superintendent), acceptable to the Owner, to represent and act for the Design/Builder. The Design/Builder shall:
- 19.1.1 Inform Owner, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Design/Builder and shall specify any and all limitation on such authority.

- 19.1.2 Keep the Design Criteria Professional informed of any subsequent changes in the foregoing.
- 19.2 The Superintendent shall be present or be duly represented at the site of the Work at all times when the Work is actually in progress.
- 19.3 During periods when portions of the Work are suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency which may be required.
- 19.4 All notices, determinations, instructions and other communications given to the Design/Builder's Superintendent shall be binding upon the Design/Builder.
- 19.5 The Superintendent shall maintain a daily log/report, which shall include at least the following information: weather conditions; trades at site; manpower totals by trade; activities in progression; and inspections at site. Copies of the daily entries shall be provided to the Owner and Design Criteria Professional once per month or as required elsewhere in the Contract Documents.
- 19.6 Superintendent shall attend all Progress Meetings attended by Design Criteria Professional.

ARTICLE 20. COOPERATION WITH OTHERS

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

ARTICLE 21. SITE CONDITIONS

- 21.1 Design/Builder shall have the sole responsibility to conduct reasonable inspection of the site and to satisfy itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of material; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions; location of underground utilities as depicted in the Contract Documents; governmental processes and requirements for obtaining permits other than issuance of the original building permits, certificates of occupancy and other regulatory/utility approvals; physical conditions at the work sites and the Project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quality of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Construction Contract; and all other matter which can in any way affect performance of the Construction Contract, or the cost associated with such performance.

- 21.2 The failure of Design/Builder to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating the duration, difficulties, or the costs of successfully performing the Work.
- 21.3 Design/Builder may reasonably rely upon site documentation provided by the Owner. In the event the site conditions are materially different than what Design/Builder anticipated as a result of Design/Builder's inspection of the property or tests, information or data supplied to Design/Builder by others such as design professionals or testing companies, then Design/Builder may seek an adjustment in time or price based upon same provided that Design/Builder gives Owner written notice of same within 10 days of discovery of the differing site condition. Said request for change in time or price shall be addressed in the same manner as a Change Order pursuant to Article 35 below.

ARTICLE 22. RESPONSIBILITY FOR WORK SECURITY

- 22.1 Design/Builder shall at all times conduct, at its expense, all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.
- 22.1.1 Design/Builder shall promptly take such reasonable precautions as are necessary and adequate to eliminate any conditions that involve risk of a loss, theft or damage to its property.
- 22.1.2 Design/Builder shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.
- 22.2 Design/Builder shall comply with all applicable laws and regulations.
- 22.2.1 Design/Builder shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.
- 22.2.2 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 22.2.3 Such compliance with these security requirements shall not relieve Design/Builder of Design/Builder's responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner Design/Builder's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 22.3 Design/Builder shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

ARTICLE 23. PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

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

ARTICLE 24. ADMINISTRATION OF THE CONTRACT

- 24.1 The Design Criteria Professional will provide Administration of the Contract for the Owner.

- 24.1.1 In the event the Owner should find it necessary to replace the Design Criteria Professional, the Owner shall retain a replacement and the role of the replacement shall be the same as the role of the original Design Criteria Professional.
- 24.2 Unless otherwise directed by the Owner in writing, the Design Criteria Professional will perform those duties and discharge those responsibilities allocated to the Design Criteria Professional by the Owner.
- 24.3 Neither the Design Criteria Professional nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Design/Builder, its Subcontractors or their agents or employees.
- 24.4 The Design Criteria Professional and Owner will each have the authority to reject Work which does not conform to the Contract Documents, Construction Documents and to required special inspection or testing with prior approval by the Owner. Neither the Design Criteria Professional's nor the Owner's authority to act under this Paragraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Design Criteria Professional or the Owner to the Design/Builder, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 24.5 The Design/Builder shall forward all communications to the Design Criteria Professional, with simultaneous copies to the Owner.
- 24.6 The Design Criteria Professional will review and certify the Design/Builder's Application for Payments that the Owner must subsequently approve prior to Payment of the Design/Builder.
- 24.7 The Design Criteria Professional shall review shop drawings for design intent only. The Design/Builder shall be responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Construction Documents and Contract Documents.
- 24.8 The duties, responsibilities and limitations of authority of the Design Criteria Professional and the Owner will not be modified nor extended without written consent of the Design/Builder, the Design Criteria Professional, and the Owner.

ARTICLE 25. MATERIALS

- 25.1 The Design/Builder shall provide materials and equipment as required in the Contract Documents and Construction Documents. Substitutions will be considered as defined by Section 00100-Instructions to Proposers and Section 01630-Substitution Procedures.
- 25.1.1 Any such substitution shall be approved by the Design Criteria Professional and Owner prior to incorporation of the proposed substitution into the Work.
- 25.1.2 Proposed substitutions shall be submitted for consideration from the Design/Builder to the Design Criteria Professional and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Design/Builder's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available
- 25.1.3 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner.
- 25.1.4 All additional costs incurred by the Owner as the result of any substitution shall be the direct responsibility of and borne by the Design/Builder.

- 25.1.5 Refer to Section 00100-Instructions to Proposers for substitutions proposed during Proposal Phase, and Section 01630-Product Substitution Procedures for substitutions proposed after award.
- 25.2 The Design/Builder shall make written request to the Design Criteria Professional for and obtain Design Criteria Professionals written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.
- 25.3 If, in the opinion of the Design Criteria Professional, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Design Criteria Professional shall request a Change Order Proposal from the Design/Builder for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

ARTICLE 26. STORED MATERIALS

- 26.1 Design/Builder shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials and equipment required for the performance of the Contract.
 - 26.1.1 Design/Builder is not entitled to payment for same except for those materials, which in Owner's discretion are properly stored and are going to be installed or incorporated into the construction of the Project within 30 days of delivery to the construction site.
 - 26.1.2 The storage facilities and methods of storing shall meet Owner's approval and shall be in accordance with manufacturer's recommendations, or Owner will not be obligated to pay for same.
 - 26.1.3 Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure provided by Design/Builder at Design/Builders expense.
 - 26.1.4 Owner may at its discretion require material to be stored in an air-conditioned location.
- 26.2 Provided the above conditions are met, the stored materials may be included in a subsequent Application for Payment if the Design/Builder also complies with the following:
 - 26.2.1 An applicable purchase order is provided listing the materials in detail and identifying the Contract Documents, by name, with verification that the total value of the purchase order amount reconciles with the corresponding application for payment stored materials line item value.
 - 26.2.2 Evidence that proper storage security is provided.
 - 26.2.3 The Owner is provided legal title (free of liens or encumbrances of any kind) to the material that is stored or stockpiled.
 - 26.2.4 The Design/Builder and/or its subcontractor have provided insurance for the Stored Materials against loss, damage (from whatever source), or disappearance, including loss or theft prior to incorporation into the Work. By execution of the Contract, Design/Builder releases Owner from any responsibility for Stored Materials and assumes all liability for and risk of loss or damage, by whatever means, including Owner's alleged negligence, regardless of whether the Owner has paid for said Stored Materials.
- 26.3 Once any Stored Material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Project or upon subsequent written approval by Owner.

