

SCHOOL BOARD OF BREVARD COUNTY
OFFICE OF PURCHASING SERVICES
2700 JUDGE FRAN JAMIESON WAY
VIERA, FL 32940-6601

RFQ #0902/LH – Design-Build Services for Dr. W.J. Creel Elementary Air Conditioning Replacement - Maintenance

VENDOR RECOMMENDED FOR AWARD:

Vendor Name

**Vendor #V00002099980
Wharton-Smith**

SOLICITATION SUMMARY

Date Solicited: January 7, 2009
Date Opened: January 20, 2009
Present to Board: **March 10, 2009**

No. Firms Solicited: 36
No. Firms Responded: 9

CONTRACT TERM:

Upon completion of project and acceptance by the School Board of Brevard County

RECOMMENDATION: (Posted 2/24/09 – 11:00 AM)

It is the recommendation of Mr. Walt Petters, Director, Office of Plant Operations and Maintenance, and Staff after a proper evaluation of submittals and presentation process as specified by F.S. 287.055 and SREF Section 4.1, that the District award a Design/Build Services Contract required for Dr. W.J. Creel Elementary Air Conditioning Replacement with the top ranked firm for a not to exceed Guaranteed Maximum Price (GMP) of \$1,601,000.00.

ACTION BY BOARD

_____ Approved Recommendation(s) Above & Awarded

Meeting Date: _____

_____ Other _____

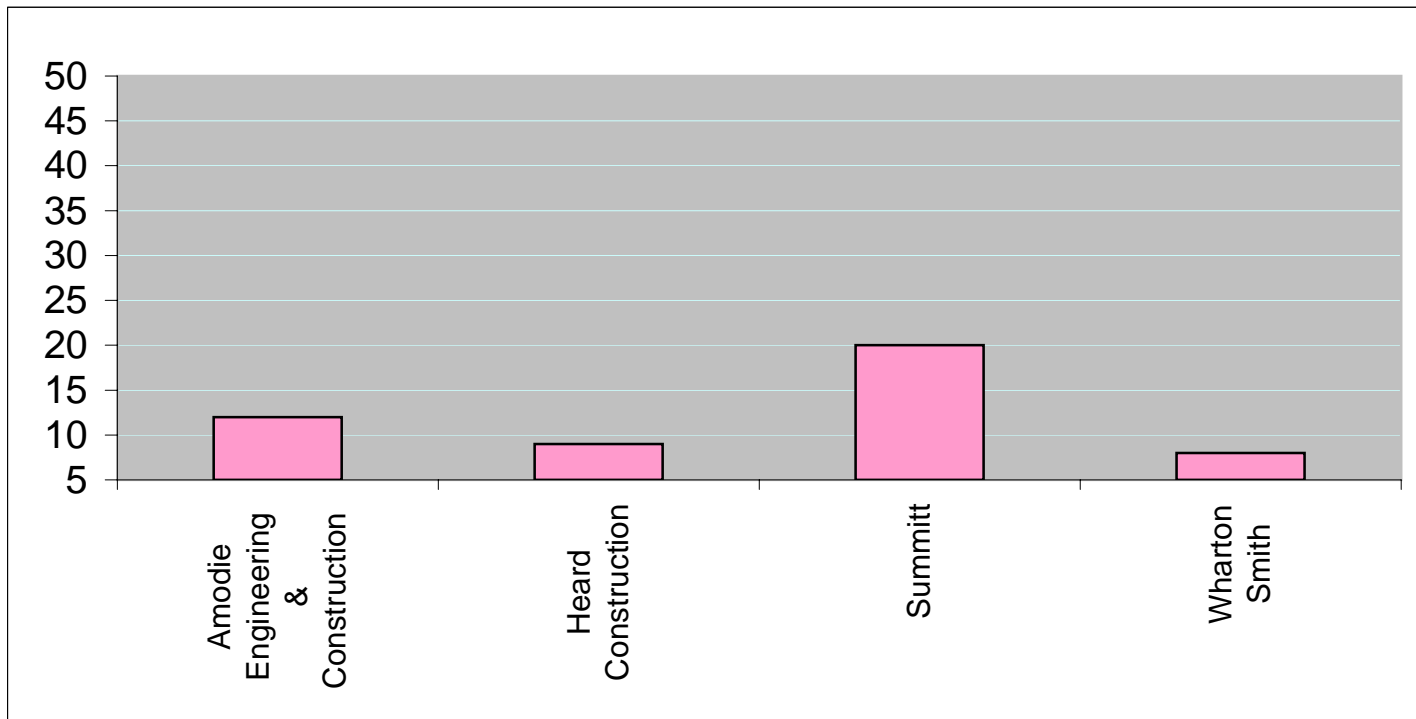
Lynda L. Jones
Director of Purchasing and Warehouse Services

Failure to file a protest within the time prescribed in s. 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

RFQ 0901/LH Design-Build Services for Dr. WJ Creel Elementary School Air Conditioning Replacement

Ranking Summary

Team Member	Amodie Engineering & Construction	Heard Construction	Summitt	Wharton Smith
Herb Blauel	3	1	4	2
Alan Daniels	1	3	4	2
Elden Burke	3	1	4	2
Warren McKenzie	3	2	4	1
Andrew Collamore	2	2	4	1
Total Rank	12	9	20	8



Lowest score = 1st Ranked

Selection Completed 2-12-09

Agreement Between Owner and Design-Builder Cost Plus Fee with a Guaranteed Maximum Price

This **AGREEMENT** is made as of the ____ day of _____ in the year of _____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940-6699

DESIGN-BUILDER:

(Name and address)

PROJECT:

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1 Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2 Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1** All written modifications, amendments, Change Directives and Change Orders to this Agreement issued in accordance with attached Supplemental Conditions;
- .2** Exceptions, Clarifications and Exclusions (**Exhibit C-1**);
- .3** This Agreement, including all exhibits and attachments;
- .4** Owners Standard General Conditions to Design Build Agreement (**Exhibit A**);
- .5** Supplemental Conditions to Design Build Agreement (**Exhibit B**);
- .6** **Exhibit C**;
- .7** Scope of Design Services (**Exhibit C-2**), including **Attachment “A”** and **Attachment “B”**;
- .8** Construction Documents (Drawings and specifications developed by the Design-Builder and approved by the Owner and all permitting/review authorities having jurisdiction);
- .9** By reference, the latest revision in effect as of the date of this Agreement of: Owner’s “Design Standards” and all applicable local, state and national building codes and related codes such as, but not limited to; Florida Building Code, Florida Fire Prevention Code, Florida Plumbing Code, Florida Mechanical Code, National Electrical Code and State Requirements for Educational Facilities (SREF).
- .10** Design Criteria Professional’s Design Criteria Package (Defined in **Exhibit C**);
- .11** Sworn Statement Pursuant to Section 287.133(3)(A) F.S. on Public Entity Crimes (**Exhibit D**);
- 12.** Noncollusion Affidavit of Prime Bidder (**Exhibit E**);

Article 3 Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with the construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 The Contract Documents form the entire agreement between Owner and Design-Builder, and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties, except as specifically stated in the Contract Documents.

Article 4 Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (Work Product) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

4.2 Owner's Limited License Upon Payment in Full. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the Indemnified Parties).

4.3 Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates the Project for its convenience as set forth in Article 8 hereof, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, conditioned on the following:

- .1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party.

4.4 Owner's Limited License Upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's completion and occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

4.5 Owner's Indemnification for Use of Work Product. If Owner uses the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorney fees, arising out of or resulting from the use of the Work Product.

Article 5 Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed (Date of Commencement) unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____, 200___. Intermediate schedule milestone dates, if any, are identified in **Exhibit C**.

5.2.2 Final Completion of the Work or identified portions of the Work shall be achieved ninety (90) Days after Substantial Completion.

5.2.3 All of the dates set forth in this Article 5 [Contract Time(s)] may be subject to adjustment, upon proper application to and approval by Owner.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that Design-Builder shall pay Owner **One Thousand** Dollars (**\$1,000.00**) as liquidated damages for each day that Substantial Completion extends beyond the Substantial Completion Date and **Five Hundred** Dollars (**\$500.00**) as liquidated damages for each day that Final Completion extends beyond the Final Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion.

Article 6 Contract Price

6.1 Design-Builder's Fee

6.2.1 Design-Builder's Fee shall be:

6.2.2 Lump Sum Design Fee of _____ Dollars (\$ _____); Basic Design Services contained in the Lump Sum Design Fee and Additional Design Services, if any, are identified in **Exhibit C**.

6.2.3 Lump Sum Construction Management Fee of _____ Dollars (\$ _____); Portions of the Construction Management Fee allocated to specific activities or Phases, such as Pre-Construction Services, if any, are identified in **Exhibit C**.

6.2.4 Reimbursable General Conditions Costs not to exceed _____ Dollars (\$ _____). General Conditions costs shall be reimbursed at the Design-Builder's actual cost. Estimates of General Condition costs are identified in **Exhibit C**. It is not the intent of this contract to limit the cost of each line item to the estimates shown in Exhibit C, but in no case shall the total cost shown above be exceeded.

6.2.5 Design-Builder's Fee shall be adjusted for changes in the GMP, at the time such changes are negotiated. Design-Builder agrees Owner can add up to **No** Dollars (\$ **-0-**) worth of work with no additional Design Fee, Construction Management Fee, or additional General Conditions Fee.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

- .1** Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site. Costs for those employees or consultants of Design-Builder performing design services shall be at the rates set forth in an exhibit to this Agreement. Payments properly made by Design-Builder to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors.
- .2** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the management of the Work or the production or transportation of material and equipment necessary for the Work.
- .3** Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

- .4 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- .5 Costs of removal of debris and waste from the Site.
- .6 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- .7 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
- .8 Premiums for insurance and bonds required by this Agreement or the performance of the Work.
- .9 All fuel and utility costs incurred in the performance of the Work.
- .10 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work (except where sales tax is credited to Owner).
- .11 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
- .12 Deposits which are lost, except to the extent caused by Design-Builder's negligence.
- .13 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- .14 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.4 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as approved by Owner in **Exhibit C**.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 Costs incurred by Design-Builder in repairing or correcting defective, damaged or non-conforming Work, unless such defects, damage or non-conformances are not caused by the Design-Builder, sub-contractors or suppliers.
- .5 Any costs not specifically and expressly described in Article 6.3 above.
- .6 Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.5 The Guaranteed Maximum Price (GMP)

6.5.1 GMP Established Upon Execution of this Agreement

6.5.1.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$_____). Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be identified in **Exhibit C**.

6.5.1.2 Contingency. Design-Builder shall include in the GMP an agreed upon sum as the Contingency, which is included for the purpose of defraying the risks associated with cost estimates based on incomplete construction documents, estimating errors and unforeseen circumstances relating to the procurement of Trade Contracts. Upon completion of the Construction Documents, or a portion thereof, Design Builder shall obtain bids for the Work. If Trade Contracts are executed below the applicable line items in the GMP, the surplus will be added to the Contingency; if Trade Contracts are executed above the applicable line item in the GMP, the deficiency will be taken from the Contingency. However, such events shall not be cause to increase or decrease the GMP. Design-Builder shall execute 100% of the Trade Contracts within sixty (60) days after completion of all Construction Documents. If 100% of the Trade Contracts have not been executed within sixty (60) days, maximum allowances agreeable to Owner shall be established for those portions of the Work for which Trade Contracts have not been executed. Upon request by Design-Builder and approval by Owner, the Contingency shall be used for design errors and omissions, scope gaps in the Trade Contracts and unforeseen conditions in the Work. Owner may use the Contingency to incorporate (additive or deductive) alternates into the Work if the increased Work will not cause the schedule to be extended or the GMP to be exceeded. Use of the Contingency shall not increase Design fees, Construction Management fees or General Conditions costs. If any funds remain in the Contingency at the completion of the Project, the GMP shall be reduced by change order to return all unused Contingency to the Owner.

6.5.1.3 Sales Tax Savings. Design-Builder recognizes that Owner is a political subdivision of the State of Florida and as such is entitled to direct purchase materials in order to save the state sales tax. Design-Builder shall provide Owner with a list of items that may be eligible for sales tax savings prior to purchasing these materials. In the event Owner opts to make Owner-direct purchases, the tax savings shall be accrued in a Sales Tax Savings Account. The Sales Tax Savings Account shall be for the benefit of Owner only. Owner is the sole recipient of any sales tax savings and may use money generated by the savings for reduction of the GMP, incorporation of (additive or deductive) alternates into the Work, or any other purpose Owner so desires without extending the schedule. Use of the Sales Tax Savings shall not increase Design fees, Construction Management fees or General Conditions costs. If any funds remain in the Sales Tax Savings Account at the completion of the Project, the GMP shall be reduced by change order to return all unused Sales Tax Savings to Owner.

6.5.1.4 Value Engineering Savings. Value engineering savings, proposed by Design-Builder and approved by Owner, shall be added to the Contingency.

6.5.1.5 Final GMP. At the completion of the Project, the Final GMP shall not include Contingency or Sales Tax Savings.

Article 7 Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the Twenty-Fifth (25th) Day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment.

7.1.2 Owner shall make payment within thirty (30) Days after Owner's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made, and less amounts properly withheld.

7.1.3 The amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments

7.2.1 Owner shall withhold from each progress payment made to the Design-Builder **ten (10) percent** of the payment as retainage until **fifty (50) percent** completion of services. After **fifty (50) percent** completion the Owner shall reduce to **five (5) percent** the amount of retainage withheld from each subsequent progress payment made to the Design-Builder. **Fifty (50) percent** completion shall be determined as the point at which the owner has expended **fifty (50) percent** of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications for the construction services provided for in the contract. Retainage shall not be held on General Conditions Costs, General Requirements Costs or Owner Direct Purchases.

Retention shall not be held on the first **ninety five (95) percent** of Design Fees and Construction Management Fees. The final **five (5) percent** shall be paid upon completion of all project close-out activities.

7.2.2 After **fifty (50) percent** completion of the construction services the Design-Builder may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Design-Builder. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers the Design-Builder shall timely remit payment of such retainage to those subcontractors and suppliers.

7.2.3 The Owner may release at any point all, or any portion of any retainage withheld which is attributable to the labor, services, or materials supplied by the Design-Builder or by one or more subcontractors or suppliers. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers the Design-Builder shall timely remit payment of such retainage to those subcontractors and suppliers.

7.2.4 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and all Liquidated Damages and other damages for which Owner determines Design-Builder is liable.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) Days after approval of the Final Application for Payment by Owner's Representative and The School Board Of Brevard County, provided that Design-Builder has satisfied all of the requirements for final payment.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest in accordance with the provisions of Article 9.1 of the Supplemental Conditions.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an open book arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

**Article 8
Termination for Convenience**

8.1 Upon seven (7) days written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1** All Work executed and for proven loss, cost or expense in connection with the Work;
- .2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants;
- .3** Overhead and profit in the amount of _____ (___%) on the sum of items .1 and .2, above, in lieu of any additional Construction Management Fee; and
- .4** Design fee paid in proportion to the percentage of completion of the Construction Documents or Construction Contract Administration, as applicable.

**Article 9
Representatives of the Parties**

9.1 Owner's Representatives

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

**Ed Curry, Assistant Superintendent
2700 Judge Fran Jamieson Way
Viera, FL 32940
(321) 631-1911**

9.1.2 Owner designates the individual listed below as its Owner's Representative to provide direct interface with Design-Builder with respect to Owner's responsibilities:

_____, **Project Manager**

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual is an Officer of the Corporation authorized to sign binding agreements and has the authority and responsibility for avoiding and resolving disputes:

_____ **(name)**
_____ **(address)**

_____ **(phone)**

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative to provide direct interface with Owner with respect to Design-Builder's responsibilities:

_____ **(name)**

Article 10 Bonds and Insurance

10.1 Insurance. Design-Builder shall procure insurance coverages in accordance with Article 5 of the Supplemental Conditions of the Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide performance bond and labor and material payment bond or other performance security in accordance with Article 1 of the Supplemental Conditions.

Article 11 Other Provisions

11.1 Other provisions, if any, are as follows:

.1 Contract Forms:

Exhibit F – Certificate of Final Completion
Exhibit G – Application for Payment
Exhibit H – Contingency Use Request
Exhibit I – Sales Tax Savings Use Request

.2 AIA Document G704, latest version shall be used for the Certificate of Substantial Completion.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

School Board of Brevard County, Florida

ATTEST:

Superintendent/Secretary

By: _____
_____, Chairman

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, whose position is _____ with the School Board of Brevard County. He/She is personally known to me or has produced _____ as identification.

(SEAL)

NOTARY PUBLIC

Typed, Printed or Stamped Name

DESIGN-BUILDER:

WITNESS:

By: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, whose position is _____ with _____ He/She is personally known to me or has produced _____ as identification.

(SEAL)

NOTARY PUBLIC

Typed, Printed or Stamped Name

SAMPLE

EXHIBIT A
OWNER'S STANDARD GENERAL CONDITIONS
TO
AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

BY AND BETWEEN

And

School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940
(321) 631-1911
Fax: (321) 633-4646

FOR THE DESIGN AND CONSTRUCTION OF:

_____, 200__

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 - 5.4.3. Documentation Prior to Payment
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 - 5.4.5. No Waiver by Payment
 - 5.4.6. No Waiver by Use
 - 5.4.7. No Waiver by Inspection
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- 5.5. SAFETY PROGRAMS
 - 5.5.1. Design-Builder Responsibility
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- 5.6. SAFETY OBLIGATIONS
 - 5.6.1. Safety of Property
 - 5.6.2. Applicable Safety Laws
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 - 5.6.4. Hazardous Activities
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- 5.7. SECURITY
 - 5.7.1. Secured Areas

- 5.8. CHANGE ORDERS
 - 5.8.1. Definition

- 5.9. OWNER ORDERED CHANGES
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- 5.10. ADJUSTMENTS TO CONTRACT SUM
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 - 5.10.5. Reimbursable Material, Equipment and Services with Markup

- 5.11. UNIT PRICES
 - 5.11.1. Adjustments

- 5.12. CONCEALED CONDITIONS

- 5.12.1. Adjustment of Contract Sum or Contract Time
- 5.12.2. Certificates of Inspection

- 5.13. UNCOVERING OF WORK
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- 5.14. CORRECTING DEFECTIVE WORK
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- 7.1. RESOLUTION OF DISPUTES
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- 8.1. TERMINATION FOR DEFAULT
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- 8.2. OWNER'S CONVENIENCE
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1. GENERAL CONDITIONS

1.1 DEFINITIONS

1.1.1. **Agreement.** The "Agreement," which includes any exhibits, attachments and Contract Documents, is the agreement between Owner and Design-Builder for the performance of the Work in accordance with the Contract Documents as modified in accordance with this Exhibit A.

1.1.2. **Contract Documents.** The "Contract Documents" are the documents identified in Article 2 of the Agreement.

1.1.3. **Design Criteria Package.** The "Design Criteria Package" are the documents prepared by the Owner's Design Criteria Professional. These documents define the general scope and quality of the Work.

1.1.4. **Drawings.** The "Drawings" are drawings produced by Design-Builder pursuant to this Agreement.

1.1.5. **Laws.** The term "Laws" as used in the Agreement means all local ordinances, environmental protection, requirements of city and county building codes, local sanitary laws, rules and regulations, and requirements of national or federal and state authorities which are applicable to the Project or the Work, including, but not limited to, the American Disabilities Act and all orders and interpretations by all governing public authorities.

1.1.6. **Project.** The "Project" is the total design and construction contemplated by the Contract Documents.

1.1.7. **Specifications.** The "Specifications" are the written requirements for materials, equipment, construction systems, standards and workmanship referred to in Article 2.1.5 of the Agreement. The term "equipment" used throughout the Agreement includes any equipment-related software.