- 26.4 No Applications for Payment shall be submitted nor payments made based on the value of materials stored at locations other than the Project, unless otherwise approved in writing by the Owner.
- 26.5 It is further agreed between the parties that the transfer of title and the Owner's payment for any Stored Material pursuant to the Contract Documents shall in no way relieve the Design/Builder of the responsibility for providing and installing such material in accordance with the requirements of the Contract Documents.
- 26.6 The Design/Builder warrants that title to all of the Work or Stored Materials covered by the Application for Payment will pass to the Owner either by incorporation in the Project or upon receipt of payment by the Design/Builder, whichever occurs first, free and clear of all liens, claims, security, interest or encumbrance; and that none of the Work and none of the Stored Materials covered by the Application for Payments will have been acquired by the Design/Builder, or by any other person performing the Work at the site or providing materials and equipment to the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Design/Builder or such person.
- 26.7 In the event stored materials which Owner is paying for in advance of their being installed or incorporated into the Project pursuant to this Paragraph are not installed or incorporated into the Project within 30 days of when they are delivered to the site, Design/Builder shall not be entitled to payment for any future stored materials on this Project and the amounts previously approved for payment for said materials shall be deducted from the Design/Builder's next application for payment.

ARTICLE 27. WORKFORCE COMPOSITION

- 27.1 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 27.1.1 The ratio of journeymen utilized shall be 2 journeymen to one other worker. When 2 workers involved in the crafts are employed, the first employed shall be a journeyman, and the second may be either a journeyman or a worker.
- 27.1.2 The Design/Builder shall utilize at least one certified journeyman that holds a State of Florida Certification or a certificate of competency obtained through a proctored examination in Broward County for the respective crafts or trades required for the execution of the Work.
- 27.1.3 For trades or crafts for which licenses or Certificates of Competency are required in Broward County, no Work may be performed or person employed as a worker in that trade unless the Work is under the direct supervision of a master or certified journeyman, certified in that trade. A certified master or certified journeyman shall not provide direct supervision to more than 3 other workers or uncertified journeymen at a job site.
- 27.1.4 The Design/Builder shall post on the outside of the Design/Builder's on-site project office and maintain by monthly updating a current list, available for the Owner and Design Criteria Professional's use, of the names, areas of specialty, and license or certificate numbers, or all journeymen, certified journeymen, and certified masters utilized for prosecution of the Work, including those used by Subcontractors.
- A. Work shall not commence in a particular trade or specialty until the Design/Builder's posted list has been updated to include that particular trade or specialty.
- B. The Owner will not consider requisitions for payment for Work completed by a particular trade or specialty unless Journeymen, certified Journeymen, or certified Masters of that

respective trade or specialty have been properly included on the Design/Builder's posted list.

- C. The format for the posted list should begin with the Design/Builder's company name; name of qualifier with their certificate or registration number; a listing of all the Design/Builder's employee names, work trade and work skill; journeymen with their license number or certificate of competency; or a designation as unskilled labor. The remainder of the list should follow the same format listing all the subcontractors and any other person performing labor on the project site. A copy of all licenses, certificates, registrations, and state registered apprenticeship documents should be kept on file in the Design/Builder's field office to substantiate his posted list.

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

ARTICLE 28. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

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

Construction Contract, Owner, Design Criteria Professional, or Inspector will notify Design/Builder in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such item or seek compensation from Design/Builder for same. Thereupon, Design/Builder shall, at its own expense, immediately remove, replace or correct such defective material; equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Design/Builder shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of either the Design Criteria Professional or the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.

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

ARTICLE 29. INSPECTIONS AND INSPECTION REPORTS

- 29.1 BCI and Other Inspections - The Design/Builder (Design/Builder) shall be solely responsible for scheduling all required inspections of the Work. Design/Builder shall fully comply with UBCI requirements regarding advance scheduling of inspections, hours of inspections, readiness of work for inspection, delays attributable to Design/Builder, and procedures that shall be followed by Design/Builder.
- 29.1.1 Design/Builder shall be solely and fully responsible for any non-compliance with BCI inspection procedures and requirements, including any fees or fines charged to SBBC due to Design/Builder Non-Compliance with said procedures and requirements.
- 29.2 Inspection Reports: The Board's Consultants will provide services and reports during construction in accordance with the Board's Consultant's respective contracts with the Board. Design/Builder shall cooperate with Board's Consultants.
- 29.3 Water and Sewer: New water and sewer facilities shall be inspected by BCH Design/Builder CDREP. After approval, Design/Builder shall verify that the facilities have been conveyed to the proper authority for maintenance.
- 29.4 Governmental Inspections: The Design/Builder shall be solely responsible for scheduling required inspections by all Governmental Agencies Having Jurisdiction, such as the South Florida Water Management District, etc., and full compliance with the procedures and requirements of same.
- 29.5 Public Utilities: The Design/Builder shall be solely responsible for scheduling required inspections by representatives of applicable public utilities, including but not limited to Electric, Gas, Water, Telephone, and Cable TV, and full compliance with the procedures and requirements of same.
- 29.6 The Design/Builder's A/E of Record shall perform the mandatory site visits as listed in Section 01040, file appropriate detailed reports of each inspection for DCP/SBBC review.
- 29.6.1 Schedule delays in the Work due to Design/Builder's failure to comply with any of the above procedures and/or requirements shall in no way be cause for extension of the contract time by SBBC.

ARTICLE 30. WARRANTY

- 30.1 Unless otherwise provided elsewhere in the Contract Documents, all material and equipment incorporated into any Work covered by the Contract Documents and Construction Documents

shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner and Design Criteria Professional.

- 30.2 Unless otherwise provided in the Contract Documents, Design/Builder warrants all Work, equipment, materials and workmanship to be in accordance with the Contract Documents, any and all applicable codes, proper and workmanlike, first class and free from defects for a period of 12 months (unless longer guarantees or warranties are provided for elsewhere in the Contract Documents in which case the longer periods of time shall prevail) from and after Substantial Final Completion of the Work under the Contract Documents and Construction Documents, regardless of whether the same were provided or performed by Design/Builder or by any subcontractor.
- 30.3 In addition to the 12-month warranty set forth in this Article, Design/Builder warrants the Work, equipment, materials and workmanship against latent defects for a period of 10 years from Final Completion.
- 30.4 In the event of damage or injury to persons or property or other consequential or resultant damages result from Design/Builder's breach of any warranties, then the Design/Builder shall be responsible for same.

ARTICLE 31. OFFICE SPACE FOR THE OWNER'S PERSONNEL

- 31.1 The Design/Builder shall provide, for the duration of the Work, a suitable lockable office for the Owner and Design Criteria Professional, equipped as provided for in other sections of these DCP documents.

ARTICLE 32. PROJECT RECORD DOCUMENTS AND SURVEY

- 32.1 A marked up record set of the Contract Documents and other project records as required elsewhere within the Contract Documents shall be kept up to date by the Design/Builder on the jobsite at all times. These documents shall be given to the Design Criteria Professional at the completion of the Work as required by the Contract Documents, and properly labeled by Design/Builder as "Project Record Documents."
- 32.2 In addition to the "Project Record Documents", the Design/Builder will cause to have prepared by a Surveyor, registered in the State of Florida, a site survey clearly representing all Work done under this Contract and updating the original survey as may have been provided by the Owner.
- 32.3 The Design/Builder shall submit Project Record Documents and Survey in the manner and format specified elsewhere in the Contract Documents.
- 32.4 Final payment will be withheld from the Design/Builder until "Project Record Documents" and survey are provided by the Design/Builder and approved by the Design Criteria Professional.

ARTICLE 33. SALVAGE

- 33.1 Any salvage resulting from clearing, grubbing, grading, draining, on this site shall be the property of the Owner; and this material shall be piled or stacked on the site if the Owner desires this material.
- 33.2 If this material is not desired by the Owner, it shall be disposed of by the Design/Builder at Design/Builder's expense.

ARTICLE 34. CLAIMS BY THE DESIGN/BUILDER

34.1 Intentionally not used. Refer to Article 52 herein.

ARTICLE 35. CHANGE ORDERS

35.1 One or more changes to the Work within the general scope of this Contract may be ordered by the Owner by Change Order, Design Criteria Professional's Supplementary Instructions, and Construction Change Directive.

35.1.1 Any change in the work, which alters the Construction Contract Amount or Contract Time, or includes a change of subcontractor shall be effected by Change Order.

35.2 The Design/Builder shall proceed with any extra Work or changes, which alter the Contract by adding to, or deducting from the Contract Sum or Contract Time in strict accordance with the following terms and conditions:

35.2.1 Change Order shall mean a written order to the Design/Builder executed by the Owner and the Design Criteria Professional after execution of this Contract, directing a change in the Work and may include a change in the Contract Price or the time for the Design/Builder's performance, or any combination thereof;

35.2.2 Any change in the Contract Price or time resulting from a Change Order shall be determined as follows:

A. By mutual agreement between the Owner and the Design/Builder as evidenced by (a) the change in the Contract Price or time being set forth in Change Order in accordance with Article 35.2.8 below, and (b) the execution of the Change Order; or,

B. If no mutual agreement occurs between the Owner and the Design/Builder, the change in the Contract Price, if any, shall be derived based upon the Cost Plus Price basis (as set forth in Article 35.2.8 below) by determining the "total actual costs" (in accordance with Article 35.2.9 below), incurred or savings achieved, resulting from revisions in the Work. Such total actual costs or savings shall include a component for direct jobsite overhead and profit but under no circumstances shall it include non-job site overhead expenses or costs or any other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Design Criteria Professional requires. If agreement is not reached as to the change in time, Design/Builder shall be given a reasonable extension of time based upon the scope of Work required by the change.

35.2.3 Execution of a Change Order by the Design/Builder shall constitute conclusive evidence of the Design/Builder's agreement to the ordered changes in the Work and the change in the Contract Price and the time for performance by the Design/Builder. The Design/Builder, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for issues or matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

35.2.4 The Design/Builder shall notify and obtain the consent and approval of the Design/Builder's surety with reference to all Change Orders if such notice, consent or approvals are required by the Owner, the Design Criteria Professional, and the Design/Builder's surety or by law. The Design/Builder's execution of the Change Order shall constitute the Design/Builder's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

35.2.5 The Owner, without invalidating the Contract, may require changes for any reason whatsoever. All said Work shall be executed under the terms of the original Contract.

- 35.2.6 All change orders and adjustments shall be in writing and executed by the Design/Builder and Owner; otherwise, no claim for additional compensation or time will be allowed.
- 35.2.7 The amount of credit to be allowed by the Design/Builder to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the total actual cost (as set forth in Article 35.2.9 below) saved as confirmed by the Design Criteria Professional. The amount shall not include an amount for the overhead and profit of the Design/Builder, which the Owner is not required to pay as a result of the deletion or decrease. When both additions and credits covering related Work or substitutions are involved in a change, the overhead and profit shall be calculated on the basis of net increase, if any, with respect to that change.
- 35.2.8 The value of any change ordered under the Contract for extra Work and/or any reductions in Work required, shall be determined under one or more of the following procedures before a written Change Order is issued.
- A. By UNIT PRICES named in the Contract or subsequently agreed upon by the Owner and the Design/Builder, which prices shall include Design/Builder's overhead and profit.
 - B. By LUMP SUM PRICE agreed upon actual reasonable costs and direct job site overhead by the Owner and the Design/Builder, which price shall include Design/Builder's overhead and profit but under no circumstances shall it include non job site overhead, expenses or costs or any other indirect costs; a breakdown of the estimated costs comprising the lump sum price may be required by the Design Criteria Professional for his review. Percentage for overhead and profit shall be determined in accordance with the method listed for COST PLUS PRICE, subparagraph (c.) below.
 - C. By a COST PLUS PRICE based on total actual costs as defined in Article 35.2.9 below, plus an added percentage, all determined as follows:

OVERHEAD AND PROFIT:

JOB SITE OVERHEAD, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the work of subcontractors (whether performed by them or others) shall be considered to be just and fully compensated for, by adding an amount equal to 5 percent of the sum of material costs (as defined under Article 35.8.9(a) below) and labor costs (as defined under Article 35.8.9(b) below), and rentals (as defined under Article 35.8.9(c) below). There shall be no compensation for any non-job site overhead, expenses or costs.

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

JOB SITE OVERHEAD, including general supervision and the furnishing, use and maintenance of small equipment incidental to and required for the Work of the Design/Builder (including that of his subcontractors) shall be considered to be just and fully compensated for by adding an amount equal to 5 percent of the sum of material costs (as defined under Article 35.8.9(a) below) and labor costs (as defined under Article 35.8.9(b) below) and rentals (as defined under Article 35.8.9(c) below). There shall be no compensation for any non-job site overhead expenses or costs.