1.1.8. **Work.** The "Work" is the process by which the design and construction called for in the Contract Documents is accomplished. The Work includes any and all labor, materials, equipment and services, including design services, required to construct the Project, all of which will be provided in full and strict compliance with the Contract Documents.

1.2 CONTRACT INTERPRETATION

1.2.1. **Interpretation.** The Contract Documents are to be interpreted to include all items necessary for the proper and complete performance of the Work and construction of the Project. Work that is reasonably inferable from the Contract Documents will be required if it is consistent with the intent of the Contract Documents.

1.2.2. **Relationship To Subcontractors or Suppliers.** The Contract Documents do not and are not to be construed to create any relationship, contractual or otherwise, between Owner and Subcontractors or Suppliers.

1.2.3. **Conflict Between Construction Documents.** The parts of the Construction Documents, including, but not limited to, the Drawings and Specifications are intended to be complementary and to describe and to provide documentation for the entire Project. In the event of conflict, Drawings and Specifications take precedence over the general description of the Project. Large-scale Drawings takes precedence over small-scale Drawings covering the same subject matter; but the Drawings will not take precedence over the Specifications nor the Specifications precedence over the Drawings. If the Drawings and Specifications are at variance with one another, Design-Builder will resolve the discrepancy in the best interest of the Owner and notify Owner of the resolution in writing before proceeding with any part of the Project affected thereby. Owner will respond in writing within three days of notification if Owner does not agree with Design-Builder's resolution of discrepancy.

1.3 OWNERSHIP OF CONTRACT DOCUMENTS

1.3.1. **Ownership.** In accordance with Article 4 of the Agreement, all Drawings, Specifications and copies furnished to Owner are and will remain the property of Design-Builder.

2. OWNER

2.1. DEFINITIONS

2.1.1. **Owner.** The Owner of the Project is identified as School Board of Brevard County, which may be acting through one of its divisions or subsidiaries.

2.2. DUTIES AND RESPONSIBILITIES

2.2.1. **Project Manager.** Owner will designate a project manager who will be available as required, at the Project Site ("Owner's Project Manager") to manage the Project on Owner's behalf. The Project Manager, will be authorized to:

- .1 act as liaison between Owner and Design-Builder;
- .2 make field decisions on behalf of Owner other than contract time or contract amount which are reserved for the School Board;
- .3 inspect and approve specified details and inspect for adherence to design and completeness of details shown on Contract Documents;
- .4 review submittals when requested to do so by Design-Builder;
- .5 review Change Orders; and
- .6 coordinate with Design-Builder other Design-Builders of Owner;

2.2.2. **Surveys and Soil Reports.** Owner will provide Design-Builder with necessary surveys of the Project Site, soil reports, results of subsurface investigations, legal limitations, descriptions of utilities and their location and a legal description of the Project Site.

2.2.3. **Easements.** Owner will obtain and pay for easements required for the completion of the Project.

2.2.4. **Drawings.** Owner will provide to Design-Builder only the Drawings which the Contract Documents specifically require to be furnished by Owner. Such Drawings will be provided to Design-Builder free of charge.

2.3. OWNER'S RIGHTS

2.3.1. **Right to Inspect Work.** Owner will have the right to inspect the Work at all times. Such inspection will not relieve Design-Builder of any of its obligations to perform the Work in strict accordance with the Contract Documents.

2.3.2. **Right to Reject Work.** Owner will have the right to reject Work that does not conform to the Contract Documents. Owner may require special inspection or testing of the Work to determine if the Work is non-conforming. If the Work is found to be conforming, the cost of inspection or testing will be charged to Owner and an appropriate Change Order issued. If such Work is found to be non-conforming, Design-Builder will pay the cost of inspection or testing.

2.3.3. **Right to Stop Work.** If Owner reasonably believes that Design-Builder is failing to carry out the Work in accordance with the Contract Documents, then Owner may order Design-Builder to stop the Work, or a portion of the Work, until such time as the cause for such stop order has been eliminated. Stop orders shall be issued by Owner's Project Manager.

2.3.4. **Right to Carry Out Work.** If Design-Builder fails to prosecute the Work properly (including, but not limited to, the failure to man the Work due to labor disputes of any type) or fails to perform any provision of the Contract Documents, including, without limitation, unauthorized Project Schedule delays, Owner, after seven (7)

calendar days written notice to Design-Builder without correction, may, without prejudice to any other rights or remedy Owner may have, correct the deficiencies or otherwise supplement the Design-Builder's performance through the Owner's own forces or through others, and may deduct the cost thereof from the payment then or thereafter due to Design-Builder.

2.3.5. **Owner's Access.** Owner will at all times have access to the Work.

3. DESIGN-BUILDER OBLIGATIONS

3.1. OBLIGATIONS

3.1.1. **Review of Contract Documents.** Design-Builder will carefully study and compare the Contract Documents and will at once report to Owner any error, inconsistency or omission discovered, or any variance from any Laws. Sizes, elevations and locations of existing facilities to which connections are to be made will be verified at the Project Site by Design-Builder prior to beginning the Work.

3.1.2. **Liability for Errors.** Design-Builder will not be liable to Owner for any damages resulting from any such errors, inconsistencies or omissions in the Contract Documents, except for such damages attributable to any such errors, inconsistencies or omissions that could have been prevented but for the negligence of Design-Builder.

3.1.3. **Design-Builder Drawings.** All drawings not specifically required by the Contract Documents to be provided by Owner will be supplied by Design-Builder including, but not limited to, Shop Drawings as specified herein. All Drawings and drawings not specifically required by the Contract Documents supplied by Design-Builder will be subject to the provisions hereof concerning review and approval.

3.1.4. **Project Lines.** Design-Builder will be responsible for the accuracy of the Project lines and levels. Design-Builder will compare carefully the levels shown on the Drawings with existing levels and will call any discrepancies to the attention of Owner before proceeding with the Work. The Work will be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated and/or as necessary to drain within standard construction practices and tolerances.

3.1.5. **Construction Means.** Design-Builder will be solely responsible for all construction means, methods and techniques of performing the Work, including but not limited to, safety precautions and Project Site safety in the areas where Design-Builder is performing the Work.

3.1.6. **Responsibility for Employees and Others.** Design-Builder is solely responsible for the acts of its employees, Subcontractors and any other person or entity involved in performing any of the Work.

3.1.7. **Inspection of Project Site.** Design-Builder will inspect the Project Site and all surfaces, areas or structure(s) related to the Work, prior to performance of the Work, and immediately notify Owner in writing of any deficiencies that would adversely affect the Project. By commencing Work, Design-Builder accepts full responsibility of all surfaces, areas or structure(s) on which Work has begun, except to the extent that such deficiencies are concealed prior to the start of Work.

3.1.8. **Daily Log.** Design-Builder will maintain a daily jobsite log which will be available to Owner.

3.1.9. **Assignment of Purchase Orders and Agreements for Labor.** Purchase orders, subcontracts and other agreements for labor entered into by Design-Builder in support of its performance of the Work will include a provision whereby they may be assigned to Owner. Design-Builder agrees to assign such purchase orders, subcontracts and other agreements upon Owner's request.

3.1.10. **Purchase.** Design-Builder will purchase or otherwise arrange for and will pay for all materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities or services required for the complete and workmanlike performance of the Work, including but not limited to,

temporary and permanent structures whether or not incorporated or to be incorporated into the Work. Notwithstanding the above, Owner will, where applicable and agreed to by Owner and Design-Builder, provide temporary water and electricity at the Project Site during the course of the Work.

3.1.11. **Quality.** Unless otherwise specifically provided for in the Construction Documents, all equipment, materials and articles incorporated in the Work are to be new, of recent manufacture and of the best grade of their respective kind for the purpose.

3.1.12. **No Substitution.** No substitution of materials, equipment, articles or processes required under the Agreement will be made without written approval of Owner's Project Manager.

3.1.13. **Approvals.** Samples of materials and mock-ups will be submitted for approval when specified in the Construction Documents.

3.1.14. **Equipment Manuals.** Design-Builder will furnish to Owner five (5) manual copies of schematic diagrams covering installations of all electrical, mechanical and pneumatic controls, operating instructions and maintenance recommendations for all machinery, equipment and systems purchased by Design-Builder and installed in the Project.

3.1.15. **Parts List.** Design-Builder will provide a printed parts list for all items subject to replacement.

3.1.16. **Operating Instructions.** The operating instructions will be included within the equipment manuals referenced above in Paragraph 3.1.14 and will state all information necessary for Owner to operate, use, maintain and service the equipment fully and efficiently.

3.1.17. **Maintenance Instructions.** Maintenance and operating instructions will be typed and furnished in such equipment manuals.

3.1.18. **Delivery of Equipment Manuals.** Equipment manuals will be prepared and transmitted to Owner not less than seven (7) calendar days prior to the Date of Final Completion of the Work. The Work will not be accepted for final payment until Owner has received such equipment manuals covering such Work.

3.1.19. **Start-up of Systems.** Design-Builder will be responsible for start-up of all systems and equipment and will have made sufficient allowances in the Contract Sum to cover contingencies arising out of the start-up of individual systems, equipment and the total facility. Design-Builder will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.

3.1.20. **Assignment of Purchase Orders and Agreements for Materials and Equipment.** Purchase orders, subcontracts and other agreements for materials and equipment entered into by Design-Builder in support of its performance of the Work will include a provision whereby they may be assigned to Owner. Design-Builder agrees to assign such purchase orders, subcontracts and other agreements upon Owner's request.

3.1.21. **Hazardous or Toxic Materials.** No asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials will be specified or used in the Work, including, but not limited to, building materials, production processes and equipment, and utilities and other support processes and equipment. Design-Builder will communicate and enforce this prohibition with its Subcontractors and will immediately bring any observed violation(s) to Owner's attention. At the Date of Final Completion of the Work, Design-Builder will provide to Owner a written certification confirming that no asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials were specified or used in the Work.

3.1.22. **Jessica Lunsford Act.** Design-Builder shall, at its expense, ensure that all of Design-Builder's employees and the employees of Design-Builder's subcontractors who will be permitted access on school grounds when students are present meet the background screening requirements of Section 1012.465, Fla. Stat., (Jessica Lunsford Act). Design-Builder's failure to comply with this requirement will constitute a material breach of the contract.

3.2. TAXES

3.2.1. **Payment of Taxes.** Design-Builder will pay all sales, consumer, use and similar taxes levied in respect to the Work.

3.3. LEGAL COMPLIANCE, BUILDING PERMITS, FEES AND NOTICES

3.3.1. **Application and Payment for Permits.** Design-Builder will apply for, obtain and pay for any and all required permits and all other required approvals, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.

3.3.2. **Compliance of Contract Documents.** It will be Design-Builder's responsibility to make certain that the Contract Documents are in accordance with applicable Laws.

3.3.3. **Variance of Contract Documents.** In the event Design-Builder believes that any of the Contract Documents are at variance with applicable Laws in any respect, Design-Builder will promptly notify Owner in writing and any necessary changes will be accomplished by an appropriate modification to the Contract Documents.

3.3.4. **Work in Violation of Laws.** Design-Builder will assume full responsibility for any Work Design-Builder or any Subcontractor performed that was contrary to any Laws at the time the Agreement was executed.

3.4. DESIGN-BUILDER'S PROJECT MANAGER

3.4.1. **Approval.** Design-Builder will at all times maintain a competent representative, approved by Owner, on the Project Site to receive instructions and to act with authority for Design-Builder.

3.4.2. **Change.** Design-Builder's Project Manager will not be changed without the consent of Owner except where Design-Builder's Project Manager proves to be unsatisfactory to Design-Builder or ceases to be in Design-Builder's employ.

3.5. PROGRESS SCHEDULE

3.5.1. **Preparation.** Subject to Article 1.2(2) of Exhibit B, Design-Builder, immediately after being awarded the Agreement, will prepare and submit to Owner a critical path progress schedule for the Work (hereinafter referred to as the "CPM Schedule").

3.5.2. **Updates.** The CPM Schedule after being approved by Owner's Project Manager will be updated by Design-Builder monthly.

3.5.3. **Failure to Comply.** If the progress of the Work does not meet the CPM Schedule, Design-Builder shall submit a revised CPM Schedule containing the revised sequencing, durations, and/or resources necessary to complete the Work, or designated portions thereof, by the date(s) contained in the original CPM Schedule. Such revised CPM Schedule shall be submitted within three (3) days of a request by Owner. Failure of Design-Builder to submit a revised CPM Schedule with corrective actions sufficient to complete the Work, or designated portions thereof, by the date(s) contained in the original CPM Schedule, or to initiate and maintain such corrective actions, shall be deemed a default by Design-Builder under Article 8 of this Exhibit A for which Owner may assert any and all remedies provided for herein.

3.5.4. **Overtime.** If the corrective actions contained in the revised CPM Schedule require Design-Builder to work overtime, Owner will not be liable for any resulting claims for damages, delays, extras, accelerations, compaction, disruption, lost productivity, lost efficiency, overtime, supervision, additional labor or overhead expenses. Nothing contained in the Contract Documents will be construed to require Owner to make any payments for the cost of any overtime necessarily incurred or paid by Design-Builder in order to fulfill its obligation to complete the Work in accordance with the CPM Schedule or within such other time limits as may be set forth in the Contract Documents.

3.6. SHOP DRAWINGS AND OTHER SUBMITTALS

3.6.1. Definitions

- . 1 "Shop Drawings" are drawings, diagrams, schedules and other data prepared specifically for the Work by Design-Builder or Subcontractor or an entity under contract to Design-Builder or Subcontractor to illustrate some portion of the Work.
- . 2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, catalog cuts and other information furnished by Design-Builder or Subcontractor or an entity under contract to Design-Builder or Subcontractor to illustrate a material, product, equipment, or system for some portion of the Work.

3.6.2. **Review by Design-Builder.** All Submittals will be reviewed, stamped with Design-Builder's approval and submitted to Owner within seven (7) days of receipt by Design-Builder.

3.6.3. **Consequences of Approval.** Design-Builder's approval of a Submittal represents that Design-Builder has determined and verified all materials, field measurements, and field construction criteria related to the Submittal, or will do so, and that Design-Builder has checked and coordinated the information contained within such Submittal with the requirements of the Work and of the Contract Documents.

3.6.4. **Liability for Errors.** Design-Builder will not be relieved from responsibility for errors or omissions in Submittals by Owner's approval of the Submittals.

3.6.5. **Revisions.** With regard to all resubmitted Submittals, Design-Builder will in writing direct specific attention to revisions or other deviations which are different from or in addition to those required by Owner on previous Submittals.

3.6.6. **Work Requiring Submittals.** Design-Builder will perform no Work requiring a Submittal until such Submittal is approved by Owner. Any such Work performed without Owner's approval will be at Design-Builder's sole risk.

3.6.7. **Limits of Operations.** Design-Builder will confine its apparatus, equipment, storage of materials and operation of the workmen to the limits indicated by local ordinances, permits, or by direction of Owner, and will not unreasonably encumber the Project Site with materials or equipment.

3.6.8. **Interruptions of Existing Operations.** Design-Builder and all Subcontractors will schedule their Work so as not to interfere with Owner's operations and will inform Owner of the time and type of Work that will occur in its existing building. If any interruption of operations is caused by the Work, it will be done during hours that Owner is not in operation unless provisions are made to temporarily relocate Owner's operations.

3.7. CLEANING UP

3.7.1. **Clean Project Site.** At all times Design-Builder and its Subcontractors will keep the Project Site and related storage areas and public and private areas free from accumulations of waste materials or rubbish.

3.7.2. **Owner Right to Clean Up.** If for any reason, Design-Builder or any Subcontractor fails to completely clean up and remove its waste materials, rubbish and other materials at the Project Site by the Date of Final Completion of the Work as set forth in Paragraph 4.1.3. of this Exhibit A, Owner may do so and the cost thereof will be charged to Design-Builder.

3.7.3. **Patching.** Cutting or patching of work that may be required to complete the Project in accordance with the Contract Documents will be the responsibility of Design-Builder.

3.7.4. **Licenses.** Design-Builder will pay for any and all applicable royalties, permits, license fees and other fees necessary to avoid infringing or violating the rights of any third party. Such payments will be a cost of the

Work. Design-Builder will defend all suits or claims for infringement thereof and will save Owner harmless from loss on account of all materials, equipment and processes called for by the Contract Documents.

3.7.5. **Responsibility.** Upon receipt, Design-Builder assumes complete liability for all property, materials, equipment or other items provided by Owner to Design-Builder, unless otherwise provided in the Contract Documents.

3.7.6. **Records Maintained at Project Site.** Design-Builder will maintain at the Project Site copies of records of all documents relating to the Project, including all contracts, Submittals, permits, a current marked set of working Drawings and Specifications, including as-builts to facilitate the preparation of record drawings, subcontracts, orders for materials, equipment and/or supplies and governmental, commercial and technical standards and specifications. At all times prior to final payment, Design-Builder will deliver duplicates of such documents to Owner if so requested, or if required by the technical trade specifications or Contract Documents.

3.7.7. **Accounting Records.** Design-Builder will maintain cost accounting records relating to the Work on a cash basis in accordance with generally accepted accounting principles. Owner will have access to Design-Builder's accounting records at all reasonable times and Design-Builder agrees to make such changes to its system of keeping these records as Owner may reasonably request in writing.

3.7.8. **Progress Records.** Design-Builder will keep detailed records of the progress of the Project during all stages of construction in accordance with the Specifications. Design-Builder will also maintain a daily log of all events occurring on the Project Site or connected with the progress of the Project. Copies of the progress records and log will be submitted monthly to Owner.

3.7.9. **Minutes of Meetings.** Design-Builder will prepare and distribute copies of minutes of meetings pertaining to the Project to Owner's Project Manager and all other interested parties. At least one bound volume of all minutes will be maintained by Design-Builder at the Project Site until Date of Final Completion of the Work. Items in the minutes will be numbered consecutively and grouped under divisions and sections similar to the organization of the Specifications.

3.7.10. **Preservation of Records.** Design-Builder will preserve such records for a period of three (3) years after final payment. Owner will have access to and the right to conduct examinations and audits of all such records at any time during such period. At the expiration of such period, Design-Builder, if requested by Owner, will turn over such records to Owner to be kept for such time as necessary for reproduction prior to return.

3.7.11. **Written Records.** All such records and reports will be written, accurate, in good order, current and show all changes made during performance of the Work.

3.7.12. **Communication Procedures.** Before the Work begins, complete procedures for communications between and among Owner and Design-Builder will be established to the satisfaction of Owner.

3.7.13. **Notification.** If, during the course of performance of the Work under the Agreement, Design-Builder or Subcontractor or any of their employees, encounter or become aware of any environmentally related issues including, but not limited to:

- .1 the release or substantial threat of release of a hazardous substance;
- .2 the discovery of materials or substances of unknown origins on or under the Project Site;
- .3 the discovery of any underground storage tank;
- .4 and/or similar occurrences;

then Design-Builder or Subcontractor or such employee of Design-Builder or Subcontractor will immediately notify Owner's Project Manager and Owner's Environmental Engineer at Owner's corporate headquarters.

3.8. GENERAL REPRESENTATIONS AND WARRANTIES

3.8.1. **Warranty of Existing Conditions.** Design-Builder represents and warrants that it has examined and thoroughly familiarized itself with all existing conditions affecting the Work, except to the extent that such existing conditions are concealed prior to the start of Work.

3.9. WARRANTY OF WORK

3.9.1. **General Warranty.** Design-Builder warrants that it is an experienced contracting firm having the ability, skill and resources necessary to perform all services required of it under the Agreement within the Project Schedule, and in connection with a project having the scope and complexity of the Project.

3.9.2. **Warranty of Quality.** Design-Builder warrants that all Work performed under the Agreement will be of good quality, free from defects in workmanship or materials, will conform to the requirements of the Drawings, Specifications and other Contract Documents, and will be fit and sufficient for the purposes expressed in or reasonably inferred from the Contract Documents.

3.9.3. **Intellectual Property Warranty.** Design-Builder warrants that no Work (including, service, equipment or material furnished or activities performed hereunder by Design-Builder or Subcontractor) will infringe upon the intellectual property rights (including trade secrets, patents, trademarks, copyright or trade dress) of any third party.

3.9.4. **Sufficiency of Documents.** Design-Builder warrants that all Contract Documents and other documents or materials prepared and/or provided by Design-Builder or Subcontractor will be complete and functional in all respects and will set forth in sufficient detail the necessary information to properly perform the Project in accordance with commonly accepted professional standards.

3.9.5. **Obligation to Correct Within One Year.** Design-Builder will, at no expense to Owner, correct any failure to fulfill the above warranty which may appear at any time within one (1) year (or, in the case of items as to which a longer warranty period is set forth in the Specifications, within such longer period) after the Date of Substantial Completion of the Work. In any event, the warranty herein expressed will not be sole and exclusive and is additional to any other warranty express or implied.

3.10. WARRANTY OF MATERIALS, EQUIPMENT AND SOFTWARE

3.10.1. **Equipment Warranties.** Warranties issued by Design-Builder and the manufacturers of machinery and materials, equipment and/or supplies purchased by Design-Builder for use in the Project will:

- .1 be collected by Design-Builder, indexed and bound;
- .2 be submitted to Owner before Date of Final Completion of the Work; and
- .3 be issued or assignable by their terms to Owner and in the latter case will be transferred to Owner.

3.11. WARRANTY OF LEGAL COMPLIANCE

3.11.1. **Survival.** The representations and warranties herein will survive the execution and delivery of the Agreement and the Date of Final Completion of the Work.

3.12. DEFAULT OR BREACH

3.12.1. **Default or Breach of Warranty.** Failure of Design-Builder to perform in accordance with any of the warranties in this Article 3 will be considered a default or breach by Design-Builder hereunder and give rise to a right of termination for cause and the exercise of any and all other rights and remedies available to Owner under the Agreement and by Law.

3.13. OWNER'S RIGHT TO PERFORM WORK AND ENGAGE OTHERS

3.13.1. **Owner's Rights.** Design-Builder acknowledges that portions of the Work related to the Project may be performed by Owner's own forces or under separate contracts by Owner.

3.13.2. **Duty to Coordinate.** Nothing in the Contract Documents creates or will create any duty on the part of the Owner to coordinate the Work with the work of other Design-Builders or subcontractors. Design-Builder and all other Design-Builders and subcontractors will coordinate all work with others so as to facilitate the general progress of the Project.

3.13.3. **Remedy.** Design-Builder agrees that if Design-Builder is injured or damaged by any other Contractor, including without limitation, delay damages, acceleration costs, extra work claims, inefficiency claims, damage to others' work, damage to property and injuries to persons (including death), Design-Builder's sole remedy is to assert a claim or cause of action directly against the other Contractor causing the injury or damage. Design-Builder hereby releases, acquits, holds harmless and forever discharges Owner of and from any and all liability for performance or non-performance of other Contractors or for any act or omission of other Contractors.

4. PROJECT SCHEDULE

4.1. DEFINITIONS

4.1.1. **Commencement.** The "Date of Commencement of the Work" is the date established in the notice to proceed from Owner to Design-Builder. If no notice to proceed is issued, it will mean the effective date of the Agreement or such other date as may be set forth in the Agreement.

4.1.2. **Substantial Completion.** The "Date of Substantial Completion of the Work" or designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents, so that Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

4.1.3. **Final Completion.** The "Date of Final Completion of the Work" is the date when all Work called for in the Contract Documents is complete and all other terms and conditions of the Contract Documents applicable to Design-Builder have been fulfilled.

4.1.4. **Day.** The term "Day" as used in the Contract Documents will mean calendar day unless otherwise specifically designated.

4.2. REQUIREMENTS

4.2.1. **Time of the Essence.** Time is of the essence of the Agreement.

4.2.2. **Start and Expeditious Completion.** Design-Builder will begin the Work on the Date of Commencement of the Work, man the Project Site with adequate forces and achieve Date of Substantial Completion of the Work and Date of Final Completion of the Work within the Project Schedule.

4.2.3. **Liquidated Damages.** Design-Builder understands that if Substantial Completion or Final Completion are not attained by the Scheduled Completion Dates, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that Design-Builder shall pay Owner the amounts set forth in Paragraph 5.4 of the Agreement as liquidated damages for each day that Substantial Completion extends beyond the Substantial Completion Date and for each day that Final Completion extends beyond the Final Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, incurred by Owner which are occasioned by any delay in achieving Substantial Completion and Final Completion.

4.3. **FORCE MAJEURE**

4.3.1. **Force Majeure.** In the event that either Owner or Design-Builder is delayed or hindered in or prevented from performance of any act required herein by reason of unavoidable labor dispute, unavoidable inability to procure materials, failure of power or failure of power not resulting from the Owner's or Design-Builder's actions or failure to act as required under the Agreement, restrictive governmental Laws enacted or taking effect after the Date of Commencement of the Work, riots, insurrections, war, fire, adverse weather conditions not reasonably anticipated, other unavoidable casualties or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the Contract Documents or any other Act of God, then performance of such acts will be excused for the period of the delay and the period for the performance of any such acts will be extended for an equivalent period.

4.3.2. **Persistence of Force Majeure.** If an act or event of force majeure continues for fifteen (15) consecutive days or longer, Owner will have the right to immediately terminate the Agreement upon written notice to Design-Builder in accordance with Article 8 of the Agreement.

5. PAYMENTS

5.1. **GUARANTEED MAXIMUM PRICE (GMP)**

5.1.1. **Definition of Guaranteed Maximum Price.** The Guaranteed Maximum Price, including authorized adjustments thereto, is the compensation or total (or maximum, as the case may be) amount payable by Owner to Design-Builder for the performance of the Work under the Contract Documents.

5.1.2. **Schedule of Values.** Before submitting its first invoice to Owner, Design-Builder will submit to Owner a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule of values, unless objected to by Owner, will be used as the basis for Design-Builder's invoices.

5.2. **INVOICES**

5.2.1. **Itemized Invoice.** Design-Builder will submit to Owner an itemized invoice, notarized if required, supported by such data substantiating Design-Builder's right to payment as Owner may require.

5.2.2. **Materials at Project Site.** Payments will be made on account of materials or equipment not yet incorporated in the Work but delivered, suitably stored and protected at the Project Site, if prior written approval has been given by Owner.

5.2.3. **Materials Off Project Site.** Payments will similarly be made for materials or equipment suitably stored, protected and identified for the Project at some other location. Payments for materials or equipment stored on or off the Project Site will only be made upon submission by Design-Builder of bills of sale or such other evidence or procedure satisfactory to Owner to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance, bonded warehouse storage and transportation to the Project Site where those materials and equipment are stored off the Project Site.

5.2.4. **Transfer of Title.** Title of all Work, materials and equipment covered by an invoice will pass to Owner either by incorporation in the Work or upon the receipt of payment by Design-Builder, whichever occurs first, and will be free and clear of all liens, claims, security interests or encumbrances. Design-Builder will have no property interest in Work, materials and equipment, including without limitation, stored materials and equipment, for which title has passed to Owner.

5.2.5. **Payment.** After review of the invoice, Owner will make payment of the Agreement or, if Owner does not agree with the invoice, it will promptly so notify Design-Builder in writing. Owner will withhold payment for only those items in dispute; undisputed items will be paid in accordance with the Agreement. If Owner fails

to pay Design-Builder undisputed amounts when such amounts are due, Design-Builder may, upon ten (10) days written notice to Owner, suspend performance of the Work on the unpaid Work or portion(s) thereof until payment has been received.

5.2.6. **Change Orders.** Invoices will show agreed Change Orders as separate items for payment, including the percent of completion of the Change Order, the amounts of previous invoices, retainage and payments for the Change Order.

5.2.7. **Payment to Subcontractors.** Upon receipt of payment from Owner, Design-Builder will promptly pay each Subcontractor (provided such Subcontractor has not been paid previously) the amount to which said Subcontractor is entitled out of the amount paid to Design-Builder on the account of such Subcontractor's work. Before the project is **fifty (50) percent** complete, Design-Builder shall retain **ten (10) percent** of the amount due Subcontractors. After **fifty (50) percent** completion of the construction services purchased pursuant to the contract the Design-Builder may elect, with Owner's approval, to withhold retainage from payments to its subcontractors at a rate higher than **five (5) percent**. The specific amount to be withheld must be determined by a case-by-case basis and must be based on the Design-Builder's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the subcontractor's ability to rely on other safeguards. The Design-Builder shall notify the Owner and subcontractor, in writing, of its determination to withhold more than **five (5) percent** of the progress payment and the reasons for making that determination, and the Design-Builder may not request the release of such retained funds from the Owner.

5.2.8. **Payment.** Notwithstanding the foregoing, payments received by Design-Builder will be held in trust for the benefit of all Subcontractors, and others claiming a right to payment from Design-Builder out of the Contract Sum. Design-Builder agrees that Design-Builder will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.

5.2.9. **Notice.** If Owner decides to withhold payment of all or part of an invoice, Owner will promptly notify Design-Builder in writing. The notice will include specific reasons for the withholding of payment.

5.2.10. **Claims.** If Design-Builder and Owner cannot agree on a revised amount, Design-Builder may submit a claim.

5.2.11. **Revocation of Prior Approval.** Owner may also nullify in whole or in part any prior approval on the basis of subsequently discovered evidence of defective Work not remedied, probable third party claims, failure of Design-Builder to pay its Subcontractors or others, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, Design-Builder damage to Owner, reasonable evidence that the Work will not be completed within the Project schedule or persistent failure to carry out the Work in accordance with the Contract Documents. As soon as the above grounds are removed, payment will be made for the amounts withheld because of them.

5.3. SUBSTANTIAL COMPLETION

5.3.1. **Punch List.** As soon as Design-Builder considers that the Work, or a designated portion thereof which Owner has previously indicated Owner will accept, is substantially complete, Design-Builder will prepare for submission to Owner a notice that Design-Builder believes has met the Date of Substantial Completion of the Work, which will include a punch list of items to be completed or corrected ("Punch List").

5.3.2. **Design-Builder Responsibility.** The failure to include any items on the Punch List does not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents.

5.3.3. **Inspection.** Owner will then inspect the Work or designated portion thereof to determine if Date of Substantial Completion of the Work, as defined in the Contract Documents, has been achieved and to verify the accuracy and completeness of the Punch List.

5.3.4. **Certificate of Substantial Completion.** If Owner agrees with Design-Builder that the Date of Substantial Completion of the Work has been met, Design-Builder will then prepare a "Certificate of Substantial

Completion" which will set forth the Date of Substantial Completion of the Work, will state the responsibilities of Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance, and will fix the time within which Design-Builder will complete the items on the Punch List.

5.3.5. **Copies.** Owner will receive a copy of the Certificate of Substantial Completion with Design-Builder's written acceptance of the responsibilities assigned to Design-Builder in such Certificate of Substantial Completion.

5.4. **FINAL PAYMENT**

5.4.1. **Final Invoice.** When Design-Builder believes that the Work is ready for final inspection and acceptance, Design-Builder will prepare the final invoice and send it to Owner along with Design-Builder's statement that, in its opinion, the Work is complete.

5.4.2. **Inspection.** Owner and Design-Builder will promptly make an inspection, and if Owner finds the Work acceptable under the Contract Documents and all the terms and conditions of the Contract Documents have been fulfilled, the date of such inspection will be the Date of Final Completion of the Work.

5.4.3. **Documentation Prior to Payment.** Neither the final payment, nor payment of any remaining retained percentage will be made to Design-Builder until it submits to Owner:

- . 1 a sworn or notarized affidavit that all payrolls, bills for materials and equipment, all charges by Design-Builders and Subcontractors and other indebtedness connected with the Work for which Owner and its property might in any way be responsible, have been paid or otherwise satisfied;
- . 2 consent to final payment by Design-Builder's surety; and
- . 3 all other data required by Owner establishing payment or satisfaction of all such obligations, including, but not limited to, receipts, releases, and waivers of lien arising out of and required under the Agreement.

5.4.4. **Final Payment.** Owner will pay the final invoice in accordance with Article 7 of the Agreement. Final payment received by Design-Builder will be held in trust for the benefit of all Subcontractors and others claiming a right to payment from Design-Builder out of the Contract Sum. Design-Builder agrees that Design-Builder will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.

5.4.5. **No Waiver by Payment.** It is mutually agreed that no payment (including final payment) under the Contract Documents will be evidence of the performance by Design-Builder under the Agreement, either wholly or in part.

5.4.6. **No Waiver by Use.** Neither the partial nor the entire use or occupancy of the Project by Owner, will constitute an acceptance of any Work not in accordance with the Contract Documents.

5.4.7. **No Waiver by Inspection.** Neither inspection by Owner or by any of his duly authorized representatives, nor any order, measurement or certificate by Owner will constitute a waiver of any of Owner's rights under the Agreement.

5.4.8. **Waiver by Design-Builder.** The acceptance of final payment by Design-Builder will constitute payment in full of the contract sum and a waiver of all claims by Design-Builder except those previously made in writing, in accordance with the Contract Documents and identified by Design-Builder in writing as unsettled at the time of the final invoice.

5.5. **SAFETY PROGRAMS**

5.5.1. **Design-Builder Responsibility.** Design-Builder will be responsible for developing, implementing,

maintaining and supervising all safety programs in connection with the Work and the Project Site. Design-Builder will be responsible for taking all reasonable safety precautions to prevent injury or death to persons and/or damage to property. These obligations extend to the protection of all individuals performing Work or on the Project Site, including visitors to the Project Site, and all other persons who may be affected by the Work in any way.

5.5.2. **Safety Officer.** A responsible member of Design-Builder's organization will be designated in writing as Design-Builder's safety officer. This person's duties will include, but will not be limited to, compliance with this Article 5 and, if this person is not the Design-Builder's Project Manager, then this person will report directly to Design-Builder's Project Manager.

5.6. SAFETY OBLIGATIONS

5.6.1. **Safety of Property.** Design-Builder will be responsible for taking all reasonable precautions to prevent damage to property. Protection of property includes the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the Project Site, or under the care, custody or control of Design-Builder or any person or entity for whom Design-Builder is responsible. In addition, protection of property includes other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.

5.6.2. **Applicable Safety Laws.** Design-Builder will ascertain and comply with all notice and posting requirements and will comply with all applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.

5.6.3. **Required Safeguards.** Design-Builder will ascertain the requirements for and will erect and maintain, as required by Law and/or existing conditions, all reasonable safeguards for safety and protection, including but not limited to, the posting of danger signs and other warnings against hazards, and the promulgation of safety regulations and notification to owners and users of adjacent property.

5.6.4. **Hazardous Activities.** If the Work involves any hazardous activities or the use or storage of explosives or other hazardous materials or equipment, Design-Builder and Subcontractors will exercise the utmost care and will carry on such activities under the supervision of properly qualified and licensed personnel.

5.6.5. **Remedy of Damages.** Any and all damage or loss to any property, caused in whole or in part by Design-Builder, Subcontractor or any other person or entity for whose performance Design-Builder is responsible, will be promptly remedied or repaired to its original condition at the expense of Design-Builder.

5.7. SECURITY

5.7.1. **Secured Areas.** Unless Design-Builder is otherwise notified in writing by Owner, all Owner property and premises are secured areas. Design-Builder will abide by all security requirements communicated in writing to Design-Builder by Owner. Design-Builder's failure to comply with these security requirements in any way will be grounds for termination for default or breach.

5.8. CHANGE ORDERS

5.8.1. **Definition.** A "Change Order" is a written order to Design-Builder, signed by Owner, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or an adjustment in the Project Schedule. No change in the Contract Sum or the Project Schedule will be effective unless a Change Order has been signed by Owner.

5.9. OWNER ORDERED CHANGES

5.9.1. **Owner Ordered Changes.** Without invalidating the Agreement, Owner may order changes in the Work within the general scope of the Agreement, inclusive of additions, deletions or other revisions, with the

Contract Sum and/or the Project Schedule being adjusted accordingly, if necessary.

5.9.2. **Authorization for Changes.** All such changes in the Work must be authorized by a Change Order and must be performed in accordance with the Contract Documents.

5.9.3. **Change Directive.** If Owner and Design-Builder are unable to agree on the need for a change, the existence of a change, the scope of a change or compensation for a change, Owner may direct the Design-Builder in writing to proceed with the Work as changed ("Change Directive"), and Design-Builder will proceed as directed. If a Change Directive is issued, the Change Directive will specify one of the methods of compensation set forth below and will state the schedule impact, if any. If Design-Builder disagrees with the method or amount of compensation or Project Schedule impact, Design-Builder will file a notice of claim.

5.10. **ADJUSTMENTS TO CONTRACT SUM**

5.10.1. **Cost/Credit for Changes.** The cost or credit to Owner resulting from a change in the Work will be determined in one or more of the following ways, as selected by Owner:

- .1 By mutual acceptance of a lump sum itemized and supported with sufficient data to permit evaluation;
- .2 By unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 By time and material supported by invoices and daily time records.

5.10.2. **Non-Reimbursables.** Unless the change in the Work increases the Contract Time or specifically approved by Owner, the following items will not be reimbursed by Owner and are not subject to any markup for overhead, profit or fee:

- .1 Salaries, expenses or other compensation of the Design-Builder's officers, executives, general managers, general superintendents, estimators, auditors, accountants, purchasing and contracting agents, expeditors and other employees working in or out of Design-Builder's permanent offices;
- .2 Salary of Design-Builder's Project Manager, other field office personnel salaries, utilities and telephone, temporary toilet facilities, trash removal and similar services, and safety equipment;
- .3 General and administrative expenses of Design-Builder's business, including, but not limited to, the cost of insurance as required by the Contract Documents;
- .4 Design-Builder's capital expenses including, but not limited to, interest on Design-Builder's capital employed for the Work;
- .5 Costs due to the negligence of Design-Builder, any Subcontractor, anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, including but not limited to, the correction of defective Work;
- .6 Use of Design-Builder's equipment such as office and material trailers and shacks, pick-up trucks, automobiles, etc.;
- .7 Costs in excess of the guaranteed maximum;
- .8 Small tools and consumables which include hand and power tools normally in a field gang box for each trade employed on the Project; and
- .9 Drayage services performed by Design-Builder's office personnel.

5.10.3. **Reimbursables at Cost.** The following items will be reimbursed at cost and will not be subject to any percentage markup for overhead and profit:

- .1 Premium time wages;
- .2 Sales and use taxes (except where sales tax is credited to Owner under Agreement);
- .3 Performance and labor and material payment bond premiums;
- .4 Permit fees; and
- .5 Insurance premiums.

5.10.4. **Reimbursable Field Costs.** The following direct field costs will be reimbursed at cost:

- .1 Straight time wages for apprentices, journeymen, sub-journeymen, foremen and general foremen;
- .2 Fringe benefits based on payroll;
- .3 Payroll insurance;
- .4 Payroll taxes up to the maximum annual amount for each employee;

5.10.5. **Reimbursable Material, Equipment and Services with Markup.** The following purchased materials, equipment and services will be reimbursed at cost and are subject to the percentage markup for overhead and profit as set forth in the Agreement, if any:

- .1 Materials and equipment incorporated in the Work;
- .2 Subcontracts, where properly identified and supported by sufficiently itemized substantiating data to permit evaluation; and
- .3 Rental charges of all necessary machinery and equipment rented by Design-Builder or Subcontractor, exclusive of hand tools, will be consistent with those that can be negotiated in the area. Rental rates to be charged are to be approved by Owner prior to the Date of Commencement of the Work; however, rental cost of any piece of equipment will not exceed its fair market value at the time such equipment is rented.