PROFIT, may then be added by the Design/Builder to the above material costs and labor costs, including the JOB-SITE OVERHEAD allowance, at the rate of 10 percent of the sum of those costs.

- D. BOND ALLOWANCE, for maintaining the Performance Bond at 100 percent of the contract amount, a sum of 1 percent of the total cost of the change, (including material, labor, overhead and profit, and equipment rentals) shall be allowed on all change orders.

35.2.9 Total actual costs of materials, labor and equipment rentals may include the following only:

- A. Material costs actually recorded by the Design/Builder and/or subcontractors as they are delivered to the site and as evidenced from originally receipted invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and available to the Design Criteria Professional at all times.
 - B. Labor costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed and on the extra Work required, including the net cost of insurance, Social Security and Workmen's Compensation. The furnishing, use and maintenance of small tools and ordinary equipment normal to the work of individual workmen in the trades will be considered part of the labor costs. Records in proper form shall be maintained and available to the Design Criteria Professional at all times.
 - C. Rentals for special equipment or machinery such as power driven roller, tractors, trucks, shovels, drills, mixers, pumps, hoists, etc., required for the economical performance of the Work, at reasonable rental prices agreed upon before work commences, shall be allowed the Design/Builder and/or his subcontractors by the Design Criteria Professional for each and every hour such special equipment is in use on the particular work.
- 35.2.10 The Design/Builder is obligated to proceed with the Changes to the Work, even though there has not been an agreement reached with the Owner as to an adjustment to the Contract Price or time, and even if there is a dispute as to same. In such instances the Design Criteria Professional will issue Section 01250e-Construction Change Directive as specified elsewhere in the Contract Documents. A change order or proposed change order shall not be the basis of the Design/Builder not performing pursuant to the Contract Documents.
- 35.2.11 The Design/Builder, Owner and Design Criteria Professional shall administer and document the change order process by utilizing the documentation system specified elsewhere in the Contract Documents, including Section 01250e-Construction Change Directive.
- 35.3 The Design Criteria Professional will have authority to order minor changes in the Work not involving an adjustment to the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Said changes shall be effected by written order on Section 01250f-Design Criteria Professional's Supplemental Instructions and such changes shall be binding on the Owner and the Design/Builder.
- 35.4 The Owner has authorized the following approval thresholds for Change Orders in the Name of The School Board of Broward County, Florida under Board Policy 7006, as amended.
- 35.5 Design/Builder shall not be entitled to additional compensation or time arising from errors or Omissions in the drawings, plans or the like authored by the Design/Builders A-E Team.

ARTICLE 36. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

- 36.1 In the event that the Design/Builder covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Design Criteria Professional, said work shall be uncovered and displayed for the Owner's or Design Criteria Professional's inspection upon request, and shall be replaced at no additional cost in time or money to the Owner.
- 36.2 If any of the work is covered, concealed or obscured in a manner not covered by paragraph above, it shall, if directed by the Owner or the Design Criteria Professional, be uncovered and displayed for the Owner's or Design Criteria Professional's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Design/Builder to uncover

and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Design/Builder.

- 36.3 The Design/Builder shall, at no additional cost in money to the Owner or extension of time correct work rejected by the Owner or by the Design Criteria Professional as defective or failing to conform to this Contract. Additionally, the Design/Builder shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.
- 36.4 In addition to Design/Builder's warranty obligations set forth elsewhere herein, the Design/Builder shall be specifically obligated to correct any and all defective or nonconforming work for a period of 12 months following Final Completion upon written direction from the Owner.
- 36.5 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 36.5.1 In such event, the Contract Price shall be reduced, at Owner's option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.
- 36.5.2 Owner for the acceptance of defective or nonconforming work, the Design/Builder shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 37. SAFETY, PROTECTION OF WORK AND PROPERTY

- 37.1 Design/Builder shall be fully and solely responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Design/Builder shall continuously and diligently inspect all Work, material and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions.
- 37.2 Design/Builder shall instruct its personnel on the requirements of the Design/Builder's safety program and shall coordinate with other contractors and subcontractors doing work on the site, on safety matters.
- 37.3 Design/Builder shall provide safety equipment and enforce the use of such equipment by its employees.
- 37.4 Design/Builder shall maintain accurate accident and injury reports and shall provide to Owner a monthly summary of injuries and man-hours lost due to injuries.
- 37.5 Design/Builder shall maintain all portions of the Work in a neat, clean and sanitary condition at all times.
- 37.6 Design/Builder shall assure that all subcontractors shall, without expense to Owner, comply with this article.
- 37.7 Design/Builder shall comply with any and all rules, regulations, laws, etc., which apply to safety requirements, including but not limited to OSHA requirements.
- 37.8 Safety Precautions and Programs:
 - 37.8.1 The Design/Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

- 37.8.2 In the event the Design/Builder encounters on the site material or substance, including, but not limited to, reasonably believed to be asbestos or polychlorinated biphenyl (PCB), the Design/Builder shall immediately stop Work in the area affected and report the condition to the Owner and Design Criteria Professional in writing. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design/Builder and, in the event such material or substance is found to be present, to perform the task or removal or safe containment of such material or substance, and verify that it has been rendered harmless. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Design/Builder and Design Criteria Professional. Asbestos abatement will not be completed by others under a separate contract with The School Board of Broward County, Florida prior to demolition work performed under this contract except as otherwise indicated in the Contract Documents.
- 37.8.3 The Design/Builder shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
- 37.9 Safety of Persons and Property:
- 37.9.1 The Design/Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- A. Employees on the Work and other persons who may be affected thereby;
 - B. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design/Builder or the Design/Builder's Subcontractors or Sub-subcontractors; and
 - C. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 37.9.2 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of person or property or their protection from damage, injury or loss.
- A. The Design/Builder and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health Act (OSHA) of 1970.
 - B. The Design/Builder shall prominently post and maintain on the jobsite:
 - 1) OSHA 200: Log and summary of occupational injuries and illnesses.
 - 2) OSHA 2203: Provisions of the Act poster.
- 37.9.3 The Design/Builder shall implement and maintain a continuing safety program applicable to all Design/Builder employees, Subcontractors, and Sub-subcontractors, to include:
- A. Designating a responsible member of the Design/Builder's organization at the site as the Design/Builder's "Safety Officer" whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Owner and the Design Criteria Professional.
 - B. Holding weekly safety meetings with employees and Subcontractors.
 - C. Implementing OSHA Voluntary Protection Programs.
 - D. Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.