5.11. **UNIT PRICES**

5.11.1. **Adjustments.** If unit prices are stated in the Contract Documents or are otherwise agreed to between Owner and Design-Builder, and if the quantities originally contemplated are so greatly different from those included in a Change Order that the application of the previously agreed upon unit prices to the quantities of Work proposed will cause substantial inequity to either Owner or Design-Builder, then the applicable unit prices will be equitably adjusted.

5.12. **CONCEALED CONDITIONS**

5.12.1. **Adjustment of Contract Sum or Contract Time.** If during and in the performance of the Work, Design-Builder encounters concealed conditions it believes are at variance with the conditions indicated in the Contract Documents or if Design-Builder encounters unknown physical conditions of an unusual nature which differ materially from those depicted in the Contract Document, the Contract Sum or Contract Time may be equitably adjusted by Change Order upon claim by either party made in writing under the provisions and requirements of Article 4.3 of Exhibit B.

5.12.2. **Certificates of Inspection.** All required certificates of inspection, testing or approval will be obtained by Design-Builder and promptly delivered to Owner.

5.13. **UNCOVERING OF WORK**

5.13.1. **Required Uncovering.** If Design-Builder or any Subcontractor covers any Work which Owner requested the opportunity to inspect or covers it contrary to the Contract Documents, Design-Builder will uncover this Work for Owner's inspection and all costs of such uncovering and covering after inspection will be borne by Design-Builder.

5.13.2. **Owner Directed Uncovering.** Owner may request that Design-Builder uncover any portion of the Work that Owner had not specifically requested to observe prior to being covered. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and covering it after inspection will be charged to Owner and the appropriate Change Order issued, including, if appropriate, an adjustment to the CPM Schedule. If such Work is found not to be in accordance with the Contract Documents, Design-Builder will pay the cost of uncovering and covering such Work after inspection, with no adjustment to the CPM Schedule.

5.14. **CORRECTING DEFECTIVE WORK**

5.14.1. **Correction.** All Work rejected by Owner as defective or failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion of the Work or Date of Final Completion of the Work will be promptly corrected by Design-Builder.

5.14.2. **Cost of Correction.** Design-Builder will be responsible for all costs of correcting such defective and nonconforming Work, including but not limited to, the compensation for any of the Subcontractor's additional services made necessary.

5.14.3. **Failure to Correct.** If Design-Builder fails to correct defective or nonconforming Work, Owner may correct it at the expense of Design-Builder. In addition, if Design-Builder does not proceed with the correction of defective or nonconforming Work within a reasonable period of time, Owner may remove it and store it at the expense of Design-Builder. If Design-Builder fails to pay the cost of such removal and storage within ten (10) calendar days of written notice from Owner, Owner may sell the Work by any means it chooses and, after satisfying its expenses incurred therein, will pay the balance remaining, if any, to Design-Builder. If the proceeds of such a sale do not cover all costs that Design-Builder should have borne, the difference will be charged to Design-Builder.

5.14.4. **Notice of Defects.** Owner will give notice of defects or deviations hereunder promptly after discovery of the condition.

5.14.5. **No Limitations.** Nothing contained herein will be construed to establish a period of limitation with respect to any other obligation that Design-Builder might have under the Contract Documents or under applicable Law.

5.15. **ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

5.15.1. **Acceptance by Owner.** At Owner's sole option, Owner may accept defective or nonconforming Work. Owner may do so instead of requiring the removal and correction of such Work, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, any balance owed after the reduction will be paid by Design-Builder to Owner.

6. CLAIMS

6.1. **REQUIREMENTS**

6.1.1. **Notice of Claim.** In accordance with the Contract Documents, Design-Builder may make a claim for increase in the Contract Sum. Design-Builder will give Owner written notice thereof within ten (10) days after the occurrence giving rise to such a claim.

6.1.2. **Time of Notice.** The notice of claim will be given by Design-Builder before proceeding to execute the Work, except in an emergency endangering life or property in which case Design-Builder will proceed in good faith to address or correct the situation causing the emergency.

7. DISPUTES

7.1. RESOLUTION OF DISPUTES

7.1.1. **Initial Negotiations.** In the event a claim, dispute or controversy between Owner and Design-Builder arises under the Agreement or performance thereunder, the parties will attempt to resolve by negotiation between Owner's Project Manager and Design-Builder's Project Manager the dispute.

7.1.2. **Final Negotiations.** If the Owner's Project Manager and Design-Builder's Project Manager are unable to resolve the matter, it will be referred to negotiation between the Senior Representatives for Owner and Design-Builder designated in Article 9 of the Agreement.

7.1.3. **Reservation of Remedies.** Except as otherwise set forth in the Agreement, Design-Builder and Owner both reserve all rights and remedies available under the Law.

7.1.4. **Continue Work.** During the pendency of any claim, controversy or dispute, Design-Builder will continue to prosecute the Work as if the claim, controversy or dispute did not exist, unless otherwise directed in writing by Owner.

7.1.5. **Termination.** Nothing in this Article 7 will be deemed to alter the Owner's rights to terminate the Agreement for default or breach or for convenience, or to preclude or interfere with Owner's exercising of those rights.

7.2. OWNER ORDERED SUSPENSION

7.2.1. **Owner Convenience.** Owner may order Design-Builder, in writing, to suspend all or any part of its Work hereunder for such period of time as Owner may determine to be appropriate for its convenience.

7.2.2. **Adjustment of Cost or Time.** If the performance of all or any part of the Work is suspended by Owner pursuant to Article 8.2 of this Exhibit A, an adjustment will be made for any increase in cost or time of performance of the Agreement necessarily caused by such suspension, and the Agreement will be modified in writing accordingly. However, no adjustment will be made under this Article 7 for any suspension to the extent that performance would have been otherwise suspended by any other cause, including the fault or negligence of Design-Builder, Subcontractor or any other person or entity for whom Design-Builder is liable.

8. TERMINATION

8.1. TERMINATION FOR DEFAULT

8.1.1. **Events of Default or Breach and Owner Remedies.** If Design-Builder at any time: (i) refuses or fails to provide sufficient properly skilled workers, adequate supervision or material or equipment of the proper quality; (ii) fails in any material respect to prosecute the Work according to the current CPM Schedule; (iii) causes, by any action or omission, the stoppage, hindrance, delay of or interference with the Owner's on-going business or the work of any other Design-Builder; (iv) fails to comply with any provision of the Agreement or the Contract Documents; (v) makes a general assignment for the benefit of its creditors; (vi) has a receiver appointed; (vii) becomes insolvent; or (viii) fails to fulfill any other of its contractual obligations, Owner may, at Owner's option, at any time after seven (7) days' written notice of such default or breach to Design-Builder, and if Design-Builder has not satisfactorily taken action to cure such default or breach within such time:

- .1 take such steps as are necessary to overcome the condition (i.e., enter into any necessary agreement(s) with a third party or third parties in order to complete the Work), in which case the Design-Builder will be liable to Owner for any additional cost thereof; or
- .2 terminate for default or breach Design-Builder's performance of all or a part of the Work.

8.1.2. **Termination for Default or Breach.** In the event of termination for default or breach, Owner may, at its option: (i) enter the applicable location and take possession, for the purpose of completing the Work, of all materials and equipment of Design-Builder; (ii) take assignment of any or all of Design-Builder's subcontracts and purchase orders; and/or (iii) either itself or through others, complete the Work by whatever method Owner may deem expedient. In case of termination for default or breach, Design-Builder will not be entitled to receive any further payment until the Date of Final Completion of the Work. At such time, if the unpaid balance of the Contract Sum to be paid exceeds the expense incurred by Owner for completion as a result of the default or breach, including, but not limited to, overhead and profit, such excess amount will be paid by Owner to Design-Builder. If Owner's completion amount after default or breach exceeds such unpaid balance, the Design-Builder will pay Owner the difference on demand. Owner's rights under this Article 8 will be in addition to all other rights and remedies which Owner may have under the Agreement, at Law or in equity.

8.2. OWNER'S CONVENIENCE

8.2.1. **Owner's Right and Consideration.** Owner reserves the right to terminate the Agreement or the Work in whole or in part for convenience even though Design-Builder has not failed to perform any part of the Agreement.

8.2.2. **Design-Builder's Exclusive Remedy.** If Owner terminates in whole or in part the Agreement or the Work for convenience, the Design-Builder's exclusive remedy will be as stated in Article 8 of the Agreement.

8.3. PROCEDURE

8.3.1. **Termination Procedures.** Termination, in whole or in part, of the Agreement or of the Work, for any reason, will be effected by written notice to Design-Builder. Upon receipt of such notice, Design-Builder will, unless the notice otherwise directs:

- .1 immediately discontinue work on and the placing of all orders and subcontracts in connection with the terminated portion of the Work;
- .2 immediately cancel all of the existing orders and subcontracts made in connection with the terminated portion of the Work, unless directed by Owner to assign subcontracts;
- .3 immediately transfer to Owner all materials, equipment (machinery and tools), supplies, work in progress, appliances, facilities acquired by Design-Builder in connection with the performance of the terminated portion of the Work;
- .4 take such action as may be necessary or as Owner may direct for protection and preservation of the Work; and
- .5 deliver to Owner all data, Drawings, Specifications, reports, estimates, summaries, plans and other information and materials as may have been accumulated by Design-Builder in performing the Agreement, including any completed work and work in progress.

8.4. CONTINUING OBLIGATIONS

8.4.1 **Continuing Obligations under Termination.** All obligations of Design-Builder under the Agreement with respect to the Work, including, but not limited to, all warranties, guarantees and indemnities, will apply to all Work completed or partially completed by Design-Builder prior to a termination by Owner.

Termination will not abrogate any of the provisions of the Agreement for the resolution of disputes. Any termination by Owner or payments to Design-Builder will be without prejudice to any claims or legal remedies which Owner may have against Design-Builder for any cause.

SAMPLE

EXHIBIT B
SUPPLEMENTAL CONDITIONS
TO
AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

BY AND BETWEEN

And

School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940
(321) 631-1911
Fax: (321) 633-4646

FOR THE DESIGN AND CONSTRUCTION OF THE:

_____, 200__

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ARTICLE 1

DESIGN BUILD SERVICES

1.1 Project Management Information System

1.1.1 Cost Control System - Design-Builder shall provide sufficient timely (monthly) data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the contract sum.

1.1.2 Project Accounting System - This cost control system will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site elements.

- (a) Costs Status Report - states the budget, estimate, and base commitment (awarded contract and purchase orders) for any change given or budget item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (b) A Payment Status Report - showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained amount, and the balance remaining. A summary of this report shall accompany each pay request.
- (c) Owner Direct Purchases - showing Owner direct purchase commitments, payments, sales tax savings, balance to be paid, deductive change order reference and pay application line reference.

1.2 Construction Phase

(a) Design-Builder's Staff - Design-Builder shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of Design-Builder to coordinate, inspect and provide general direction of the work and progress of the Subcontractors. Design-Builder shall not change any of those persons unless mutually agreed to by Owner and Design-Builder. In such case, Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

(b) Schedule - Design-Builder shall provide a Critical Path Method (CPM) Schedule:

The schedule shall include all phases of construction work, long lead procurement, shop drawings and submittals, change orders and dates of commencement, substantial completion and final completion. Change in schedule indicating a later than contracted delivery date will be supported by a separate project schedule analysis identifying the cause, effect, and duration of schedule impact. In the event of a late delivery schedule, Design-Builder will immediately develop and provide a recovery schedule to fully recover the schedule.

(c) Bonds - In accordance with the provisions of Section 255.05, *Florida Statutes*, Design-Builder shall provide to Owner a 100% Performance Bond and a 100% Labor and Material Payment Bond, each in an amount not less than the total construction cost and inclusive of the construction fee. Bonds must be submitted and approved prior to commencement of Work on the Project. The bond form shall be AIA A-311.

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

- (1) The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write Surety bonds in the State of Florida.
 - (2) The Surety Company shall have a currently valid Certificate of Authority, issued by the United States Department of Treasury under Sections 9304 and 9308 of Title 31 of the United States Codes.
 - (3) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (d) Job Site Administration - Design-Builder shall provide as part of its administrative functions during construction, including, but not limited to, the following:
- (1) Job Meetings - Hold weekly progress and coordination meetings with subcontractors. A regular monthly Project status meeting will be held between Owner and Design-Builder.
 - (2) Shop Drawing Submittals/Approvals – Per the requirements of Article 3.6 of Exhibit A.
 - (3) Owner Direct Purchases - Develop and implement procedure subject to review and approval of Owner to accommodate Owner direct purchases so that Owner can take advantage of Owner’s tax exempt status for all material purchases exceeding \$5,000.00. This includes identification, tracking and coordination with Subcontractors. In each event, the contract sum shall be reduced by the amount of direct purchases and sales tax saved.
 - (4) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer and maintain an RFI Log detailing all requests for information.
 - (5) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to Owner, including information on the Subcontractor’s work, and the percentage of completion. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc., and require the same of Subcontractors. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
 - (6) Substantial Completion and Final Inspection - Design-Builder shall notify Owner, in writing, that the Work will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date.

Inspection and testing shall take place at a time or times mutually agreeable to Design-Builder and Owner. The inspection shall determine if substantial completion has been accomplished. If substantial completion is accomplished, Owner shall produce a Certificate of Substantial Completion and a written list of unfinished Work and defective Work, commonly referred to as a “Punch List,” which must be finished and corrected to obtain final completion.

Design-Builder shall notify Owner, in writing, that the Work will be ready for final inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for substantial completion. When the Work is finally and totally complete, including the elimination of all defects, a Design-Builder’s Affidavit of Final Completion will be submitted and a

Certificate of Final Completion will be issued and the Work shall be finally accepted by Owner.

Design-Builder shall conduct the preliminary inspections. Owner may elect to have persons of its choosing also participate in the inspections. If one or more re-inspection is required, Design-Builder shall reimburse Owner for all costs of re-inspection or, at Owner's option, the costs may be deducted from payments due to Design-Builder. The Total Project Schedule shall include these notices and inspections as activities.

Design-Builder shall secure and transmit to Owner, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books as part of final completion unless stated otherwise in the Project's specifications.

- (7) Start-Up - With Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and video tape and assist in their initial start-up and testing by the Subcontractors.
- (8) Record Drawings - Design-Builder shall monitor the progress of his own forces or his Subcontractors on marked-up field prints, which at Substantial Completion shall be submitted to their Architect/Engineer who will prepare the final record as-built drawings.

(e) Owner Occupancy/Commissioning:

Design-Builder shall provide a smooth Owner occupancy of the Project. Design-Builder shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by Design-Builder, "on line" and in such condition as will satisfy Owner's operational requirements. Design-Builder recognizes Owner is a public entity responsible for operating facilities related to public education. If the Project, or any portion, is not complete in time for regularly scheduled student occupancy, then Owner may, at its option, occupy the Project or a portion thereof prior to Design-Builder obtaining Substantial Completion. In the event of occupancy prior to substantial completion, the parties agree that occupancy will not be construed as acceptance of the Work or construed as Substantial Completion.

Design-Builder shall conduct the preliminary punch list inspection and coordinate the completion of all final punch list work to be done with Owner occupancy requirements in mind.

(f) Warranty:

Where any work is performed by Design-Builder's own forces or by Subcontractors under contract with Design-Builder, Design-Builder shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials, and in conformance with the Drawings and Specifications. With respect to the same Work, Design-Builder further agrees to correct all work found by Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Substantial Completion. Design-Builder shall collect and deliver to Owner any specific written warranties given by others as required by the Contract Documents. Also, Design-Builder shall conduct, jointly with Owner and the Architect/Engineer, a warranty inspection eleven (11) months after the date of Substantial Completion.

To the extent that the Specifications require warranties in excess of one (1) year and said warranties are obtained, Design-Builder will assign to Owner the warranty or guarantee of the manufacturer and supplier of items of machinery, equipment, materials or products manufactured or sold by others, and the warranty of subcontractors, consultants or specialized services of others

and cooperate and assist Owner in enforcement thereof. Design-Builder's responsibility with respect thereto is limited to such assignment, cooperation and assistance.

ARTICLE 2

PERMITTING AND INSPECTION

- 2.1 Permits, Fees and Notices - Building permit will be issued by Owner's Code Compliance Department. Inspections will be conducted by Owner's Code Compliance Department. There will be no cost to Design-Builder for building permit and inspection.
- 2.2 Conformance - It is Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations at the time the Agreement was executed. If Design-Builder observes that portions of the Contract Documents are at variance therewith, Design-Builder shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

ARTICLE 3

SUBCONTRACTS

- 3.1 Limitation of Remedy - No Damages For Delay - Design-Builder's exclusive remedy for delays in the performance of the contract caused by events beyond its control (Force Majeure) shall be an extension of its contract time. All subcontracts shall require the Subcontractors to expressly agree that the foregoing constitute its sole and exclusive remedy for Force Majeure.
- 3.2 Responsibilities for Acts and Omissions - Design-Builder shall be responsible to the Owner for the acts and omissions of his employees and agents and his Subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to Design-Builder.

ARTICLE 4

CHANGE IN PROJECT

- 4.1 Change Orders - Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the contract sum, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date shall be authorized by Change Order and signed by Owner.
- 4.2 Change Directive - A Change Directive shall be signed by Design-Builder's Project Manager and Owner's Project Manager directing an addition, deletion or revision in the scope of the work and/or schedule. The Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Design-Builder, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order.
- 4.3 Method of Price Change - The increase or decrease in the contract sum resulting from a change in the Project shall be determined as defined in Article 5 of Exhibit A. Subcontractor's claim for adjustments in the Cost shall be limited to its actual costs for such change plus a maximum of fifteen percent (15%) for overhead and profit. Design-Builder's Construction Management Fee shall be equal to the percentage of

the Construction Management Fee contained in the Agreement divided by the GMP contained in the Agreement.

4.4 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 5.8 through Article 5.11 of Exhibit A.

All change orders shall indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. Design-Builder must provide written justification for an extension of the Time for Completion to Owner, demonstrated by an increase in the critical path for the time required to complete the total Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase in the time needed to complete the specific work related to the change order. No increase to the Time for Completion shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the total critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of a change order shall be demonstrated by a decrease in the critical path for the time required to complete the total Work. If such decreases are not provided by Design-Builder, Owner shall determine the appropriate decrease by the best means possible and such decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give Design-Builder an opportunity to demonstrate a change in the time and price needed to complete the Work. Only delays which are determined to extend the critical path of the schedule for constructing the Project will result in a time extension. Owner shall be considered to own the schedule float time when the critical path is analyzed to demonstrate an increase or decrease to the Time for Completion.

ARTICLE 5

INDEMNITY, INSURANCE AND BONDS

5.1 Indemnification

- 5.1.1 To the fullest extent permitted by law Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of Design-Builder, its Architect, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or Owner, its officers, directors, agents, or employees. Such indemnification of Owner, its officers, directors, agents, or employees shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of Owner or its officers, directors, agents, or employees, or for statutory violation or punitive damages, except and to the extent such statutory violation or punitive damages are caused by acts or omissions of Design-Builder or its Architect, Subcontractors, or anyone directly or indirectly employed by them. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Agreement. The indemnity described herein shall be one million per occurrence.

5.1.2 In any and all claims against Owner, or any of its employees by any employee of Design-Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Article 5.1.1 shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by or for the Design-Builder or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

5.2 Design-Builder's Liability Insurance

5.2.1 Design-Builder shall purchase and maintain, in companies properly licensed or authorized to do business in Florida and reasonably acceptable to Owner, such insurance as will protect Design-Builder, its Architect, Owner and their agents, representatives, and employees from claims set forth below which may arise out of or result from Design-Builder's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts (with Workmen's Compensation and Employer's Liability Insurance in amounts necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work);
- (b) claims for damages because of bodily injury, sickness or disease, or death of his employees; Design-Builder will require his Subcontractors provide Workmen's Compensation Insurance for all of the latter's employees;
- (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Design-Builder or (2) by any other person;
- (e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the loss of use resulting therefrom; and
- (f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle furnished by Design-Builder.

5.2.2 To the extent necessary to provide coverage under Design-Builder's insurance for the liabilities assumed by Design-Builder under the Indemnity provisions of this Agreement, the insurance required by Subparagraph 5.2.1(a) (b)(c)(d)(e)(f) shall be primary and non contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those required by this agreement.

5.2.3 The insurance required by Subparagraph 5.2.1(a)(b)(c)(d)(e)(f) shall include written contractual liability insurance to cover the tort liabilities assumed by the Design-Builder under the provisions of Article 5.1.1 and this shall be so noted on Design-Builder's Certificate of Insurance.

5.2.4 During the term of the Contract, Design-Builder and each Subcontractor shall, at their own expense, purchase and maintain the following insurance in companies properly licensed or authorized to do business in Florida and reasonably satisfactory to the Owner for the following amounts, or greater, if required by law.

- (a) Workmen's Compensation including Occupation Disease and Employer's Liability Insurance.
 - (1) Statutory - Amount and coverage as required by Chapter 440, Florida Statutes.

- (2) Employer's Liability - \$1,000,000.00.
- (3) Applicable Federal (e.g. Longshoreman's Statutory).
- (b) Comprehensive or Commercial General Liability Insurance (including Premises Operation; Independent Design-Builder's Protective; Products and Completed Operations; Broad Form Property Damage; Written Contractual Liability; Aggregate Limit Per Project Endorsement).
 - (1) Bodily Injury Liability
\$1,000,000 Per Person
\$2,000,000 Per Incident or Occurrence
 - (2) Property Damage Liability
\$1,000,000 Per Person
\$2,000,000 Per Incident or Occurrence
 - (3) Personal Injury with Employment Exclusion deleted
\$1,000,000 Per Person
\$2,000,000 Per Incident or Occurrence
 - (4) Regarding Completed Operations and Products Liability, continue Coverage in force for one year after completion of the Work.
 - (5) Regarding Property Damage, include Broad Form Property Damage, Remove "X", "C", or "U" exclusions as applicable (explosion, collapse, underground property damage).
- (c) Comprehensive Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles - with limits stated below, or greater if required by law.
 - (1) Bodily Injury Liability
\$500,000 Per Person
\$1,000,000 Per Incident or Occurrence
 - (2) Property Damage Liability
\$1,000,000 Each Occurrence
- (d) Umbrella Excess Liability
 - (1) \$2,000,000.00 over primary insurance, subject to aggregate limits where applicable
 - (2) \$2,000,000.00 retention for self-insured hazards, per occurrence.

5.2.5 The insurance required by this Article shall be written for limits of liability specified in the Contract Documents, or required by law, whichever is greater.

5.2.6 Certificates of Insurance acceptable to Owner shall be filed with Owner within ten (10) days after Owner's approval of the award. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice, by registered mail, has been given to Owner.

5.2.7 Design-Builder shall not commence work under this Contract until he has obtained all the insurance required thereunder and such insurance has been approved by Owner, nor shall Design-Builder allow any Subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Design-Builder thereunder.

5.2.8 To the extent necessary to provide coverage under Design-Builder's insurance for the liabilities assumed by Design-Builder under the Indemnity, provisions of this Agreement, Owner shall be included as additional insured in Design-Builder's Commercial General Liability Insurance, and Design-Builder's Completed Operator's Insurance, and shall be listed as an "additional insured" on the certificate.

5.2.9 All Subcontractor insurance policies provided will also name Owner as an "additional insured."

5.3 Property Insurance

5.3.1 Design-Builder shall purchase and at all times maintain such insurance as will protect Design-Builder, Owner, other representatives, agents and employees of Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto (excluding any ocean shipments) and intended to become a part of the finished work until acceptance by Owner. This insurance shall be in the form of "Builders All-Risk", All Risk Installation Floater", or equivalent. Design-Builder shall cause such policy or policies of insurance required under this Subparagraph to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against Owner. Notwithstanding any such deductible provision, Design-Builder shall remain solely liable for the full amount of any item covered by such insurance.

5.3.2 Any loss insured under the Article is to be adjusted with Design-Builder and made payable to Design-Builder as trustee for the insured, as their interests may appear. Design-Builder shall pay each Subcontractor a just share of any insurance moneys received by Design-Builder, and by appropriate agreement, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

5.3.3 Owner and Design-Builder waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article, or any other property insurance applicable to the Work. Design-Builder shall require, by appropriate agreement, similar waivers in favor of Owner and Design-Builder by Subcontractors and Sub-subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, his consultants, employees, and agents and representatives.

5.3.4 Owner shall be co-insured with Design-Builder in Design-Builder's Property Insurance required under 5.3.1.

5.4 Effect Of Submission Of Certificates

5.4.1 Owner shall be under no obligation to review any Certificates of Insurance provided by Design-Builder or to check or verify Design-Builder's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Design-Builder is fully liable for the amounts and type of insurance required herein, and is not excused should any policy or certificate of insurance provided by Design-Builder not comply with any and all requirements regarding insurance imposed by the Contract Documents.

5.5 Failure Of Compliance

5.5.1 Should Design-Builder fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, Owner may obtain such insurance on behalf of Design-Builder and charge the premiums to Design-Builder.

5.6 Licensed Insurance Companies

5.6.1 All insurance companies providing the above insurance shall be properly licensed or authorized by the State of Florida. Owner shall arrange with its insurers Waivers of Subrogation in favor of Design-Builder, its affiliated companies, its subcontractors and vendors on all policies obtained or maintained for this project, including without limitation any business interruption policies.

- 5.7 Payment and Performance Bonds - Design-Builder will provide payment and performance bonds on AIA Form A-311 for the entire contract amount.

ARTICLE 6

ASSIGNMENT AND GOVERNING LAW

- 6.1 Non-Assignable - Neither Owner nor Design-Builder shall assign its interest in this Agreement without the written consent of the other.
- 6.2 Choice of Law - This Agreement shall be governed by the Laws of the State of Florida.
- 6.3 Venue - Exclusive venue for any dispute arising under this Agreement shall be in Brevard County, Florida.

ARTICLE 7

NOTICE OF CLAIM

- 7.1 Notice of Claims - Owner's liability to Design-Builder for any claims arising out of or related to the subject matter of this Contract Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by 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) If Design-Builder claims that any instructions given to him by Owner, by drawings or otherwise, involve extra Work not covered by the Contract, then, except in emergencies endangering life or property, he shall give Owner written notice of claim. Notice shall be given no later than ten (10) calendar days after the receipt of such instructions;
 - (c) Within ten (10) calendar days of submitting its Notice of Claim, Design-Builder shall submit to Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) calendar days from notice submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.; and
 - (d) Design-Builder agrees that 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 section.

ARTICLE 8

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 8.1 Reservation - Owner reserves the right to perform construction related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.
- 8.2 Obligation of Owner - Unless otherwise provided in the Contract Documents, when Owner performs construction or operations related to the project with Owner's own forces, Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to Design-Builder under the Standard General Conditions (Exhibit A).

- 8.3 Storage - Design-Builder shall afford Owner and separate Design-Builders reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Design-Builder's construction and operations with Design-Builder, as required.
- 8.4 Coordination - If part of Design-Builder's Work depends for proper execution or results upon construction or operations by Owner or a separate Design-Builder, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Builder to report shall constitute an acknowledgment that Owner's or separate Design-Builders completed or partially completed construction is fit and proper to receive Design-Builder's Work, except as to defects not then reasonably discoverable.
- 8.5 Responsibility for Delay - Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.
- 8.6 Damages - Design-Builder shall promptly remedy damage wrongfully caused by Design-Builder to completed or partially completed construction or to property of Owner.

ARTICLE 9

MISCELLANEOUS

- 9.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et. seq., Florida Statutes, (The Florida Prompt Payment Act).
- 9.2 Harmony - Design-Builder hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Design-Builder and Design-Builder's Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction now or hereafter on the site of the Project.
- Design-Builder further agrees that this provision will be included in all subcontracts of the Subcontractors as well as Design-Builder's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 9.3 Public Entity Crime Affidavit - Attached as **Exhibit D**.
- 9.4 Non-Collusion Affidavit of Prime Bidder - Attached as **Exhibit E**.
- 9.5 Third-Party Beneficiaries -Except as expressly provided in this Article, there are no third-party beneficiaries of this Agreement. This Agreement does not create or confer any legal claim or cause of action in favor of any party not a signatory to this Agreement and the obligations and legal duties imposed on any party by this Agreement are owed exclusively to the other party or parties and are not owed to any party not a signatory to this Agreement.

EXHIBIT C

TO

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

BY AND BETWEEN

And

**School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940
(321) 631-1911
Fax: (321) 633-4646**

FOR THE DESIGN AND CONSTRUCTION OF:

_____, 200__

ARTICLE 1. BASIS OF THE GUARANTEED MAXIMUM PRICE (GMP)

1.1 Design Criteria Documents. The scope of Work for the GMP shall be as defined in the Design Criteria Package, prepared by _____, titled _____ and dated _____.

1.2 Exceptions, Clarifications and Exclusions. The scope of Work defined in the Design Criteria Package shall be modified as shown in attached Exhibit C-1.

ARTICLE 2. PROJECT SCHEDULE

2.1 Milestone Dates. The Date of Substantial Completion and the Date of Final Completion are contained in the Agreement. Intermediate schedule milestone dates shall be as listed below and shall be incorporated into the CPM schedule.

2.1.1 Design

- .1 Schematic Phase:
- .2 Design Development Phase:
- .3 Construction Document Phase:

2.1.2 Permitting:

2.1.3 Bidding:

2.1.4 Construction:

ARTICLE 3. LUMP SUM DESIGN FEE

3.1 Design Services. Design-Builder's Architect shall provide the Architectural and Engineering Services required for the design, permitting and construction administration of the scope of work contained in the Design Criteria Package, as modified by the Exceptions, Clarifications and Exclusions listed in Article 1 of this Exhibit C. The scope and requirements of those design services are contained in the attached Exhibit C-2. Payment of the Design Fee shall be based on the percentage of completion of the Phase.

ARTICLE 4. LUMP SUM CONSTRUCTION MANAGEMENT FEE

4.1 Construction Management Services. Design-Builder shall provide the Construction Management Services required for the cost estimating, permitting, bidding and construction of the scope of work contained in the Design Criteria Package, as modified by the Exceptions, Clarifications and Exclusions listed in Article 1 of this Exhibit C. Payment of the Construction Management Fee shall be based on the percentage of completion of the Phase.

ARTICLE 5. REIMBURSABLE GENERAL CONDITIONS COSTS

5.1 General Conditions. General Conditions costs are identified in the attached document, prepared by Design-Builder, titled _____ and dated _____.

ARTICLE 6. GENERAL REQUIREMENTS COSTS

6.1 General Requirements. General Requirements costs are identified in the attached document, prepared by Design-Builder, titled _____ and dated _____. General Requirements shall be a Cost of the Work, but have been identified separately at Owner's request.

SAMPLE

EXHIBIT C-1
TO
AGREEMENT BETWEEN OWNER AND DESIGN BUILDER
FOR
DESIGN AND CONSTRUCTION OF

(Project)

EXCEPTIONS, CLARIFICATIONS AND EXCLUSIONS

Clarification No. 1 – All items purchased by the Design Builder with General Conditions funds shall be turned over to the Owner at the end of the project.

Clarification No. 2 – All General Conditions costs shall be reimbursed at the actual cost for the item – internal processing fees will not be reimbursed. Costs for labor burdens, insurances and bonds shown in GMP breakdown are estimates only – these will be paid at actual cost based on an audit at the conclusion of the project. All components of labor burden, insurances and bonds, including internal service fees and reserves if applicable, shall be submitted to the Owner for approval prior to the first application for payment. Training, bonuses, awards or incentive/supplemental compensation are not acceptable as a component of labor burden.

EXHIBIT C-2
TO
AGREEMENT BETWEEN OWNER AND DESIGN BUILDER
FOR
DESIGN AND CONSTRUCTION OF

(Project)

SCOPE OF DESIGN SERVICES

ARTICLE 1: DEFINITIONS

- 1.1 Additional Design Services. Additional Design Services shall consist of the professional design services agreed to be performed by Design-Builder in connection with the Project but which are not specifically designated as Basic Services.
- 1.2 Basic Design Services. Basic Design Services shall consist of the professional design services required to be performed and provided by Design-Builder under this Agreement in connection with the Project.
- 1.3 Basic Design Services Compensation. Basic Design Services Compensation shall be the Lump Sum Fee designated in Article 6 of the Agreement to be paid by Owner to Design-Builder in connection with the performance of the Basic Services by Design-Builder.
- 1.4 Construction Contract Documents. The Construction Contract Documents shall consist of the plans, project manual and specifications prepared by Design-Builder, and any addenda and change orders thereto.
- 1.5 Design-Builder. Where applicable within this Exhibit, the term “Design-Builder” shall mean the design professionals employed and/or sub-contracted by Design-Builder to provide the design services required under the Agreement.
- 1.6 Design Criteria Package. Performance-based criteria documents prepared by a Design Criteria Professional retained by Owner, establishing the scope of work for a Design/Build project, conforming to the requirements of 287.055(2)(j) F.S.
- 1.7 Design Standards. Owner’s Design Standards which shall be used for the design of the Project.

ARTICLE 2: REQUIREMENTS

- 2.1 Design-Builder certifies to Owner that it is licensed, registered or certified in all required professional design disciplines to meet the requirements of Florida Statutes, D.O.E. regulations and the specific project. If Design-Builder should at any time lose such license, registration or certification in any required discipline, it shall immediately notify Owner. If Owner determines that Design-Builder cannot perform the professional design services required under this Agreement, it shall declare this Agreement void and be obligated to only pay for those services rendered before loss of license, registration or certification.

- 2.2 Design-Builder shall comply with all requirements of the State Department of Education, to the end that plans and specifications shall meet or exceed the minimum standards for planning, design and construction adopted by the State Department of Education and all other applicable laws of the State of Florida. Design-Builder shall comply with all directives and memoranda issued by Owner and shall incorporate them into the Project if within the terms of this Agreement.
- 2.3 Owner may provide drawings, data, recommendations, suggestions, consultation and/or other information relating to the Project from other Consultants under separate contract with Owner. Design-Builder shall coordinate and cooperate with Owner's other consultants.

ARTICLE 3: BASIC SERVICES

3.1 Scope of Services.

- 3.1.1 The Basic Design Services below to be performed by Design-Builder consist of professional tasks which have as their objective the design, production of technical documents, and construction administration to provide Owner with a complete and properly functioning Project. The Project shall be suitable for the purposes for which it is intended, comply with all applicable codes and laws, and be completed on a timely basis within the approved construction budget.
- 3.1.2 The Basic Design Services to be provided by Design-Builder shall be performed in the phases described hereinafter and shall include all services customarily furnished in accordance with generally accepted industry practices for this type of professional design service consistent with the terms of this Agreement.
- 3.1.3 Design-Builder shall provide all necessary documents and other services required for the Work. All Work shall be performed in accordance with: Florida School Law, Rules of Florida State Department of Education, State Requirements for Educational Facilities (SREF), Florida Building Code, Florida Fire Prevention Code, FAC Rule 6-2, and Brevard County Public School Guideline Standards and Brevard County Public School Board Policy.

3.2 Design-Builder's Professional Responsibility and Standard of Care.

- 3.2.1 By execution of this Agreement, Design-Builder hereby warrants that (a) it is an experienced, established design firm having the ability and skill necessary to perform all the design services required of it under this Agreement in connection with scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with current laws, rules and regulations which are applicable (such laws, rules and regulations including, but not limited to, local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services applicable to the Project), and that all drawings, specifications and other documents prepared by Design-Builder shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.
- 3.2.2 Design-Builder hereby represents and agrees within the professional standard of care that the drawings, specifications, documents and other services prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended, as mutually agreed upon between Owner and Design-Builder, except as to any deficiencies which are due to causes beyond the control of Design-Builder, and that the Project, if constructed in accordance with the intent established by such drawings, specifications and other documents, shall be structurally sound and suitable for the purpose intended.

Design-Builder shall be responsible for any negligent acts, errors, or omissions in the drawings, specifications, documents and other services within the normal standard of care at the time services are rendered. While Design-Builder cannot guarantee the various documents and services required herein to be completely free of minor human errors and omissions, it shall be the responsibility of Design-Builder throughout the period of performance under this Agreement to use due care with professional competence. Design-Builder will correct at no additional cost to Owner any negligent acts, errors and omissions in the drawings, specifications, documents and other services prepared by Design-Builder. Design-Builder further agrees, at no additional cost, to render assistance to Owner in resolving mutually agreed upon problems relating to the design or specified materials.

- 3.2.3 It is the responsibility of Design-Builder to make certain that all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from Federal, State and local governments.
- 3.2.4 It is the responsibility of Design-Builder to assure that the Project Construction Documents require that no asbestos containing materials are to be incorporated in the Project. Design-Builder must certify that no asbestos containing material was used in the project as a pre-condition to final payment.
- 3.2.6 If bids exceed the Project Construction Budget Design-Builder shall, at no additional cost to Owner, assist Owner in Value Engineering or scope reductions necessary to meet the Project Construction Budget. Such assistance shall include, but shall not be limited to, participating in discussions, meetings and decisions and revising existing documents or providing additional documents as necessary to obtain pricing for and implement the Value Engineering and/or scope reductions.
- 3.3 Project Conferences.
- 3.3.1 Throughout all phases of the Project, Design-Builder shall meet periodically with Owner when reasonably requested. Participants shall be as determined by Owner.
 - 3.3.1.1 Predesign and design conferences.
 - 3.3.1.2 Prebid and preconstruction conferences.
 - 3.3.1.3 Construction progress meetings.
 - 3.3.1.4 Substantial Completion, Final Completion and completion of warranty period inspections for each construction contract.
- 3.3.2 Design-Builder shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials and applicable utilities.

ARTICLE 4: COMPENSATION

- 4.1 Basic Design Services Compensation.
- 4.1.1 For the Basic Design Services of Design-Builder, Basic Design Services Compensation shall be the Lump Sum Fee contained in Article 6 of the Agreement.
- 4.1.2 Should Owner request additions to the Project which would cause a change or changes in the scope of the Work or previously approved designs or design criteria, the Project Construction Budget shall be

increased by the aggregate amount of such change(s) and Design-Builder's design fee shall be increased as an Additional Design Service in relation to the effort required for the change(s).

4.1.3 In the event Owner requests changes to the Project which would decrease the Project Construction Budget, basic compensation due Design-Builder shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by Design-Builder of the written requested change in accordance with the basic payment schedule set forth below.

4.1.3 The Basic Design Services Compensation stated in paragraph 4.1.1 includes all compensation and other payments due Design-Builder (manpower, overhead, profit, direct costs, etc.) in the performance of the Basic Design Services.

4.1.4 Design-Builder certifies that his wage rates, unit costs and other factual data which may have been furnished Owner to support the compensation schedule are accurate, complete and current at the time of entering into this Agreement. It is mutually understood between Design-Builder and Owner that the original fee schedule and any additions there to shall be adjusted within one year, if required, to exclude any significant sums wherein Owner determines the fee was increased due to inaccurate, incomplete or noncurrent wage rates, unit costs and other factual data which may have been furnished by Design-Builder.

4.2 Payments to Design-Builder for Design Services. Payments to Design-Builder for design services shall be made as follows:

4.2.1 Payments for Basic Design Services shall be made monthly in proportion to services performed based on a Payment Schedule below upon presentation of Design-Builder's statement of design services, fully supported by invoices, time cards, and certifications if requested that all subconsultants have been paid, and other documentation if requested by Owner.