- E. Compliance with the Drug Free Work Place Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Section 00457-Drug-Free Workplace Certification.
 - F. Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - G. Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their rights in these regards.
- 37.9.4 When use of toxic materials or equipment or unusual methods are necessary for execution of the Work, the Design/Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 37.9.5 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to properly caused in whole or in part by the Design/Builder, a Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is reasonable, except damage or loss attributable to acts or omissions of the Owner or Design Criteria Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault of negligence of the Design/Builder.
- 37.9.6 The Design/Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 37.9.7 Building materials, Design/Builder's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which he shall store all materials which would be damaged or made defective by weather. This shall in no manner relieve the Design/Builder from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as required by ASCE 7-98 Chapter 6, Florida Building Code, and SREF.
- 37.10 Emergencies: In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 38. ROYALTIES AND PATENTS

- 38.1 The Design/Builder shall pay all royalties and license fees.
- 38.2 The Design/Builder shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Design/Builder and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.
- 38.3 Design/Builder hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Design/Builder, or out of the process of actions employed by, or on behalf of Design/Builder in connection with the performances of this Construction Contract. Design/Builder shall, at its sole expense, promptly defend against any such claim or

action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Design/Builder upon becoming aware of such claims or actions, and provided further, that Design/Builder's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.

- 38.4 Design/Builder shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.
- 38.5 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of \$1,000.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Contract Documents.

ARTICLE 39. TAXES

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

ARTICLE 40. INDEMNITY AND HOLD HARMLESS

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

insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions against the Owner which are within the insurance policy limits and are paid by the insurance company solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

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

ARTICLE 41. TERMINATION BY THE DESIGN/BUILDER

- 41.1 If the Owner fails to perform its material obligations to the Design/Builder without cause for a period of 90 days after receiving written notice from the Design/Builder of its intent to terminate hereunder, the Design/Builder may terminate performance under this Contract by written notice to the Owner and the Design Criteria Professional.
- 41.2 In such event, the Design/Builder shall only be entitled to recover from the Owner as though the Owner had terminated the Design/Builder's performance for convenience pursuant to the terms and conditions of this Contract.

ARTICLE 42. OWNER'S RIGHT TO SUSPEND DESIGN/BUILDER'S PERFORMANCE

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

ARTICLE 43. TERMINATION BY THE OWNER

- 43.1 The Owner may at any time terminate this Contract in accordance with the following terms and conditions.
- 43.2 The Owner may, for any reason whatsoever, terminate performance under this Contract by the Design/Builder for convenience:
- 43.2.1 The Owner shall give written notice of such termination to Design/Builder 7 days before it becomes effective.
- 43.2.2 The Design/Builder shall incur no further obligations in connection with the Work and the Design/Builder shall stop work when such termination becomes effective.
- 43.2.3 The Design/Builder shall also terminate outstanding orders and subcontracts.

- 43.2.4 The Design/Builder shall settle the liabilities and claims arising out of the termination of subcontracts and orders.
- 43.2.5 The Owner may direct the Design/Builder to assign the Design/Builder's right, title and interest under termination orders or subcontracts to the Owner or its designee.
- 43.2.6 The Design/Builder shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Design/Builder has.
- 43.2.7 When terminated for convenience except as set forth in Section 43.2.7(d), the Design/Builder shall be compensated as follows:
- A. The Design/Builder shall submit a termination claim within one year to the Owner and the Design Criteria Professional specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Design Criteria Professional. If the Design/Builder fails to file a termination claim with the Owner's Design Criteria Professional within one (1) year from the effective date of termination, the Owner shall have no further obligation to the Design/Builder and Design/Builder waives any and all rights for compensation based upon the termination.
 - B. The Owner and the Design/Builder may agree to the compensation, if any, due to the Design/Builder hereunder;
 - C. Absent agreement to the amount due to the Design/Builder, the Owner shall pay the Design/Builder the following amounts:
 - 1. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - 2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Design/Builder's performance, plus a fair and reasonable allowance for direct jobsite overhead (and not home office or other overhead) and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - 3. Reasonable costs of settling and paying claims arising out of the termination of subcontractors or orders pursuant to this subparagraph. These costs shall not include amounts paid in accordance with other provisions hereof.
 - 4. The total sum to be paid the Design/Builder under this Subparagraph shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.
 - D. If the Owner terminates the contract after the design phase is completed and before the construction phase notice to proceed is issued, Design/Builder shall be paid the sum shown as the termination cost in the Section 00350-Project Cost Proposal, as full and final compensation representing a termination cost. Design/Builder acknowledges upon payment that it has no further claims against the Owner arising under the contract and releases Owner from any and all claims including consequential damages of any kind arising from said termination.
- 43.3 The Owner may terminate this Contract for cause in accordance with the following terms and conditions:
- 43.3.1 If the Design/Builder does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely

discharge its obligations for labor, equipment and materials or proceeds to disobey applicable law, or otherwise is in breach of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Design/Builder or others, may terminate the performance of the Design/Builder for cause upon 7 day written notice and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.

- 43.3.2 In such case, the Design/Builder shall not be paid further until the Work is complete.
- 43.3.3 After Final Completion has been achieved, if any portion of the Contract Price (as it may be modified hereunder) remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Design/Builder. Otherwise, the Design/Builder shall pay the Owner any and all costs, fees, damages or expenses which the Owner has paid or is obligated to pay in excess of the contract price (as it may be modified hereunder). This obligation for payment shall survive the termination of the Contract. In the event the Design/Builder is terminated by the Owner for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the terms of Article 43.2 shall apply.

ARTICLE 44. DESIGN/BUILDER'S INSURANCE

General Provisions

- 44.1 Refer to RFP for insurance requirements

ARTICLE 45. PERFORMANCE AND PAYMENT BOND

45.1 BOND REQUIREMENTS

- 45.1.1 The successful Proposer shall enter into a formal Contract and furnish satisfactory performance and payment bonds, with a corporate surety authorized to do business in the State of Florida and acceptable to the Owner, within 10 calendar days after notice of the award. The respective performance and payment bonds shall be conditioned well and truly to perform the Contract and to pay all bills and invoices for labor done and materials furnished in the performance of the Work, including guarantee period of one year against faulty work, and be on the forms as provided by the Owner.
- 45.1.2 All bonds shall be executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or an attorney-in-fact. The Owner requires the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- 45.1.3 In case of default on the part of the Design/Builder, actions for all expenses incident to ascertaining and collecting losses under the bond, including legal services, shall lie against the bond.
- 45.1.4 All bonding companies shall be authorized to do business under the laws of the State of Florida. All bonding companies providing bonds required under this contract shall have at least an "A Minus" rating in the current A. M. best manual.
- 45.1.5 The U. S. Treasury Department approved bonding companies, to be acceptable to the Owner, will be limited in bonding ability to the current U. S. Treasury Department standing for net limit on any one risk. All Bonding Companies shall issue bonds on the Owner's standard Documents 00600-Performance Bond Form and 00610-Payment Bond Form provided in the Contract Documents. Performance and Payment Bonds issued on any form, other than those provided herein will not be acceptable.