Schematic Phase	15%
Design Development Phase	15%
Construction Documents Phase	35%
SBBC Building Department and DOE approval	05%
Bidding	05%
Construction Administration	25%

4.2.2 No deductions shall be made from Design-Builder's Basic Design Services Compensation on account of penalty, liquidated damages, retainage or other construction-related sums withheld from payments to Design-Builder.

4.2.3 Deductions may be made from Design-Builder's Basic Design Services Compensation on account of errors and omissions in the drawings, specifications, documents and other services prepared by Design-Builder in accordance with the provisions of Paragraph 3.2.3 to the extent described in the Scope of Work.

4.2.4 Payments due for Reimbursable Expenses incurred while performing Basic or Additional Design Services shall be computed at 1.1 times actual costs. Reimbursable Expenses shall include actual expenditures made by Design-Builder, his employees, or his design subconsultants in the interest of the project. Before incurring any Reimbursable Expenses, Design-Builder must request and receive written authorization from Owner.

4.2.5 Final payment to Design-Builder for design services shall not be made by Owner until the following items have been received by Owner:

1. Electronic copies of all drawings, specifications, documents and other services prepared by Design-Builder in connection with the Project, including incorporation of the Design-Builder's "As-Built" records of the Project.
2. All certifications required by: applicable laws, statutes, building codes and regulations; Federal, State and local governments.

4.3 Additional Design Services Compensation.

4.3.1 Prior to any Additional Design Services performed by Design-Builder hereunder, Design-Builder and Owner shall negotiate an equitable adjustment to the Basic Design Services Compensation.

4.3.2 Payments for Additional Design Services to Design-Builder shall be made monthly upon presentation of Design-Builder's statement of design services, fully supported by invoices, time cards, and other documentation as requested by Owner. Design-Builder expressly waives any right to payment for any Additional Design Services rendered if Design-Builder does not give written notice of its claim that the services are additional within twenty (20) days of rendering the services, and if such services are not billed as Additional Design Services within sixty (60) days following their rendition.

4.3.3 Notwithstanding anything to the contrary expressed elsewhere in this Agreement, no design or construction services made necessary, in whole or in part, by any fault or omission of Design-Builder to perform its duties, responsibilities or obligations under this Agreement, shall be compensated.

4.4 Accounting Records.

4.4.1 Records of Design-Builder with respect to Additional Design Services and payroll, subconsultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept on generally accepted accounting principles and shall be available to Owner or its authorized representative for inspection and copying at mutually convenient times.

4.4.2 At the request of Owner or its authorized representative Design-Builder will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Design Services and Reimbursable Expenses.

4.4.3 Design-Builder shall not be entitled to receive payment hereunder until Owner is provided such lien waivers, including lien waivers from Design-Builder's design subconsultants, detailed descriptions of services, and sworn statements of certification stating Design-Builder's design services are in compliance with the requirements of this Agreement, as Owner may reasonably require in connection with Design-Builder's request for payment.

ARTICLE 5: INSURANCE

5.1 Design-Builder shall purchase and maintain workers' compensation insurance for all of their employees during the entire period of this contract. Design-Builder shall also purchase and maintain for the entire period of this contract, insurance that protects itself and Owner from any and all claims resulting from negligent or wrongful acts or omissions, damages due to bodily injury, including personal injury, sickness, disease or death of any of Design-Builder's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which Design-Builder is legally liable. All insurance provided under this Agreement shall be through an insurance carrier acceptable to Owner. The insurance carrier shall be rated "A-" or better by Best's Key Rating Guide and shall provide Owner with evidence of financial

strength. In no case shall the deductible for any of the required insurance policies exceed \$25,000. The minimum limits of insurance coverage shall be as follows:

Insurance Description	Minimum Required Coverage
a. Workers' Compensation	Statutory
b. Public/General Liability Combined Limit	
Bodily Injury: Each Person	\$ 1,000,000.00
Bodily Injury: Each Accident	\$ 2,000,000.00
Property Damage: Each Accident	\$ 1,000,000.00
c. Automobile Liability & Property Damage	Combined Limit
Bodily Injury: Each Person	\$ 500,000.00
Bodily Injury: Each Accident	\$ 1,000,000.00
Property Damage: Each Accident	\$ 1,000,000.00
d. Professional Liability Insurance	\$ 1,000,000.00

- 5.2 The General and Auto liability insurance policies required under Section 5.1 of this Agreement shall name Owner as an additional insured and shall contain a waiver of subrogation against Owner. Owner shall also be listed as an additional insured on Design-Builder's Professional Liability insurance policy should the policy be on a form other than a "claims made" policy.
- 5.2.1 Design-Builder shall deliver to Owner a certificate of insurance for its Workers' Compensation, General Liability, Auto Liability and Professional Liability prior to the commencement of work and annually thereafter, so long as it is required to maintain such coverage under Article 5.4.
- 5.3 Evidence of such insurance shall be furnished to Owner as part of this Agreement, and Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, Design-Builder shall procure substitute insurance so as to assure Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 5.4 Design-Builder shall maintain Professional Liability insurance in force during the performance of this Agreement and for three years after the conclusion of this agreement.
- 5.5 Design-Builder shall require the provisions of this Article 5 to apply in full force and effect to its subconsultants and shall provide to Owner certificates of insurance as described in Article 5.2 for all subconsultants.

ARTICLE 6: INDEMNIFICATION

- 6.1 Notwithstanding anything to the contrary contained herein, Design-Builder shall indemnify and hold harmless Owner and its officers, agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) Design-Builder's performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease, intentional acts or death, or to injury to or destruction of personal property including the loss of use resulting therefrom and caused by any negligent act or omission of Design-Builder, anyone directly or indirectly employed by Design-Builder or anyone for whose acts Design-Builder may be liable to the extent and in proportion to Design-Builder's comparative degree of fault. Such obligation shall not be construed to negate,

abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- 6.2 Except as otherwise set forth in this Agreement, Design-Builder and Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to Design-Builder for acts or failures to act by Owner, the Design-Builder or Owner's Consultants. Design-Builder shall not be liable for acts or failures to act by the Design-Builder, Owner, or Owner's Consultants.

ARTICLE 7: DOCUMENTATION

- 7.1 Design-Builder shall provide and Owner shall retain electronic copies of Drawings in AutoCAD format, Specifications in MS Word format and other documents in AutoCAD, MS Word, MS Excel, MS Access or MS Project as appropriate for information, reference and use in connection with Owner's use and occupancy of the Project and for Owner's future requirements of the Project's facilities including without limitation any alteration or expansion in any manner Owner deems appropriate without additional compensation or fee to Design-Builder. Owner shall assume responsibility in connection with its use of the Drawings and Specifications without Design-Builder's consent.

ARTICLE 8: PROJECT PHASES

- 8.1 The design services are described under the Project Phases in which they customarily occur. This order is for convenience only and does not necessarily reflect the sequence in which a design service will actually be performed, or necessarily limit the Project, or a designated portion of the Project, to one of each Phase. These Phases may be divided to facilitate the procurement of segregated portions of the Work. Owner reserves the right to designate the phasing of segregated portions of the Work. Owner may eliminate one or more Phases if they are not applicable to the Project.

8.2. PRE-DESIGN PHASE

1. Design-Builder shall advise Owner in regarding the design guidelines for the project contained in the Design Criteria Package.
2. Design-Builder shall become familiar with the Design Criteria Package for the Project and Owner's Design Standards and utilize them in his project design and specifications.
3. Design-Builder shall serve as a team member and advise on the appropriateness of the Project Construction Budget as it relates to Program Requirements and Design Standards.
4. Design-Builder shall review all Owner furnished information, data and services, verify that it is correct and certify that it is acceptable for their use on the project.

8.3. SCHEMATIC DESIGN PHASE

1. Upon written authorization from Owner to proceed and, based on the Design Criteria Package and the approved Project Construction Budget, Design-Builder shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components for approval by Owner.

2. Design-Builder shall provide Owner periodically with copies of Schematic Design Studies for Owner's review during the Schematic Design Phase. At the end of the Schematic Design Phase Design-Builder shall provide Owner with three (3) complete sets of the drawings and other documents for approval by Owner.
3. Documents prepared by Design-Builder for final Schematic Design Phase submittal shall include drawings and a written report. The drawings are described and shall include, but not be limited to, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall include a summary of programmed versus actual square footage by room or area; such discussion of design factors, if any, as are pertinent in the opinion of Design-Builder; and outline descriptions of proposed engineered systems. The Design/Build team shall prepare cost estimates in sufficient detail to assure itself that the project cost is within the Project Construction Budget.
4. Design-Builder shall participate as requested in meetings with Owner's staff to review the project and receive Owner's input.
5. Design-Builder shall make presentations as necessary to the School Board and/or its committees.
6. Upon Owner acceptance and approval of the Schematic Design, the design concept may not be changed except by Owner approval.
7. Owner may combine the Schematic Design Phase with the Design Development Phase.

8.4. DESIGN DEVELOPMENT PHASE

1. Design-Builder shall prepare from the approved Schematic Design Studies, for further approval by Owner, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural systems, materials and such other essentials.
2. Design Development Documents prepared by Design-Builder shall include drawings and a written report in more detail than the Schematic Design Documents and shall take into account Owner's comments on the previous submittal. The report shall include a summary of programmed versus actual square footage by room or area; such discussion of design factors, if any, as are pertinent in the opinion of Design-Builder; and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts. Drawings shall include dimensioned site development plan, floor plans, elevations, and one or more typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. Design-Builder shall prepare cost estimates in sufficient detail to assure itself that the project cost is within the Project Construction Budget.
3. Design-Builder shall provide Owner periodically with copies of in-progress Design Development Documents during the Design Development Phase. At the end of the Design Development Phase Design-Builder shall provide Owner with three (3) complete sets of drawings and other documents for approval by Owner.
4. Owner may combine the Design Development Phase with the Construction Document Phase.

8.5. CONSTRUCTION DOCUMENT PHASE

1. Upon written authorization from Owner to proceed, Design-Builder shall prepare from the approved Design Development Documents Construction Documents setting forth in detail the requirements for the construction of the entire Project.
2. Construction Documents shall be packaged as prescribed in the Management Plan and be completed in accordance with the Schedule.
3. Detailed drawings shall cover all work included in the Project or designated portion thereof.
4. Single or multiple contracts shall be as agreed to by Owner, and the detailed drawings for each contract shall be prepared by Design-Builder with appropriate designation noted thereon.
5. Specifications shall be prepared using the Construction Specifications Institute format.
6. Design-Builder shall prepare final Construction Documents and Bid Documents, including final Specifications for all authorized work on the Project and shall incorporate in those final documents the comments and any modifications and changes desired by Owner and any modifications required for compliance with applicable codes, regulations, standards, the approved program, and prior written approvals and instructions of Owner. The resulting final Construction Document submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, meeting all the requirements of SREF – State Requirements for Educational Facilities 2007, Chapter 4/Section 4.3/Paragraph (3) without any significant addenda or further clarification required per requirements of Attachment “A”. Four (4) sets of documents, marked “100% Review” shall be submitted to Owner for review and approval. Upon approval of these documents by Owner, Design-Builder shall submit the following signed and sealed sets of documents marked “Issued for Permit and Bid”: one (1) to DOE and three (3) to Owner/SBBC Building Department. Design-Builder shall provide four (4) additional copies of these documents for distribution by the Owner. Design-Builder shall be responsible for the coordination of all drawings and design documents relating to Design-Builder's design and use on the project, regardless of whether such drawings and documents are prepared or performed by Design-Builder or by others.
7. Design-Builder shall participate in such reviews and meetings as are necessary to ensure that the project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Documents which are required for issuance of all permits and legal authorization needed to construct the Project.
8. Design-Builder shall complete and submit the “FISH Input Form” (Attachment “B”) in electronic format to Owner.
9. Design-Builder shall include State of Florida Product Approval Numbers for all applicable specified products.
10. Design-Builder shall provide furniture layouts as requested by Owner including but not limited to the following spaces: Classrooms, Science Rooms, Media Center, Cafeteria and Administration Area.
11. Design-Builder shall provide interior color selection for review and approval by Owner.

12. Design-Builder shall prepare separate construction documents to allow early bid of long-lead time items identified by Design-Builder and agreed to by Owner. These documents shall provide for complete coordination and integration of these items into the project.
13. Design-Builder shall prepare cost estimates in sufficient detail to assure itself that the project cost is within the Project Construction Budget.

8.6 CONSTRUCTION BID/AWARD PHASE

1. After receiving written authorization from Owner, Design-Builder shall conduct the Construction Bid Phase. There may be more than one Construction Bid Phase, depending upon the Management Plan.
2. Design-Builder shall prepare such clarifications and addenda to the bidding documents as may be required. Design-Builder will provide these to Owner for review prior to issuance to all holders of bid documents.
3. Owner may request Prebid Conferences with prospective bidders to review the Project requirements. Design-Builder shall provide knowledgeable representative, including representatives of its subconsultants, to participate in these conferences to explain and clarify Bidding Documents. Within a reasonable time after the Prebid Conference, Design-Builder shall deliver to Owner, if needed, a final Addendum.
4. Should first bidding or negotiation produce prices in excess of the approved Project Construction Budget, Design-Builder shall conduct such re-bidding and re-design, at no additional expense to Owner, as may be necessary to obtain price(s) within the approved Project Construction Budget or price(s) acceptable to Owner. Owner will assist in re-design decisions. All re-design must be approved by Owner.
5. Should Design-Builder re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to Owner.
6. Design-Builder shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. In addition to the bidders, documents shall be issued to all required code authorities, plan room services, and others, as Owner designates.

8.7. CONSTRUCTION PHASE

1. The Construction Phase for each portion of the Project shall begin upon commencement of the Work and will terminate when the Final Completion payment is made by Owner.
2. Design-Builder shall advise Owner in all decisions as to the acceptability of Subcontractors and other persons and organizations proposed by Design-Builder for various portions of the work.
3. Design-Builder shall review and approve shop drawings, samples and other submissions for conformance with the design concept of the Project and for compliance with the Contract Documents. The review and return of submittals shall be accomplished by Design-Builder within ten (10) calendar days from date of receipt except when authorized by Owner.
4. Owner will establish with Design-Builder procedures to be followed for review and processing of all shop drawings, catalog submissions, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.

5. Design-Builder, when requested by Owner, shall prepare Change Order documentation, including that required by SREF – State Requirements for Educational Facilities 2007, Chapter 4 and the Agreement.
6. Design-Builder shall render to Owner, within two (2) working days unless otherwise authorized by Owner, interpretations of requirements of the Contract Documents. Design-Builder shall make all interpretations consistent with the intent as is reasonably inferable from the Contract Documents. Design-Builder shall coordinate and cooperate with Owner's Design Criteria Professional regarding in matters relating to artistic effect relative to the intent of the Contract Documents.
7. Should errors, omissions or conflicts in the drawings, specifications or other Contract Documents by Design-Builder be discovered, Design-Builder will prepare and submit to Owner, within two (2) working days unless otherwise authorized by Owner, such amendments or supplementary documents and provide consultants as may be required, for which Design-Builder shall make no additional charges to Owner.
8. Design-Builder shall visit the Project site as may be necessary to review the progress and quality of the work and to determine if the work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, Design-Builder shall take the appropriate steps to guard Owner against defects and deficiencies in the work. If Design-Builder observes any work that does not conform to the Contract Documents, Design-Builder shall immediately make an oral and written report of all such observations to Owner.
9. Design-Builder shall prepare and submit a report on each visit, submitted to Owner within three (3) working days of the visit.
10. Based upon observations at the site and upon the Design-Builder's applications for payment, Owner and Owner's Design Criteria Professional shall jointly determine the amount owing to the Design-Builder, pursuant to the terms of the Agreement Between Owner and Design/Builder. Owner's Design Criteria Professional shall sign the Certificate of Payment prior to the time it is transmitted to Owner. Owner's Design Criteria Professional signing of a Certificate of Payment shall constitute a representation by Owner's Design Criteria Professional to Owner, based upon Owner's Design Criteria Professional observations at the site and the data comprising the Application for Payment that the work has progressed to the point indicated, that to the best of Owner's Design Criteria Professional knowledge, information and belief, the quality of the work appears to be in accordance with the Contract Documents (subject to: an evaluation of the work for conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Design-Builder is entitled to payment in the amount certified.
11. If, in accordance with its duty, Design-Builder advises Owner of non-conforming work, Design-Builder shall confirm the non-conformance in writing to Owner within two (2) days of observation.
12. Design-Builder shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.
13. When Owner agrees that the work or portions of the work are substantially complete, Design-Builder shall inspect the work and submit to Owner punch lists of the work which is not in

conformance with the Contract Documents. Owner's Design Criteria Professional will review the punch lists and augment as necessary.

14. Owner's Design Criteria Professional shall ensure Design-Builder's as-builts are up to date during the monthly application for payment review. Upon completion of the project, Design-Builder shall revise his electronic documents to show significant changes in the work made during the construction process, based on neatly and clearly marked-up contract drawings, prints, and other data and the applicable Addenda, Clarifications, and Change Orders which occurred during the project. Design-Builder shall furnish one set of signed and sealed as-built drawings to Owner, which are clearly marked "AS-BUILT DRAWINGS".
15. Design-Builder shall assist Owner in updating Owner's Property Accounting Drawings for the project.
16. Design-Builder shall be responsible to ensure that instruction is provided in the operation of any equipment or system such as initial start-up, testing, adjusting and balancing.
17. Design-Builder shall observe and review test data of the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.
18. Design-Builder shall review the maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection required by the Construction Documents and forward all approved copies to Owner for use by Owner. Design-Builder shall conduct such observations as necessary to ensure all material and equipment warranties are in compliance with applicable specifications.
19. Design-Builder shall conduct comprehensive Final Completion inspections for the project, or each Phase thereof, at the request of Owner. Owner's Design Criteria Professional shall accompany Design-Builder on the Final Completion inspections.
20. Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates of the Design-Builder, Owner's Design Criteria Professional shall approve the Application for Final Payment and forward it to Owner for execution.

8.8. POST CONSTRUCTION PHASE

1. Design-Builder shall conduct an inspection of the project thirty (30) working days prior to warranty expiration and provide to Owner a written report specifying any warranty deficiencies which may exist. The warranty period shall be 12 months from Substantial Completion.

ATTACHMENT “A”

TO EXHIBIT C-2 – SCOPE OF DESIGN SERVICES

Chapter 4 State Requirements for Educational Facilities Section 4.3

Documents and Submittals. A board which undertakes the construction, remodeling, renovation, lease, or lease-purchase of any educational plant or ancillary facility, or day labor project, regardless of cost or fund source, shall develop policies and procedures for the review of contract and construction documents as outlined in Section 235.017, F.S. After January 1, 2001, boards shall use the Florida Building Code (FBC) as the state building code for public educational facilities. Board authorized building departments, where provided, shall comply with the requirements of: the FBC; the certification requirements of Chapter 468, F.S., for building code administrators and inspectors; Chapter 553, F.S., and Chapter 235, F.S. Boards shall also provide for permanent archival of plans; and submission of project data as requested to the Department pursuant to Section 235.33, F.S. Boards may submit construction documents to the Office for review and approval as prescribed in this section for new construction, remodeling and renovation, regardless of estimated project cost, including relocatables. Documents for projects shall conform to the appropriate sections of these State Requirements.

(1) Construction Documents (Phase III). The board shall approve construction/Phase III documents which may be sent to the Office for code review and approval.

(a) Delegation of Authority. Pursuant to Section 235.26(2), F.S., the board may adopt policies and procedures for delegation of authority to the superintendent or president for submitting documents to the Office for review and approval, subsequent to, and consistent with the board's approved scope, time frame, funding source, and budget of a project.

(b) Approval or Approval Withheld. Notice of approval of construction/Phase III documents, or an approval withheld of construction/Phase III documents, will be issued to the administrator and the project design professional. If approval is withheld from the construction/Phase III documents the board shall correct cited mandatories, submit corrected documents to the Office, highlighting any changes from the original, and receive an Educational Facilities approval letter.

(2) Reuse or Prototype Projects. The facilities list and construction documents shall be updated, highlighting any changes from the original, to adapt to the new site and to comply with these State Requirements and other current rules or codes in effect relating to safety-to-life, health and sanitation, physically disabled, and any laws in effect at the time a design adaptation contract is awarded. FEEC and LCCA documents shall also be updated to evaluate energy use and energy efficient designs. An analysis shall be included, as required by Section 235.26(3), F.S., which evaluates building materials and systems, life cycle costs for maintenance, custodial, operating, and life expectancy against initial costs, as described in Section 235.26(2)(f)5., F.S. Standards for evaluation of materials are available from the Department in a publication entitled “Life Cycle Cost Guidelines for Materials and Building Systems for Florida’s Public Educational Facilities.”

(3) Document Submittal. When the board chooses to send documents to the Office for review, one (1) set of contract documents shall be submitted for review and approval, as follows:

(a) General Requirements.

1. Submit OEF Form 208 - Letter of Transmittal with construction documents for review.
 2. Record Set; signed and sealed/statements of compliance. Only complete documents, signed and sealed by the design professionals, will be accepted for review; in addition, these documents shall contain a statement of compliance by the architect or engineer of record that, "To the best of my knowledge, these drawings and the project manual are complete and comply with the 'State Requirements for Educational Facilities.'" This submittal is the official record set of the bid documents, which will be permanently archived by the Department for the benefit of future boards.
 3. When requested by the Office, engineering calculations for mechanical, electrical, and structural systems shall be submitted separately from drawings and the project manual.
 4. Changes to the construction documents may be made prior to contract award by addenda and/or resubmittal of documents graphically indicating the changes. Addenda and revised drawings shall be signed and sealed by the design professionals and submitted to the Office as they occur during the bidding process for complete record set documentation.
 5. Life-Cycle Cost Analysis (LCCA) Data Summary Sheets 1, 2, 3. LCCA shall be signed and sealed and submitted to the Office for review and approval with the construction documents.
 6. Florida Energy Efficiency Code for Building Construction (FEEC). Submit one (1) copy Florida Energy Efficiency Code for Building Construction (FEEC) forms, signed and sealed by a State of Florida registered design professional, including calculations for mechanical systems, documenting energy efficiency ratio rating of HVAC equipment, electrical systems, insulation, and building envelope.
 7. "OEF Facilities Space Chart/Net and Gross Square Footages" (OEF 208a) or equivalent chart indicating all room names in the project, room numbers, the number of square feet in each room, and design occupant capacity.
 8. An analysis shall be included, as required by Section 235.26(3), F.S., which evaluates building materials and systems, life cycle costs for maintenance, custodial, operating, and life expectancy against initial costs, as described in Section 235.26(2)(f)5., F.S. Standards for evaluation of materials are available from the Department in a publication entitled "Life Cycle Cost Guidelines for Materials and Building Systems for Florida's Public Educational Facilities."
- (b) Drawings.** Documents shall be submitted on sheet sizes not to exceed thirty-two (32) inches by forty-two (42) inches. The drawings shall include the following:

1. Site plans, including, but not limited to, area location map, legal description of property, demolition, excavation, utilities, finish grading, landscaping, mechanical, electrical, civil/structural, and architectural site plans.
 - a. Acreage, points of the compass, scale, contours and general topographical conditions, flood zone and floodplain elevation, overall dimensions, adjacent highways, roads, emergency access, fire hydrants, power transmission lines, ownership and use of adjacent land, walks and paths, vehicle and bike parking areas, accessibility for the disabled, service areas, play areas, bus and car loading zones, existing buildings and use, location of proposed building(s) and future additions, community use buildings, phased construction.
 - b. A statement should be included on the site plan identifying the FEMA flood zone and floodplain elevation in which the project is located. The statement shall be signed and dated by the A/E of record.
 - c. Drainage, water retention ponds, sewage disposal and water supply systems, and such physical features that may adversely affect or enhance the safety, health, welfare, visual environment, or comfort of the occupants.

d. Soil testing results.

2. Plans and details including, but not limited to:

a. Title sheets including a table of contents and statement of compliance by the architect or engineer of record. Each discipline shall have a list of abbreviations, schedule of material indications, and schedule of notations and symbols at the beginning of their section of the plans.

b. Architectural sheets including floor plans, door, window and finish schedules, roof plans, elevations, sections, and details.

c. Floor plans showing points of the compass, overall dimensions, identity of each space, proposed door locations, accessibility for the disabled, Florida Inventory of School House (FISH) numbers, occupant load of each space, proposed passive design and low energy usage features, possible community service areas and instructional spaces that can be converted to community use areas, any existing buildings and use, future additions, and phased construction. Indicate emergency public shelter design features, if applicable.

d. A life-safety plan showing exits, accessibility for the disabled, fire walls, fire resistance rated walls, rated doors, emergency wall openings, smoke vents, master valves and emergency disconnects, emergency lighting, emergency power equipment, fire extinguishers, exit signs, smoke and fire dampers, working stage protection, range and fume hoods, eye wash and emergency showers, protected corridors, smoke barriers, fire alarm systems, room names and numbers, or any other life-safety features relevant to the facility. The life safety plan shall also show the fire sprinkler system if proposed. By symbol, indicate connections and tie-ins to existing equipment.

e. A floor plan drawn at an architectural scale that will allow the entire facility to be shown on one sheet, without breaklines.

f. Floor plans for additions to an existing facility shall indicate the connections and tie-ins to the building, including all existing spaces, exits, plumbing fixtures and locations, and any proposed changes thereto. Distinguish between new and existing areas for renovation, remodeling, or an addition.

g. Existing facilities to be remodeled or renovated may use accessibility lifts provided: sketches of proposed vertical platform lifts shall include layout drawings showing the effect of the lift on existing corridor width and exiting from the affected facility; sketches of proposed inclined wheel chair lift shall include layout drawings showing the effect of the lift on the stairway width in the folded and unfolded position, as well as the upper and lower platform storage locations, and the sketches shall also show the effect on exiting from the affected areas of the facility.

h. When planning open space schools, a floor plan should be developed showing the methods used to permanently define the means of egress, such as surface finish or color.

i. Exterior building elevations as necessary to show the general character of the facility.

j. Typical building sections to show dimensions, proposed construction materials, and elevations of finished floors and finished ground grades.

k. Civil/Structural sheets including paving; drainage; water, sanitary sewer, fire protection; foundation plans; floor plans; roof plans; structural plans; sections; details; and pipe, culvert, beam, column, wall and footing schedules.

l. Mechanical sheets including floor plans; room names and numbers; sections; details; riser diagrams; kitchen exhaust hoods; and, equipment, fan, and fixture schedules, fixture locations and fixture unit calculations.

m. Electrical sheets including floor plans; room names and numbers; sections; details; riser diagrams; and fixture and panel schedules.

n. A threshold building inspection plan, prepared by the A/E of record, as set forth in Section 553.79(5), F.S., including the name of a certified threshold building inspector, shall be submitted

to the Office for review and approval. *A threshold building is any building greater than three (3) stories or fifty (50) feet in height, or any building with an assembly space that exceeds five thousand (5000) square feet in area, and has an occupant load of more than five hundred (500) persons.*

(c) Project Manual. The project manual shall include, but not be limited to, the following:

1. Title Page including a statement of compliance by the architect or engineer of record.
2. Table of Contents.
3. Schedule of Drawings.
4. Invitation to Bid and Advertisement for Bids. *Include a statement regarding provisions of Public Entity Crime Law, Section 287.133(2)(a), F.S.*
5. Instructions to Bidders, including date and time of bid opening and notice of pre-bid conference.
6. Sample Forms. *Owner/ Contractor Agreement; Performance and Payment Bond; Change Order; Bid Form, which may require the general contractor's license number, and may include a subcontractors list and license numbers; and other project forms.*
7. Bonding Requirements. *Bonds are required on projects costing two hundred thousand dollars (\$200,000) or more. On projects with costs less than two hundred thousand dollars (\$200,000), bonds shall be at the discretion of the board.*
 - a. *Bid Security equaling five percent (5%) of the base bid, as required by Section 255.051, F.S. Security shall be in the form of a certified check, cashier's check, treasurer's check, or bank draft of any national or state bank.*
 - b. *Performance Bond and Materials and Payment Bond. Each bond shall equal one hundred percent (100%) of the contract amount, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F.S.*
 - c. *Where the contract amount does not exceed five hundred thousand dollars (\$500,000), the board shall not refuse a bonding company which meets the provisions of Section 287.0935, F.S.*
8. Insurance Requirements. *The project shall be covered by the following insurance, with limits as required by law:*
 - a. *Workers' Compensation and employer's liability.*
 - b. *Public liability to include personal injury, bodily injury, and property damage.*
 - c. *Products and completed operations liability.*
 - d. *Owner's protective liability.*
 - e. *Business automobile liability, including owned, non-owned, and hired automobiles.*
 - f. *Property all-risks coverage to one hundred percent (100%) of the value at risk. This is subject to the deductibles acceptable to the board.*
 - g. *Boiler and machinery insurance as required.*
9. General Conditions and Supplementary Conditions. *The contract should include, but not be limited to, the following:*
 - a. *Deductive alternates must be used if bidding is to take place on a project where funds are in jeopardy of reversion and a rebid process would not be possible within remaining time available, and the board wants to preserve the option to negotiate with the apparent low bidder.*
 - b. *Notice of time limit and method of payment to the contractor including final payment.*
 - c. *Time limit in which the construction is to be completed.*
 - d. *The penalty to be paid by the contractor for failure to comply with the time limits of the contract.*
 - e. *Federal wage rates and hourly scales shall be used where required by federal fund source. Federal wage rates shall be secured from the Federal Department of Labor. When using a Federal wage rate, Federal workers' compensation must also be used. Federal wage rates are not required for construction projects financed totally from local or state funds.*
 - f. *Where projects include trenching which exceeds a depth of five (5) feet, reference shall be made to the trench safety standard as required by Sections 553.63 and 553.64, F.S.*
 - g. *For projects including asbestos abatement, a board may indemnify and hold harmless an asbestos consultant against acts of omission or release of contaminants during asbestos abatement activities in accordance with Sections 255.551 through 255.565, F.S.*
 - h. *A listing of all toxic substances enumerated in the Florida Substance List established pursuant to Section 442.103, F.S., that are to be used in the construction, repair, or maintenance of educational facilities, and before use, the contractor shall notify the district superintendent or college president,*

and the administrator, in writing at least three (3) working days prior to using the substance. The notification shall contain: the name of the substance to be used; where the substance is to be used and when the substance is to be used. A copy of a material safety data sheet as defined in Section 442.102, F.S., for each such substance shall be included in the notification. The administrator shall take all reasonable actions to ensure that the contractor complies with the safety precautions and handling instructions set forth in the material safety data sheet for each substance used so that usage of the substance poses no threat to the health and safety of students, school personnel, and the general public.

i. A provision setting forth who should pay for standard tests of concrete, plumbing, electrical, steel and others as required by industry standards.

j. A provision setting forth who should pay for the testing of questionable installations, procedures, products, or materials in the construction phase.

k. Test and balance services for HVAC systems should be provided by a company employed by the board.

l. The board may include an incentive in the contract for early completion of the project.

10. Specifications. Written requirements for materials, equipment, construction systems, standards, workmanship, and performance of related services.

11. Addenda.

SAMPLE

EXHIBIT D

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
(print name of the public entity)
- by _____
(print individual's name and title)
- for _____
(print name of entity submitting sworn statement)
- whose business address is _____

- and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of the individual signing this
sworn statement _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members and agent who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement **(indicate which statement applies.)**

___ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989,

___ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has be charged with and convicted of a public entity crime subsequent to July 1, 1989,

___ The entity submitting this sworn statement, or one or more of it officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(attach a copy of the final order)**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(SIGNATURE)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced identification _____ Notary Public - State of _____

(Type of identification) My commission expires _____

(Print typed or stamped commissioned name of notary public.)

EXHIBIT E

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____)

County of _____)

_____, being duly sworn, deposes and says that:

- (1) He is _____ of _____, the Bidder that has submitted the attached bid:
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

(Signature) _____

(Title) President

Subscribed and sworn to before me
this _____ day of _____, 2006

NOTARY PUBLIC _____ My Commission Expires:

CERTIFICATE OF FINAL INSPECTION (CFI)

8. BUILDING CONTRACT DATE: _____ COMPLETION DATE: _____

9. CHANGE ORDERS - List of each Change Order and amount:

C.O. No. _____	\$ _____	C.O. No. . _____	\$ _____
C.O. No. _____	\$ _____	C.O. No. . _____	\$ _____
C.O. No. _____	\$ _____	C.O. No. . _____	\$ _____
C.O. No. _____	\$ _____	C.O. No. . _____	\$ _____

10. Date of Occupancy: _____

11. Additional Information:

SAMPLE

PAYMENT APPLICATION REQUEST
CONTRACT SCHEDULE OF VALUES



PROJECT: SPRINGFIELD MIDDLE ADDITIONS & REMODELS

APPLICATION NO.:

09

CONTRACTOR: MACE Construction, Inc.
Deerfield, Florida 33999

DATE: 5/5/2006
DD TO: 4/25/2006
T NO.: AC-7890

Retainage will **not** be assessed for General Conditions, General Requirements, Design and Construction Fees and ODPs

A SOV LINE ITEM NO.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULE of VALUES	D REVISED SCHEDULE of VALUES	E WORK COMPLETED		G MATERIALS PRESENTLY STORED (NOT IN E OR F)	H TOTAL COMPLETED AND STORED TO DATE (E + F + G)	I % COMPLETE (H ÷ D)	J BALANCE TO FINISH (D - H)	K RETAINAGE AMOUNT TO DATE (H * 0.10)
				FROM PREVIOUS APPLICATION	CURRENT PERIOD					
PART I - EXPENSES										
Contract Exhibit C	General Conditions	\$806,895.00	\$723,337.00	\$221,896.93	\$41,806.19		\$263,703.12	36.456%	\$459,633.88	\$0.00
Contract Exhibit C	General Requirements									
	Builders Risk Insurance	\$119,241.15	\$119,241.15	\$0.00	\$83,424.00	\$0.00	\$83,424.00	69.962%	\$35,817.15	\$0.00
	General Liability Insurance	\$188,275.50	\$188,275.50	\$0.00	\$160,970.00	\$0.00	\$160,970.00	85.497%	\$27,305.50	\$0.00
	Performance & Payment Bond	\$179,310.00	\$179,310.00	\$0.00	\$94,217.00	\$0.00	\$94,217.00	52.544%	\$85,093.00	\$0.00
	Relocatable Infrastructure	\$65,000.00	\$77,715.00	\$0.00	\$63,457.75	\$0.00	\$63,457.75	81.654%	\$14,257.25	\$0.00
	Testing & Inspections	\$30,950.00	\$18,235.00	\$0.00	\$17,010.67	\$0.00	\$17,010.67	93.286%	\$1,224.33	\$0.00
	Total General Requirements	\$582,776.65	\$582,776.65	\$0.00	\$419,079.42	\$0.00	\$419,079.42	71.911%	\$163,697.23	\$0.00
Contract	Fees									
6.2.2	Design Fee	\$537,930.00	\$234,922.79	\$0.00	\$234,922.79	\$0.00	\$234,922.79	100.000%	\$0.00	\$0.00
6.2.3	Construction Fee	\$519,999.00	\$519,890.98	\$342,915.50	\$32,689.00	\$0.00	\$375,604.50	72.247%	\$144,286.48	\$0.00
	Total Fee	\$1,057,929.00	\$754,813.77	\$342,915.50	\$267,611.79	\$0.00	\$610,527.29	80.884%	\$144,286.48	\$0.00
	Contingency	\$145,000.00								
			Contingency may be Approved or Pending Approval							
	CCD #01, Replace AHU		\$66,789.67	\$35,000.00	\$15,432.55	\$0.00	\$51,332.55	75.510%	\$16,357.12	\$5,043.26
	ODP #2600010 Trane		\$46,789.00	\$34,980.00	\$11,809.00	\$0.00	\$46,789.00	100.000%	\$0.00	\$4,678.90
	CCD #02, Add additional pole		\$6,856.70	\$6,456.70	\$400.00	\$0.00	\$6,456.70	100.000%	\$0.00	\$685.67
	CCD #03, Add new HVAC re-circulation pumps		\$3,456.89	\$2,500.00	\$850.00	\$0.00	\$3,350.00	96.908%	\$106.89	\$335.00
	CCD #04, Add additional casework		\$6,543.00	\$0.00	\$2,500.00	\$0.00	\$2,500.00	38.209%	\$4,043.00	\$250.00
	CCD #05, Add contractor for baseball field lights	\$0.00	\$4,890.00	\$0.00	\$1,326.00	\$0.00	\$1,326.00	27.117%	\$3,564.00	\$132.60
	CCD #06, Delete vinyl fence coating	\$0.00	(\$6,700.00)	\$0.00	(\$6,700.00)	\$0.00	(\$6,700.00)	100.000%	\$0.00	(\$670.00)
	Total Requested Contingency		\$128,625.26	\$78,936.70	\$25,617.55	\$0.00	\$104,554.25	81.286%	\$24,071.01	\$10,455.43
02-01	Site Work Sub	\$28,550.00	\$27,500.00	\$17,500.00	\$0.00	\$0.00	\$25,300.00	92.000%	\$2,200.00	\$2,530.00
	ODP #2532464 Rinker Mat.	\$0.00	\$10,891.50	\$10,891.50	\$0.00	\$0.00	\$10,891.50	100.000%	\$0.00	\$0.00
	ODP #2532464 Rinker Mat.	\$0.00	\$5,678.88	\$5,678.88	\$0.00	\$0.00	\$5,600.00	98.611%	\$78.88	\$0.00
	ODP #2532465 FEI Orlando	\$0.00	\$20,513.65	\$3,500.00	\$17,013.65	\$0.00	\$20,513.65	100.000%	\$0.00	\$0.00
	ODP #26008431 Turf Master	\$0.00	\$7,015.82	\$4,500.00	\$2,450.00	\$0.00	\$6,950.00	99.062%	\$65.82	\$0.00
02-02	Utility Locating	\$3,200.00	\$3,375.00	\$3,375.00	\$0.00	\$0.00	\$3,375.00	100.000%	\$0.00	\$337.50
02-03	Utility Survey	\$5,500.00	\$4,235.00	\$4,235.00	\$0.00	\$0.00	\$4,235.00	100.000%	\$0.00	\$423.50

Percent Complete **cannot** exceed 100%

Must be approved by SBBC Project Manager & incorporated in the Contingency Log

ODPs include sales tax

PAYMENT APPLICATION REQUEST
CONTRACT SCHEDULE OF VALUES



PROJECT: SPRINGFIELD MIDDLE ADDITIONS & REMODELS

APPLICATION NO.:

09

CONTRACTOR: MACE Construction, Inc.
Deerfield, Florida 33999

DATE: 5/5/2006
DD TO: 4/25/2006
T NO.: AC-7890

Retainage will **not** be assessed for General Conditions, General Requirements, Design and Construction Fees and ODPs