- 45.1.6 Work will be issued on the basis of a Notice to Proceed (NTP) and for any such work so issued, a performance bond and payment bond shall be required.
- 45.1.7 Performance and Payment Bonds shall be based upon 100% of the Base Cost Proposal plus the total cost of any alternate cost items as submitted by the Design/Builder and accepted by the Owner. Reuse of the Design/Builders Base Cost Proposal issued by an NTP in excess of the submitted bond capacity will require the submittal of additional bonds. A separate performance bond and payment bond shall be required for each school site authorized by NTP's issued by the Owner for reuse of the Design/Builder's Base Cost Proposal.
- 45.1.8 Performance Bonds and Payment Bonds:
- 45.1.8.1 Shall be issued by a Surety Company approved by the U.S. Treasury Department and licensed to do business in Florida, and executed and signed by a resident agent having an office in Florida, representing such Surety Company, said bond guaranteeing the performance of the Contract and as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Performance Bonds and Payment Bonds shall be issued by the Surety Company on the forms provided within the Proposal Documents. No other forms will be acceptable. These forms are:
- A. Document 00600 - Design/Builder's Performance Bond: Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100 percent of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design/Builder may not proceed with any Work related to such subsequent NTP until the Design/Builder has provided a new performance bond for that NTP.
- B. Document 00610 - Design/Builder's Payment Bond: Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100 percent of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design/Builder may not proceed with any Work related to such subsequent NTP until the Design/Builder has provided a new performance bond for that NTP.

ARTICLE 46. RIGHT TO AUDIT PROVISIONS

- 46.1 Design/Builder's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Design/Builder records which may have a bearing on matters of interest to the Owner in connection with Design/Builder's dealings with the Owner (,all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Design/Builder compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the Design/Builder or his payees. Design/Builder shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between

Design/Builder and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Design/Builder will cooperate fully and will require Related Parties and all of Design/Builder's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data..

- 46.2 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Design/Builder's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.
- 46.3 Owner's authorized representative or designee shall have reasonable access to the Design/Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- 46.4 Design/Builder shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts, which include such provisions, shall be reason to exclude some or all of the related payees' costs from amounts payable to the Design/Builder pursuant to this contract.
- 46.5 If an audit inspection or examination in accordance with this Article, and finds that Design/Builder overcharged Owner, the Design/ Builder shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Design/ Builder shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Design/ Builder and Owner. If such amounts owed Design/ Builder are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Design/ Builder hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

ARTICLE 47. LAWS AND REGULATIONS

- 47.1 Design/Builder and it's employees and representative shall at all times, comply with all applicable laws, ordinances, statutes, codes, rules and regulations (including but not limited to the State Requirement for Educational Facilities (SREF) in effect at the time Work is performed pursuant to the Contract Documents.
- 47.2 If, during the term of this Construction Contract, there are any changed or new laws, ordinances, status, codes, rules, and/or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Design/Builder shall within 15 days of the discovery of said law, ordinance, statues, codes, rules, and or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction

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

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

ARTICLE 48. DISPUTE RESOLUTION

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

ARTICLE 49. GOVERNING LAW

- 49.1 The Construction Contract shall be governed by the laws of the State of Florida.
- 49.2 In the event either party institutes litigation regarding or relating to this Contract or for breach of any of its terms said litigation shall have venue in Broward County, Florida.

ARTICLE 50. RIGHTS AND REMEDIES

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

ARTICLE 51. SUCCESSORS, ASSIGNS AND ASSIGNMENT

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

ARTICLE 52. NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- 52.1 The Owner's liability to Design/Builder for any claims arising out of or related to the subject matter of this contract, 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. The Design/Builder must submit a Notice of Claim to Owner within 20 days of when the Design/Builder 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, the Design/Builder shall submit to the Owner the Design/Builders Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
- D. The Design/Builder agrees that the Owner shall not be liable for any claim that the Design/Builder fails to submit as a Request for Change Order as provided in this Article.

52.2 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Design/Builder the Owners written determination of the claim.

52.3 The venue for all civil actions against the Owner shall be in Broward County, Florida.

52.4 For work the Design/Builder performs with its own forces, and in addition to the adjustments provided for in Article 35, the Design/Builder'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, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 52.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Design/Builder's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes as set forth in Articles 35. The Design/Builder 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.

52.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision are inapplicable or unenforceable for any reason or cause, then the Design/Builder shall be entitled to the sum of \$200 per day for each day the Design/Builder is actually delayed by the action of or neglect of the Owner, by changes in the Work, or by any other cause of delay which is attributable to the Owner, and beyond the Design/Builder's control, avoidance or mitigation and without the fault or negligence of the Design/Builder and/or subcontractor, or supplier at any tier. This provision contemplates anticipated supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Owner as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like."

END OF SECTION

ATTACHMENT V

Design Builders Bid Breakout Form

BID SHEET - BID BREAKDOWN

Attachment V

RFP # 15-081C

RFP Name: City of Parkland Classroom Additions 14-1212

Division	Description	Amount
	Mob/Demob	
1	General Requirements	
2	Site Construction	
3	Concrete	
4	Masonry	
5	Metals	
6	Wood & Plastics	
7	Thermal & Moisture Protection	
8	Doors & Windows	
9	Finishes	
10	Specialties	
11	Equipment	
12	Furnshings	
13	Special Construction	
14	Conveying Systems	
15	Mechanical	
16	Electrical	
17	Technology & Communications	
Sub Total		
Design		
Bonds & Insurance		
Overhead		
Profit		
Owner Contingency @ 10%		
Sub Total		
TOTAL		

ATTACHMENT W1

ALTERNATIVE DESIGN CONCEPT DESCRIPTION for OWNER CONSIDERATION

(1 concept per sheet, more than 1 sheet may be utilized for each concept provided)

Design Builders Company Name

Name of Alternative Design Concept

Description of Alternative Concept

Provide description here, take as much space as required

Benefits of the Alternative Design Concept

Provide information pertaining to the benefits here

List of Attachments

- 37.8.2 In the event the Design/Builder encounters on the site material or substance, including, but not limited to, reasonably believed to be asbestos or polychlorinated biphenyl (PCB), the Design/Builder shall immediately stop Work in the area affected and report the condition to the Owner and Design Criteria Professional in writing. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design/Builder and, in the event such material or substance is found to be present, to perform the task or removal or safe containment of such material or substance, and verify that it has been rendered harmless. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Design/Builder and Design Criteria Professional. Asbestos abatement will not be completed by others under a separate contract with The School Board of Broward County, Florida prior to demolition work performed under this contract except as otherwise indicated in the Contract Documents.
- 37.8.3 The Design/Builder shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
- 37.9 Safety of Persons and Property:
- 37.9.1 The Design/Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- A. Employees on the Work and other persons who may be affected thereby;
 - B. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design/Builder or the Design/Builder's Subcontractors or Sub-subcontractors; and
 - C. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 37.9.2 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of person or property or their protection from damage, injury or loss.
- A. The Design/Builder and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health Act (OSHA) of 1970.
 - B. The Design/Builder shall prominently post and maintain on the jobsite:
 - 1) OSHA 200: Log and summary of occupational injuries and illnesses.
 - 2) OSHA 2203: Provisions of the Act poster.
- 37.9.3 The Design/Builder shall implement and maintain a continuing safety program applicable to all Design/Builder employees, Subcontractors, and Sub-subcontractors, to include:
- A. Designating a responsible member of the Design/Builder's organization at the site as the Design/Builder's "Safety Officer" whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Owner and the Design Criteria Professional.
 - B. Holding weekly safety meetings with employees and Subcontractors.
 - C. Implementing OSHA Voluntary Protection Programs.
 - D. Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.

- E. Compliance with the Drug Free Work Place Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Section 00457-Drug-Free Workplace Certification.
 - F. Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - G. Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their rights in these regards.
- 37.9.4 When use of toxic materials or equipment or unusual methods are necessary for execution of the Work, the Design/Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 37.9.5 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to properly caused in whole or in part by the Design/Builder, a Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is reasonable, except damage or loss attributable to acts or omissions of the Owner or Design Criteria Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault of negligence of the Design/Builder.
- 37.9.6 The Design/Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 37.9.7 Building materials, Design/Builder's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which he shall store all materials which would be damaged or made defective by weather. This shall in no manner relieve the Design/Builder from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as required by ASCE 7-98 Chapter 6, Florida Building Code, and SREF.
- 37.10 Emergencies: In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 38. ROYALTIES AND PATENTS

- 38.1 The Design/Builder shall pay all royalties and license fees.
- 38.2 The Design/Builder shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Design/Builder and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.
- 38.3 Design/Builder hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Design/Builder, or out of the process of actions employed by, or on behalf of Design/Builder in connection with the performances of this Construction Contract. Design/Builder shall, at its sole expense, promptly defend against any such claim or

action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Design/Builder upon becoming aware of such claims or actions, and provided further, that Design/Builder's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.

- 38.4 Design/Builder shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.
- 38.5 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of \$1,000.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Contract Documents.

ARTICLE 39. TAXES

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

ARTICLE 40. INDEMNITY AND HOLD HARMLESS

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

insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions against the Owner which are within the insurance policy limits and are paid by the insurance company solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

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

ARTICLE 41. TERMINATION BY THE DESIGN/BUILDER

- 41.1 If the Owner fails to perform its material obligations to the Design/Builder without cause for a period of 90 days after receiving written notice from the Design/Builder of its intent to terminate hereunder, the Design/Builder may terminate performance under this Contract by written notice to the Owner and the Design Criteria Professional.
- 41.2 In such event, the Design/Builder shall only be entitled to recover from the Owner as though the Owner had terminated the Design/Builder's performance for convenience pursuant to the terms and conditions of this Contract.

ARTICLE 42. OWNER'S RIGHT TO SUSPEND DESIGN/BUILDER'S PERFORMANCE

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

ARTICLE 43. TERMINATION BY THE OWNER

- 43.1 The Owner may at any time terminate this Contract in accordance with the following terms and conditions.
- 43.2 The Owner may, for any reason whatsoever, terminate performance under this Contract by the Design/Builder for convenience:
- 43.2.1 The Owner shall give written notice of such termination to Design/Builder 7 days before it becomes effective.
- 43.2.2 The Design/Builder shall incur no further obligations in connection with the Work and the Design/Builder shall stop work when such termination becomes effective.
- 43.2.3 The Design/Builder shall also terminate outstanding orders and subcontracts.

- 43.2.4 The Design/Builder shall settle the liabilities and claims arising out of the termination of subcontracts and orders.
- 43.2.5 The Owner may direct the Design/Builder to assign the Design/Builder's right, title and interest under termination orders or subcontracts to the Owner or its designee.
- 43.2.6 The Design/Builder shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Design/Builder has.
- 43.2.7 When terminated for convenience except as set forth in Section 43.2.7(d), the Design/Builder shall be compensated as follows:
- A. The Design/Builder shall submit a termination claim within one year to the Owner and the Design Criteria Professional specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Design Criteria Professional. If the Design/Builder fails to file a termination claim with the Owner's Design Criteria Professional within one (1) year from the effective date of termination, the Owner shall have no further obligation to the Design/Builder and Design/Builder waives any and all rights for compensation based upon the termination.
 - B. The Owner and the Design/Builder may agree to the compensation, if any, due to the Design/Builder hereunder;
 - C. Absent agreement to the amount due to the Design/Builder, the Owner shall pay the Design/Builder the following amounts:
 - 1. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - 2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Design/Builder's performance, plus a fair and reasonable allowance for direct jobsite overhead (and not home office or other overhead) and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - 3. Reasonable costs of settling and paying claims arising out of the termination of subcontractors or orders pursuant to this subparagraph. These costs shall not include amounts paid in accordance with other provisions hereof.
 - 4. The total sum to be paid the Design/Builder under this Subparagraph shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.
 - D. If the Owner terminates the contract after the design phase is completed and before the construction phase notice to proceed is issued, Design/Builder shall be paid the sum shown as the termination cost in the Section 00350-Project Cost Proposal, as full and final compensation representing a termination cost. Design/Builder acknowledges upon payment that it has no further claims against the Owner arising under the contract and releases Owner from any and all claims including consequential damages of any kind arising from said termination.
- 43.3 The Owner may terminate this Contract for cause in accordance with the following terms and conditions:
- 43.3.1 If the Design/Builder does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely

discharge its obligations for labor, equipment and materials or proceeds to disobey applicable law, or otherwise is in breach of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Design/Builder or others, may terminate the performance of the Design/Builder for cause upon 7 day written notice and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.

- 43.3.2 In such case, the Design/Builder shall not be paid further until the Work is complete.
- 43.3.3 After Final Completion has been achieved, if any portion of the Contract Price (as it may be modified hereunder) remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Design/Builder. Otherwise, the Design/Builder shall pay the Owner any and all costs, fees, damages or expenses which the Owner has paid or is obligated to pay in excess of the contract price (as it may be modified hereunder). This obligation for payment shall survive the termination of the Contract. In the event the Design/Builder is terminated by the Owner for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the terms of Article 43.2 shall apply.

ARTICLE 44. DESIGN/BUILDER'S INSURANCE

General Provisions

- 44.1 Refer to RFP for insurance requirements

ARTICLE 45. PERFORMANCE AND PAYMENT BOND

45.1 BOND REQUIREMENTS

- 45.1.1 The successful Proposer shall enter into a formal Contract and furnish satisfactory performance and payment bonds, with a corporate surety authorized to do business in the State of Florida and acceptable to the Owner, within 10 calendar days after notice of the award. The respective performance and payment bonds shall be conditioned well and truly to perform the Contract and to pay all bills and invoices for labor done and materials furnished in the performance of the Work, including guarantee period of one year against faulty work, and be on the forms as provided by the Owner.
- 45.1.2 All bonds shall be executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or an attorney-in-fact. The Owner requires the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- 45.1.3 In case of default on the part of the Design/Builder, actions for all expenses incident to ascertaining and collecting losses under the bond, including legal services, shall lie against the bond.
- 45.1.4 All bonding companies shall be authorized to do business under the laws of the State of Florida. All bonding companies providing bonds required under this contract shall have at least an "A Minus" rating in the current A. M. best manual.
- 45.1.5 The U. S. Treasury Department approved bonding companies, to be acceptable to the Owner, will be limited in bonding ability to the current U. S. Treasury Department standing for net limit on any one risk. All Bonding Companies shall issue bonds on the Owner's standard Documents 00600-Performance Bond Form and 00610-Payment Bond Form provided in the Contract Documents. Performance and Payment Bonds issued on any form, other than those provided herein will not be acceptable.

- 45.1.6 Work will be issued on the basis of a Notice to Proceed (NTP) and for any such work so issued, a performance bond and payment bond shall be required.
- 45.1.7 Performance and Payment Bonds shall be based upon 100% of the Base Cost Proposal plus the total cost of any alternate cost items as submitted by the Design/Builder and accepted by the Owner. Reuse of the Design/Builders Base Cost Proposal issued by an NTP in excess of the submitted bond capacity will require the submittal of additional bonds. A separate performance bond and payment bond shall be required for each school site authorized by NTP's issued by the Owner for reuse of the Design/Builder's Base Cost Proposal.
- 45.1.8 Performance Bonds and Payment Bonds:
- 45.1.8.1 Shall be issued by a Surety Company approved by the U.S. Treasury Department and licensed to do business in Florida, and executed and signed by a resident agent having an office in Florida, representing such Surety Company, said bond guaranteeing the performance of the Contract and as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Performance Bonds and Payment Bonds shall be issued by the Surety Company on the forms provided within the Proposal Documents. No other forms will be acceptable. These forms are:
- A. Document 00600 - Design/Builder's Performance Bond: Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100 percent of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design/Builder may not proceed with any Work related to such subsequent NTP until the Design/Builder has provided a new performance bond for that NTP.
- B. Document 00610 - Design/Builder's Payment Bond: Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100 percent of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design/Builder may not proceed with any Work related to such subsequent NTP until the Design/Builder has provided a new performance bond for that NTP.

ARTICLE 46. RIGHT TO AUDIT PROVISIONS

- 46.1 Design/Builder's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Design/Builder records which may have a bearing on matters of interest to the Owner in connection with Design/Builder's dealings with the Owner (,all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Design/Builder compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the Design/Builder or his payees. Design/Builder shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between

Design/Builder and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Design/Builder will cooperate fully and will require Related Parties and all of Design/Builder's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data..

- 46.2 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Design/Builder's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.
- 46.3 Owner's authorized representative or designee shall have reasonable access to the Design/Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- 46.4 Design/Builder shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts, which include such provisions, shall be reason to exclude some or all of the related payees' costs from amounts payable to the Design/Builder pursuant to this contract.
- 46.5 If an audit inspection or examination in accordance with this Article, and finds that Design/Builder overcharged Owner, the Design/ Builder shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Design/ Builder shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Design/ Builder and Owner. If such amounts owed Design/ Builder are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Design/ Builder hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

ARTICLE 47. LAWS AND REGULATIONS

- 47.1 Design/Builder and it's employees and representative shall at all times, comply with all applicable laws, ordinances, statutes, codes, rules and regulations (including but not limited to the State Requirement for Educational Facilities (SREF) in effect at the time Work is performed pursuant to the Contract Documents.
- 47.2 If, during the term of this Construction Contract, there are any changed or new laws, ordinances, status, codes, rules, and/or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Design/Builder shall within 15 days of the discovery of said law, ordinance, statutes, codes, rules, and or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction

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

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

ARTICLE 48. DISPUTE RESOLUTION

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

ARTICLE 49. GOVERNING LAW

- 49.1 The Construction Contract shall be governed by the laws of the State of Florida.
- 49.2 In the event either party institutes litigation regarding or relating to this Contract or for breach of any of its terms said litigation shall have venue in Broward County, Florida.

ARTICLE 50. RIGHTS AND REMEDIES

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

ARTICLE 51. SUCCESSORS, ASSIGNS AND ASSIGNMENT

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

ARTICLE 52. NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- 52.1 The Owner's liability to Design/Builder for any claims arising out of or related to the subject matter of this contract, 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. The Design/Builder must submit a Notice of Claim to Owner within 20 days of when the Design/Builder 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, the Design/Builder shall submit to the Owner the Design/Builders Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
- D. The Design/Builder agrees that the Owner shall not be liable for any claim that the Design/Builder fails to submit as a Request for Change Order as provided in this Article.

52.2 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Design/Builder the Owners written determination of the claim.

52.3 The venue for all civil actions against the Owner shall be in Broward County, Florida.

52.4 For work the Design/Builder performs with its own forces, and in addition to the adjustments provided for in Article 35, the Design/Builder'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, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 52.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Design/Builder's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes as set forth in Articles 35. The Design/Builder 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.

52.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision are inapplicable or unenforceable for any reason or cause, then the Design/Builder shall be entitled to the sum of \$200 per day for each day the Design/Builder is actually delayed by the action of or neglect of the Owner, by changes in the Work, or by any other cause of delay which is attributable to the Owner, and beyond the Design/Builder's control, avoidance or mitigation and without the fault or negligence of the Design/Builder and/or subcontractor, or supplier at any tier. This provision contemplates anticipated supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Owner as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like."

END OF SECTION