A SOV LINE ITEM NO.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULE of VALUES	D REVISED SCHEDULE of VALUES	E WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN E OR F)	TOTAL COMPLETED AND STORED TO DATE (E + F + G)	% COMPLETE (H ÷ D)	I BALANCE TO FINISH (D - H)	J RETAINAGE AMOUNT TO DATE (H * 0.10)
				FROM PREVIOUS APPLICATION	CURRENT PERIOD					
02-04	Building Demolition	\$20,450.00	\$19,900.00	\$19,900.00	\$0.00	\$0.00	\$19,900.00	100.000%	\$0.00	\$1,990.00
02-05	Utility Sub	\$16,780.00	\$19,148.00	\$18,110.00	\$1,000.00	\$0.00	\$19,110.00	99.802%	\$38.00	\$1,911.00
02-06	Final Grading	\$6,700.00	\$6,700.00	\$6,700.00	\$0.00	\$0.00	\$6,700.00	100.000%	\$0.00	\$670.00
02-07	Soil Treatment	\$4,800.00	\$4,950.00	\$4,950.00	\$0.00	\$0.00	\$4,950.00	100.000%	\$0.00	\$495.00
02-08	Fencing & Gates	\$32,500.00	\$33,123.00	\$0.00	\$875.00	\$0.00	\$875.00	2.642%	\$32,248.00	\$87.50
	ODP #2525939 Stephens Pipe	0	\$27,310.31	\$27,310.31	\$0.00	\$0.00	\$27,310.31	100.000%	\$0.00	\$0.00
	ODP #2525939 Close Stephens	0	(\$27,310.31)	(\$27,310.31)	\$0.00	\$0.00	(\$27,310.31)	100.000%	\$0.00	\$0.00
	ODP #2526765 Master Halco	0	\$27,747.28	\$23,458.00	\$150.00	\$0.00	\$23,608.00	85.082%	\$4,139.28	\$0.00
02-09	Baseball & Softball Construction	\$17,500.00	\$19,800.00	\$15,468.00	\$4,900.00	\$0.00	\$19,468.00	98.323%	\$332.00	\$1,946.80
	ODP #2516687 DST Turf	0	\$34,980.00	\$34,980.00	\$0.00	\$0.00	\$34,980.00	100.000%	\$0.00	\$0.00
	ODP #2516687 Close DST Turf	0	\$10,190.31	\$10,190.00	\$0.00	\$0.00	\$10,190.00	99.997%	\$0.31	\$0.00
	ODP #2518347 Golf Specialties	0	\$13,515.00	\$13,515.00	\$0.00	\$0.00	\$13,515.00	100.000%	\$0.00	\$0.00
	ODP #2518349 Laser Turf	0	\$17,550.00	\$17,550.00	\$0.00	\$0.00	\$17,550.00	100.000%	\$0.00	\$0.00
02-10	Pro-Tek Termite	0	\$5,678.23	\$500.00	\$0.00	\$0.00	\$500.00	8.806%	\$5,178.23	\$50.00
02-11	Irrigation System	\$8,000.00	\$8,150.00	\$5,435.00	\$1,250.00	\$0.00	\$6,685.00	82.025%	\$1,465.00	\$668.50
02-12	Sodding Fields	\$27,000.00	\$25,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$25,500.00	\$0.00
02-13	Sodding Common Areas	\$7,500.00	\$7,975.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$7,975.00	\$0.00
02-14	Landscaping	\$15,000.00	\$7,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$7,000.00	\$0.00
02-15	Haul Route	\$12,000.00	\$11,350.00	\$11,350.00	\$0.00	\$0.00	\$11,350.00	100.000%	\$0.00	\$1,135.00
02-16	Paving Sub	\$49,750.00	\$49,750.00	\$23,450.00	\$3,890.00	\$0.00	\$27,340.00	54.955%	\$22,410.00	\$2,734.00
02-17	Install School Sign	\$4,000.00	\$3,975.00	\$100.00	\$400.00	\$0.00	\$500.00	12.579%	\$3,475.00	\$50.00
02-18	Install Flag Pole	\$3,500.00	\$2,876.00	\$1,003.45	\$0.00	\$0.00	\$1,003.45	34.890%	\$1,872.55	\$100.35
02-19	Install Bike Racks	\$7,650.00	\$6,875.00	\$3,000.00	\$0.00	\$0.00	\$3,000.00	43.636%	\$3,875.00	\$300.00
03-01	Perimeter Edge Forms	\$12,500.00	\$11,750.00	\$11,750.00	\$0.00	\$0.00	\$11,750.00	100.000%	\$0.00	\$1,175.00
05-01	Bdlg Construction New Addn't	\$6,090,019.35	\$6,347,754.65	\$5,431,875.80	\$0.00	\$0.00	\$5,431,875.80	85.572%	\$915,878.85	\$543,187.58
09-02							\$0.00	#DIV/0!	\$0.00	\$0.00
11	The Contract Manager / Design-Builder / General Contractor shall continue showing the Schedule of Values under their contract Division 03 through Division									
21	33. Format shall be consistent with the sample of Division 02 listed above throughout the Pay Application Request.									
21										
21										
33-01	Total site work	\$6,372,899.35	\$6,775,447.32	\$5,698,486.75	\$43,228.65	\$0.00	\$5,741,715.40	84.743%	\$1,033,731.92	\$559,791.73
	ORIGINAL CONTRACT	\$8,965,500.00	\$8,965,000.00	\$6,342,235.88	\$797,343.60	\$0.00	\$7,139,579.48	79.638%	\$1,825,420.52	\$570,247.15
				The sum must be equal						
	OWNER AMENDMENT #01, REPLACE CHILLER & PIPING									
	General Conditions		\$12,196.81	\$12,196.81	\$0.00	\$0.00	\$12,196.81	100.000%	\$0.00	\$0.00
	General Requirements									
	Builders Risk Insurance		\$1,856.93	\$1,856.93	\$0.00	\$0.00	\$1,856.93	100.000%	\$0.00	\$0.00
	Performance & Payment Bond		\$2,937.30	\$2,937.30	\$0.00	\$0.00	\$2,937.30	100.000%	\$0.00	\$0.00
	General Liability Insurance		\$2,797.43	\$2,797.43	\$0.00	\$0.00	\$2,797.43	100.000%	\$0.00	\$0.00
	Testing & Inspections		\$1,500.00	\$1,413.00	\$0.00	\$0.00	\$1,413.00	94.200%	\$87.00	\$0.00
	Total General Requirements		\$9,091.66	\$9,004.66	\$0.00	\$0.00	\$9,004.66	99.043%	\$87.00	\$0.00

CONTRACT SCHEDULE OF VALUES



PROJECT: SPRINGFIELD MIDDLE ADDITIONS & REMODELS

APPLICATION NO.:

09

CONTRACTOR: MACE Construction, Inc.
Deerfield, Florida 33999

DATE: 5/5/2006
DD TO: 4/25/2006
T NO.: AC-7890

Retainage will **not** be assessed for General Conditions, General Requirements, Design and Construction Fees and ODPs

A SOV LINE ITEM NO.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULE of VALUES	D REVISED SCHEDULE of VALUES	E WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN E OR F)	TOTAL COMPLETED AND STORED TO DATE (E + F + G)	% COMPLETE (H ÷ D)	I BALANCE TO FINISH (D - H)	J RETAINAGE AMOUNT TO DATE (H * 0.10)
				FROM PREVIOUS APPLICATION	CURRENT PERIOD					
Contract	Fees									
	Design Fee		\$8,392.30	\$8,392.30	\$0.00	\$0.00	\$8,392.30	100.000%	\$0.00	\$0.00
	Construction Fee		\$8,112.56	\$5,451.07	\$0.00	\$0.00	\$5,451.07	67.193%	\$2,661.49	\$0.00
	Total Fee		\$16,504.86	\$13,843.37	\$0.00	\$0.00	\$13,843.37	83.596%	\$2,661.49	\$0.00
02-14	Install fence around chiller		\$3,978.69	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$3,978.69	\$0.00
02-15	Sod around chiller yard		\$2,750.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$2,750.00	\$0.00
09-19	Paint screen wall		\$975.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%	\$975.00	\$0.00
23-21	Demo CWP & Plant		\$6,100.00	\$6,100.00	\$0.00	\$0.00	\$6,100.00	100.000%	\$0.00	\$610.00
23-22	Install CWP Pipe		\$8,990.00	\$7,990.00	\$750.00	\$0.00	\$8,740.00	97.219%	\$250.00	\$874.00
	ODP #2532627, Hughes		\$6,788.67	\$6,788.67	\$0.00	\$0.00	\$6,788.67	100.000%	\$0.00	\$0.00
23-23	Install CWP Insulation		\$1,100.00	\$500.00	\$350.00	\$0.00	\$850.00	77.273%	\$250.00	\$85.00
	ODP #2532628, Hughes		\$5,005.25	\$5,005.25	\$0.00	\$0.00	\$5,005.25	100.000%	\$0.00	\$0.00
23-24	New Chiller		\$10,645.00	\$7,567.00	\$0.00	\$0.00	\$7,567.00	71.085%	\$3,078.00	\$756.70
	ODP #2532689, York		\$48,750.00	\$48,750.00	\$0.00	\$0.00	\$48,750.00	100.000%	\$0.00	\$0.00
23-25	Hoist Chiller		\$5,000.00	\$5,000.00	\$0.00	\$0.00	\$5,000.00	100.000%	\$0.00	\$500.00
23-26	Chiller Controls		\$850.00	\$200.00	\$326.78	\$0.00	\$526.78	61.974%	\$323.22	\$52.68
	ODP #2532680, Siemens		\$6,790.00	\$3,500.00	\$3,234.98	\$0.00	\$6,734.98	99.190%	\$55.02	\$0.00
26-17	Replace HVAC Switchgear		\$6,000.00	\$2,567.89	\$1,234.56	\$0.00	\$3,802.45	63.374%	\$2,197.55	\$380.25
	ODP #2532681, Square D		\$12,350.98	\$12,350.98	\$0.00	\$0.00	\$12,350.98	100.000%	\$0.00	\$0.00
26-18	Upgrade chiller feeders		\$6,000.00	\$2,376.12	\$3,478.82	\$0.00	\$5,854.94	97.582%	\$145.06	\$585.49
	ODP #2532682, Ferguson		\$7,800.00	\$7,800.00	\$0.00	\$0.00	\$7,800.00	100.000%	\$0.00	\$0.00
	Total Construction		\$139,873.59	\$116,495.91	\$9,375.14	\$0.00	\$125,871.05	89.989%	\$14,002.54	\$3,844.12
	Total Amendment # 01		\$177,666.92	\$151,540.75	\$9,375.14	\$0.00	\$160,915.89	90.572%	\$16,751.03	\$3,844.12
	TOTAL ALL BOARD APPROVED CONTRACT AMENDMENTS		\$177,666.92							

ODPs include sales tax

Line 3
Pay Application Summary

Add all Board Approved Amendments/Change Orders

**PAYMENT APPLICATION REQUEST
CONTRACT SCHEDULE OF VALUES**



PROJECT: SPRINGFIELD MIDDLE ADDITIONS & REMODELS
 CONTRACTOR: MACE Construction, Inc.
 Deerfield, Florida 33999

APPLICATION NO.: 09
 DATE: 5/5/2006
 DD TO: 4/25/2006
 T NO.: AC-7890

Retainage will **not** be assessed for General Conditions, General Requirements, Design and Construction Fees and ODPs

A SOV LINE ITEM NO.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULE of VALUES	D REVISED SCHEDULE of VALUES	E WORK COMPLETED		G MATERIALS PRESENTLY STORED (NOT IN E OR F)	H TOTAL COMPLETED AND STORED TO DATE (E + F + G)	I % COMPLETE (H ÷ D)	J BALANCE TO FINISH (D - H)	K RETAINAGE AMOUNT TO DATE (H * 0.10)
				F FROM PREVIOUS APPLICATION	G CURRENT PERIOD					
Section B - ODP INVOICES PROCESSED TO DATE (including sales tax) :										
	28000810 Ferguson Entreprise			\$309,264.81						
	28000811 Dixie Lime			\$492,633.32						
	28000812 Cemex			\$109,082.22						
	28000813 Raybor Supply			\$132,979.35						
	28000814 Rinker			\$128,001.50						
	28000815 Trane			\$62,435.61						
	28000816 Thyssen Krupp			\$53,657.10						
	28000817 HD Supply			\$86,756.67						
	28000818 Waterworks Inc			\$15,432.00						
	TOTAL ODP INVOICES PROCESSED TO DATE WITH TAX :			\$1,390,242.58						
Section C - CONTINGENCY APPROVED TO DATE:										
	C # 101 Sidewalk addition		Contractor's Log				\$17,341.00			
	C# 102 Wall remove						\$0.00			
	C # 103 Ceiling Tile						\$1,355.00			
	C #104 Floor tile change						\$0.00			
	C # 105 Plumb Change						\$2,478.00			
	C # 106 Elect Connect						\$0.00			
	C # 107 Door Lock						\$0.00			
	Line 5a Pay Application Summary						\$10,698.00			
	TOTAL CCD PROCESSED TO DATE:						\$2,345.67			
	TOTAL CCD PROCESSED TO DATE:						\$34,217.67			
Section D - SALES TAX APPROVED TO DATE:										
						Potential Sales Tax Savings :	\$161,379.00			
ST-1	Overhead utilities		\$2,165.53	\$0.00	\$0.00	\$0.00	\$0.00	0.00%		
ST-2	Add fencing around tennis courts		\$8,768.12	\$0.00	\$0.00	\$0.00	\$0.00	0.000%		
ST-3	Add fence cap		\$3,200.77	\$3,200.00	\$0.00	\$0.00	\$3,200.00	99.976%		
ST-4	Add CW valves		\$7,540.92	\$0.00	\$3,500.00	\$0.00	\$3,500.00	46.413%		
ST- 5	Add canopies Admin Bldg.		\$16,150.00	\$0.00	\$14,500.00	\$0.00	\$14,500.00	89.783%		
ST-6	Add court surfacing		\$9,176.37	\$1,500.00	\$0.00	\$0.00	\$5,000.00	54.488%		
ST-7	Add Landscaping		\$8,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.000%		
	Total Spent Sales Tax Savings		\$55,501.71	\$4,700.00	\$21,500.00	\$0.00	\$26,200.00	47.206%		

Owner Direct Purchase Order Log of CM/DB needs to be included with the Monthly Project Report accompanied by the Pay Application Request

Line 6
Pay Application Summary

Processed invoices must include tax

Contingency Log of CM/DB needs to be included with the Monthly Project Report accompanied by the Pay Application Request

Must be approved by SBBC Project Manager & incorporated in the Contingency Log

Must be approved by SBBC Project Manager & incorporated in the Sales Tax Log

Sales Tax Log of CM/DB needs to be included with the Monthly Project Report accompanied by the Pay Application Request and this amount should reflect sales tax earned to date on

Line 7
Pay Application Summary



PAYMENT APPLICATION REQUEST

EXHIBIT G

SUMMARY

TO: Facilities Department PROJECT: SPRINGFIELD MIDDLE ADDITIONS & RENOVATIONS APPLICATION NO.: 09 Distribution to: x OWNER x ARCHITECT x CONTRACTOR
FROM CONTRACTOR: MACE Construction, Inc. VIA ARCHITECT: Munns, Cartwright & Associates
2700 Judge Fran Jamieson Way Viera, Florida 32940-6699 123 Limerock Road Deerfield, Florida 33999 2006 Strawbridge Ave. Melbourne, Florida 33901
PERIOD TO: 4/25/2006 PROJECT NO.: AC-7890

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Facilities Form 3, Contract Schedule of Values Sheet must be attached to this application.

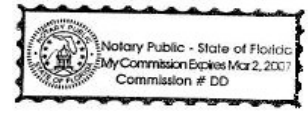
Table with 2 columns: Description and Amount. Rows include: 1. ORIGINAL CONTRACT SUM (\$8,965,500.00), 2. OWNER DIRECT PURCHASE ORDER BUDGET (\$1,760,000.00), 3. Net change by Change Orders (\$177,666.92), 4. CONTRACT SUM TO DATE (\$7,383,166.92), 5. TOTAL COMPLETED & STORED TO DATE (\$7,300,495.37), 6. APPROVED OWNER DIRECT PURCHASE PAYMENTS (\$1,390,242.58), 7. APPROVED OWNER SALES TAX (\$26,200.00), 8. RETAINAGE (\$574,091.27), 9. TOTAL EARNED LESS RETAINAGE (\$5,362,361.52), 10. LESS PREVIOUS CERTIFICATES FOR PAYMENT (\$4,032,229.53), 11. CURRENT PAYMENT DUE (\$1,330,131.99), 12. BALANCE TO FINISH, INCLUDING RETAINAGE (\$2,416,262.82).

PAYMENT DUE amount must be the same

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: MACE Construction, Inc.
By: SIGNED Date: April 29, 2006
State of: Florida County of: Milton

Subscribed and sworn to before me this 30 day of April 2006
Notary Public: SIGNED
My Commission expires: March 2, 2007



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$1,330,131.99

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: Munns, Cartwright & Associates CRITERIA ARCHITECT: DRTK & Associates
By: SIGNED Date: May 1, 2006 By: SIGNED Date: May 1, 2006

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



CONTINGENCY USE REQUEST

PROJECT NAME:

OWNER:
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940

DATE: _____

CONTINGENCY USE REQUEST NO.: _____

CONTINGENCY USE DESCRIPTION:
Description of Work

Reference (drawings, sketches, RFI, ASI, etc.)

JUSTIFICATION FOR REQUEST **NO TIME EXTENSION ALLOWED**

TOTAL: \$ _____ *Cost* _____

FUNDING & SCHEDULE ARE WITHIN THE GMP & CONTRACT COMPLETION DATE

Category of Use

① Added Scope (Owner Directive) ③ Unforeseen/Hidden Conditions ⑤ Scope Gap (CM)
② Error or Omission (A/E) ④ Value Engineering/Buyout Option ⑥ Transfers

Project Contingency

Increase (Credit) Deduct

CM / D-B / GC:
_____ *Name* _____

By:
Date:

Architect:
_____ *Name* _____

By:
Date:

OWNER:
School Board of Brevard County

By:
Date:



CONTINGENCY USE REQUEST

PROJECT NAME:

OWNER:
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940

DATE: _____

CONTINGENCY USE REQUEST NO.: _____

CONTINGENCY USE DESCRIPTION:

JUSTIFICATION FOR REQUEST **NO TIME EXTENSION ALLOWED**

TOTAL: \$ _____

**FUNDING & SCHEDULE ARE WITHIN THE GMP
& CONTRACT COMPLETION DATE**

Category of Use

① Added Scope (Owner Directive) ③ Unforeseen/Hidden Conditions ⑤ Scope Gap (CM)

② Error or Omission (A/E) ④ Value Engineering/Buyout Option ⑥ Transfer

Project Contingency

Increase (Credit) Deduct

CM / D-B / GC:

By:
Date:

Architect:

By:
Date:

OWNER:
School Board of Brevard County

By:
Date:



SALES TAX SAVINGS USE REQUEST

PROJECT NAME:

OWNER:
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940

DATE: _____

TAX SAVINGS USE REQUEST NO.: _____

CM / D-B / GC Name: _____

Job No.: _____

SALES TAX SAVINGS USE REQUEST DESCRIPTION:

Description of work

TOTAL FOR REQUEST: \$ _____ Cost _____

NO TIME EXTENSION ALLOWED

Category of Use

① Added Scope (Owner Directive) Categories 2-5
⑥ Transfers Not Used on this form

CM / D-B / GC:
_____ Name _____

By: _____

Date: _____

Architect:
_____ Name _____

By: _____

Date: _____

OWNER:
School Board of Brevard
County

By: _____

Date: _____



SALES TAX SAVINGS USE REQUEST

PROJECT NAME:

OWNER:
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940

DATE: _____
TAX SAVINGS USE REQUEST NO.: _____

CM / D-B / GC Name: _____
Job No.: _____

SALES TAX SAVINGS USE REQUEST DESCRIPTION:

TOTAL FOR REQUEST: \$ _____

NO TIME EXTENSION ALLOWED

Category of Use
① Added Scope (Owner Directive)
⑥ Transfers

Categories 2-5
Not Used on this form

CM / D-B / GC:

By:

Date:

Architect:

By:

Date:

OWNER:
School Board of Brevard
County

By:

Date: