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ARTICLE 1 - DEFINITIONS

1.1 Definitions (in alphabetical order)

1.1.1 Addendum

An Addendum is a written instrument issued by the Architect/Engineer prior to the opening of the bids, which modifies or interprets the Bidding Documents by additions, deletions, clarifications or corrections.

1.1.2 Alternate

An alternate is an amount to be provided by the Bidder for the Owner's option that will add to or deduct from the Base Bid for items of Work.

1.1.3 Base Bid

Base Bid is the amount stated in the Proposal for which the Bidder offers to perform the Work described as the base to which Work may be added or deducted.

1.1.4 Bid (Proposal)

A bid is a proposal to do the Work or designated portion thereof for the amount or amounts stipulated therein, prepared and supported by data called for in the Bidding Documents.

1.1.5 Bidding Documents

The Bidding Documents consist of the Invitation to Bid, the Instruction to Bidders, the Bid Form, other sample forms, the Construction Contract Form, the Proposed Contract Documents and all Addenda or directives issued prior to receiving bids.

1.1.6 Change Orders

A Change Order is a written order on DCPS Change Order Form to the Contractor signed by Duval County Public School's Superintendent or designee and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work

or an adjustment in the Contract Sum or the Contract Time.

1.1.7 Commencement of the Work Date

The Date of Commencement of the Work is the date established in a Notice to Proceed issued by the Owner or Architect/Engineer.

1.1.8 Contract

1.1.8.1 The Contract Documents form the Contract for Construction. This contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, whether written or oral.

1.1.8.2 The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.18.

1.1.8.3 The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect/Engineer and the Contractor.

1.1.8.4 Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect/Engineer and any Subcontractor or Sub-subcontractor.

1.1.9 Contract Documents (CDs)

The Contract Documents consist of the Construction Contract, General Conditions, Supplementary Conditions, Special Conditions, the Drawings, Specifications, both technical and non-technical, all Addenda, Change Orders and Modifications, all Bidding Documents including but not limited to the Performance and Payment Bond Forms, and all documents referenced in the Construction Contract. **The Drawings applicable to this Contract are listed in Section 01005: Index to Drawings. The Drawings accompany these Specifications (Project Manual) and become a part hereof.**

1.1.10 Contractor

The Contractor is the person or entity identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

1.1.11 Contract Sum

The Contract Sum is stated in the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

1.1.12 Contract Time

The Contract Time is the period of time allotted in the Contract Documents for the construction effort to attain Completion of the Work as defined in Subparagraph 1.1.15 (Final Completion Date) and 1.1.26 (Substantial Completion Date) to include authorized adjustments thereto.

1.1.13 Architect/Engineer

The Architect/Engineer is the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering according to the laws of the State of Florida identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect/Engineer means the Architect/Engineer or his authorized representative.

1.1.14 Architect/Engineer's Approval

Architect/Engineer approval implies only that an item is acceptable as it appears to be in compliance with provisions of Contract Documents. Approval does not imply that the Architect/Engineer endorses an item or finds such free of imperfections.

1.1.15 Final Completion Date

The Date of Final Completion of the work or designated portions thereof, is the date that all work, including punch list items and submittal of closeout documents, has been finally completed to

the satisfaction of the Architect/Engineer and the Owner.

1.1.16 Force Account Work

This is Work specifically ordered by the Owner on the Project without an earlier agreement or a lump sum or unit price cost and performed with the explicit, express written acknowledgment by the Owner that the Contractor will charge the Owner according to the cost of labor, materials, equipment, insurance, bonds, taxes and a certain percentage for overhead and profit.

1.1.17 Inspector

An Inspector is an authorized and designated agent of the Owner through the Office of Building Code Enforcement, Duval County Public Schools, who is responsible for providing periodic inspections of new construction to determine compliance with *Florida Statutes*.

1.1.18 Modification

A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect/Engineer pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Architect/Engineer pursuant to Paragraph 12.4.

1.1.19 Notice of Award

Written notification from the Owner to the successful Bidder of the Owner's intent to award a Contract for Construction.

1.1.20 Owner

The Owner is the Duval County Public Schools and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative or agent.

1.1.21 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.22 Project Manual

The Project Manual is synonymous with the traditional term "Specifications." It may include Divisions with sections incorporated under each Division.

1.1.23 Provide

To provide shall mean to furnish and/or to install.

1.1.24 Referenced Documents

Documents such as Federal Specifications, ASTM, ANSI, etc., shall be the latest edition in effect on the date of this manual except where other specific edition dates are given. Reference to such thereby makes them a part of this manual as if bound herein.

1.1.25 Subcontractor/Sub-Subcontractor

1.1.25.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

1.1.25.2 A Sub-subcontractor is a person or entity who has direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

1.1.26 Substantial Completion Date

The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect/Engineer 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 without unreasonable inconvenience to the Owner.

1.1.27 Surety

The firm or corporation bound by issued bonds with the Bidder, Contractor or others to the Owner or others designated for the successful performance of the provisions of such bonds.

1.1.28 Unit Prices

A unit price is an amount stated in the proposal as a price per unit for materials or services as described in the Bidding Documents.

1.1.29 The Work

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction and all materials and equipment incorporated or to be incorporated in such construction.

1.2 Execution, Correlation and Intent

1.2.1 The Contract shall be signed in duplicate by the Owner and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed and has correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade.

1.2.5 Precedence of Documents. The precedence of the documents shall be as follows:

1. Change Order
2. Other Amendment
3. Contract Agreement
4. Specifications
5. Notice of Award
6. Notice to Proceed
7. Special Conditions
8. Supplementary Conditions
9. General Conditions
10. Drawings
11. Invitation to Bid
12. Addenda
13. Bid Proposal

1.3 Ownership and Use of Documents

As provided and permitted by *Florida Statute* and Administrative Code, all Drawings, Specifications and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner. They shall be used only with respect to this Project and shall not be used on any other project. With the exception of one Contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Architect/Engineer on request at the completion of the Work. Submission for distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect/Engineer's common law copyright or other reserved rights. Owner shall have the use and copies of all documents in Contractor's and its Surety's possession that involve the Project and may obtain copies upon request.

ARTICLE 2 - ARCHITECT/ENGINEER

2.1 **Definition** (Refer to Subparagraphs 1.1.13 and 1.1.14)

The term "Architect/Engineer" utilized in the Project Manual refers to:

Insert Architect/Engineer Name, Address, Contact and Telephone/Fax numbers.

2.2 Administration of the Contract

- 2.2.1 The Architect/Engineer shall provide administration of the Contract as hereinafter described.
- 2.2.2 The Architect/Engineer shall be the Owner's representative during construction and until final payment is due. The Architect/Engineer will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect/Engineer. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument.
- 2.2.3 The Architect/Engineer shall visit the site periodically at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents.
- 2.2.4 Neither the Owner nor the Architect/Engineer shall be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents to the extent he is made aware pursuant to Subparagraph 2.2.3. The Architect/Engineer nor the Owner shall not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

- 2.2.5** The Architect/Engineer shall, at all times, have access to the Work whenever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect/Engineer may perform his functions under the Contract Documents.
- 2.2.6** Based on the Architect/Engineer's observations and an evaluation of the Contractor's Applications for Payment, the Architect/Engineer will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in Paragraphs 9.2 and 9.3.
- 2.2.7** The Architect/Engineer shall be the interpreter of the requirements of the Contract Documents and shall certify the performance thereunder by the Contractor.
- 2.2.8** Either party to the Contract may make written request to the Architect/Engineer for such interpretations.
- 2.2.9** Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect/Engineer for decision, which he shall render in writing within a reasonable time. Such a submission and determination by the Architect/Engineer shall be a condition precedent to bringing any action for any claim or dispute against the Owner.
- 2.2.10** All interpretations and decisions of the Architect/Engineer shall be in writing or in the form of drawings.
- 2.2.11** The Architect/Engineer's decisions in matters relating to artistic effect will be final.
- 2.2.12** The Architect/Engineer shall have authority to reject Work that does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have the authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. However,

neither the Architect/Engineer's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility by the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 2.2.13** The Architect/Engineer shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no unreasonable delay. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.14** The Architect/Engineer shall prepare Change Orders in accordance with Article 12 and shall have the authority to order minor changes in the Work at no additional cost as provided in Subparagraph 12.4.1.
- 2.2.15** The Architect/Engineer shall conduct site visits to determine the dates of Substantial Completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor and shall issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.
- 2.2.16** In case of the termination of the employment of the Architect/Engineer, the Owner shall appoint a replacement.

ARTICLE 3 - OWNER

3.1 **Definition** (Refer to Subparagraph 1.1.20)

3.2 **Information and Services Required of the Owner**

- 3.2.1** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications

reasonably necessary for the execution of the Work.

- 3.2.2** The Owner shall forward all instructions to the Contractor through the Architect/Engineer.

3.3 Owner's Right to Stop the Work

- 3.3.1** If the Contractor is installing Work that, in the Inspector's opinion, is contrary to the Contract's requirements, the Inspector shall contact the Facilities Project Manager immediately. The General Director or designee shall have the authority to stop the Work, if deemed to be in the best interest of the project, until a review and resolution by the Architect/Engineer can be obtained. Such directive must be made in writing.

- 3.3.2** If the Contractor then fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated. However, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The Owner will not be responsible for any demobilization or remobilization costs or any other costs that may result due to the Contractor's performance referenced in this section.

3.4 Owner's Right to Carry Out the Work

If the Contractor defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following mailing, delivery, or FAX to the Contractor to the last known address of an additional notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due to the Contractor the cost of correcting such deficiencies, including compensation for the Architect/Engineer's additional services made necessary by

such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor or his Surety, at the choice of the Owner, shall pay the difference to the Owner.

ARTICLE 4 - CONTRACTOR

4.1 Definition (Refer to Subparagraph 1.1.10)

4.2 Review of Contract Documents

4.2.1 The Contractor shall carefully review the Contract Documents and shall, at once, report to the Architect/Engineer any error, inconsistency or omission he may discover. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.2.2 Contractor's failure to notify the Architect/Engineer in writing within ten (10) days of the discovery of any error, or when the Contractor should have discovered any such error, shall waive any right to recovery against the Owner or his representative, and the Contractor shall proceed at his own risk.

4.3 Supervision and Construction Procedures

4.3.1 The Contractor shall supervise and direct the Work using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract with all other Contractors, Subcontractors, Suppliers and provide all scheduling information to the Architect/Engineer.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their Agents and employees, or other persons performing any of the Work under a Contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect/Engineer in his

administration of the Contract or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 Labor and Materials

- 4.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 4.4.2** All labor described in these specifications or indicated on the drawings or the Work described or indicated shall be executed in a thoroughly substantial and workmanlike manner. All materials and equipment shall be new and meet specifications in every respect and shall be delivered to the site of the building and installed in a perfect and undamaged condition, without exception.
- 4.4.3** Whenever materials are sold by the manufacturer in sealed packages, they must be so delivered to the job.
- 4.4.4** The Contractor shall, at all times, enforce strict discipline and good order among his employees and shall not employ for the Work any unfit person or anyone not skilled in the Work assigned to him.
- 4.4.5** Samples shall be delivered to the Architect/Engineer and/or Owner when requested, and all subsequent materials used in Work under this Contract shall be equal in every respect to the approved sample.
- 4.4.6** No substitutions will be permitted unless approval of the Architect/Engineer and authorization by the Owner is first obtained in writing.
- 4.4.7** The Contractor shall not use or install any material containing asbestos in the construction of this project or in the substitution of any product or material used in the construction.

4.4.8 Nondiscrimination in Employment. During the performance of this Contract, the Contractor agrees as follows:

4.4.8.1 The Contractor shall not discriminate against any employee or application for employment because of race, creed, color or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, rates of pay or other forms of compensation and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause.

4.4.8.2 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color or national origin.

4.4.8.3 The Contractor shall send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4.5 Warranty

The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of

materials and equipment. The provisions of Paragraph 13.2 do not limit this warranty.

4.6 Taxes

- 4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received whether or not yet effective.
- 4.6.2 State of Florida Sales Tax - Pursuant to §212.08 *Florida Statutes* and subsequent to Attorney General's option number 059-111, the purchase of materials for building projects are exempt from sales tax under certain conditions and the Owner may exercise this exemption. The Owner is exempt from sales tax on the purchase of construction material. The Owner has elected to exercise this right and therefore directly purchase various construction material, supplies and equipment that may be a part of this Contract. Such direct purchase shall be without any additional cost to Owner. The Owner shall, via Purchase Order (PO), purchase material, and the Contractor shall assist the Owner in the preparation of the Purchase Order. The Owner will purchase the material from Vendors selected by the Contractor for the price originally negotiated by the Contractor. **All bids are to be submitted with all applicable taxes included.**
- 4.6.3 The Contract Amount shall be reduced by the net, undiscounted amount of the purchase orders plus all State sales tax. This reduction in the Contract Amount will occur through a **Change Order**, which will reference the Purchase Order affecting the change. MBE Form six (6) is also required.
- 4.6.4 Issuance of Purchase Orders by the Owner shall not relieve the Contractor of any responsibility regarding material or equipment purchases or installations, with the exception of the payments for the material or equipment purchased. **The Contractor shall remain fully responsible for coordinating, scheduling, ordering correct quantities, submittals, protections, storage, shipping, security, expediting, receiving, verification, installation, cleaning and all applicable**

warranties. The Contractor must maintain the Builder's Risk policy to include all material and equipment stored on-site and installed on site.

4.6.5 It is recognized that the Contractor may encounter additional overhead costs in assisting the Owner with its Direct Purchase Program. The Contractor is charged with including all additional costs as part of the Base Bid.

4.6.6 No payment will be made for material or equipment stored off-site.

4.7 Permits, Fees, Notice

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits when required and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. All inspections and permits must be conducted and issued by the Office of Building Code Enforcement, Duval County Public Schools, 8015 Parker School Road, Jacksonville, Florida, 32211-5110, Telephone (904) 858-1919. The Office of Building Enforcement is responsible for code inspections on all projects administered by the Owner. The costs associated with permitting and inspection shall be paid by DCPS directly to the Office of Building Code Enforcement. The Contractor will pay reinspection fees and/or fines.

4.7.2 All projects require code compliance inspections during construction in areas of the work as determined by Florida Statutes, the Florida Building Code, the Florida Fire Prevention Code and all such other referenced codes, laws, standards and ordinances as are applicable. The work to be inspected normally includes, but is not necessarily limited to site, structural, mechanical, electrical, plumbing and general building.

4.7.3 The Contractor shall notify the Office of Building Code Enforcement, Duval County Public Schools, 8015 Parker Road, Jacksonville, Florida, 32211-5110, Telephone: (904) 858-1919, no less than 24

hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Office of Building Code Enforcement. All costs for uncovering and reconstruction shall be borne by the Contractor.

4.7.4 All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specification.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.7.3 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes or regulations in any respect, he shall promptly notify the Architect/Engineer in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the Architect/Engineer, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

4.8 Allowances (Not Used)

4.9 Superintendent

4.9.1 The Contractor shall employ a competent Superintendent who shall be present at the project site during progress of the Work. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing.

4.9.2 The Contractor's Superintendent shall be skilled in his duties with at least five (5) years previous experience as Superintendent with projects of comparable size and complexity. The Superintendent shall be acceptable to the Architect/Engineer and the Owner and shall not be changed during the progress of the Work except by

approval of the Owner and the Architect/Engineer. Resume of proposed superintendent shall be submitted within fifteen (15) days after Notice of Award. Resume shall indicate previous experience noting size, claim history, description and cost of projects supervised. Substitution of the Superintendent by the Contractor at any time must be requested in writing and be approved by the Owner and the Architect/Engineer.

- 4.9.3 For contracts involving Work at more than one school site, the Contractor shall have a competent Superintendent who meets the above criteria present at each site while Work is being performed at that site.

4.10 Communications

- 4.10.1 The Contractor shall forward all communications to the Owner through the Architect/Engineer.
- 4.10.2 The Contractor shall notify the Owner's Chief building Official when he plans to begin the Work at the school site.

4.11 Royalties and Patents

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly conveys such information to the Architect/Engineer in writing.

4.12 Progress Schedule

- 4.12.1 Within ten (10) days after Notice to Proceed, the Contractor, shall prepare and submit for the Owner's and Architect/Engineer's approval a computer generated CPM Progress Schedule for the Work, utilizing Primavera or other nationally recognized software acceptable to the Architect/Engineer. The Progress Schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practical execution of

the Work. Schedule shall be itemized into divisions of work in such detail as deemed appropriate by the Architect/Engineer.

- 4.12.2 The Progress Schedule shall be updated at least monthly by the Contractor to indicate the status and progress of the Work and shall submit it with each Application for Payment. Any float in the schedule shall be used at the discretion of the Owner.
- 4.12.3 Contractor shall provide a manpower and equipment loading schedule to the Owner at the time of submission, and at any other time requested by the Owner, of the CPM in 4.12.1.
- 4.12.4 All progress schedules that are submitted with updates or modifications that purport to obtain an equitable time extension shall be accompanied with a time-impact analysis to justify the time extension. Failure to include the time-impact analysis shall constitute a waiver for any claim.

4.13 Shop Drawings, Product Data and Samples

- 4.13.1 Shop Drawings, when approved by the Architect/Engineer, are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 4.13.2 Product Data, when approved by the Architect/Engineer, are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
- 4.13.3 Samples are physical examples which, when approved by the Architect/Engineer, illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 4.13.4 The Contractor shall review, approve and submit all Shop Drawings, Product Data and Samples to the Architect/Engineer required by the Contract Documents with reasonable promptness and in such

sequence as to cause no delay in the Work or in the Work of the Owner or any separate Contractor.

- 4.13.5** By approving and submitting to the Architect/Engineer Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements and field construction criteria related thereto and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 4.13.6** The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect/Engineer approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submission and the Architect/Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect/Engineer's approval thereof.
- 4.13.7** The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect/Engineer on previous submittals.
- 4.13.8** No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect/Engineer provided in Subparagraph 2.2.13. All such portions of the Work shall be in accordance with approved submittals.
- 4.13.9** The Architect/Engineer shall review Shop Drawings, Project Data and Samples for conformance to the Design intent and Contract Documents only, and his approval shall not be construed as to establishing actual field dimensions. An approved copy shall be provided to the Owner.

4.14 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.15 Cutting and Patching of Work

4.15.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.15.2 The Contractor shall not damage or endanger any portion of the Work or the Work of the Owner or any separate Contractors by cutting, patching or otherwise altering any Work or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work.

4.16 Cleaning Up

4.16.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.16.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.

4.17 Indemnification

4.17.1 For ten dollars (\$10) acknowledged to be included and paid for implicitly in the Contract price and other good and valuable considerations, the Contractor agrees to indemnify and hold harmless the Owner and his Agents and Employees in accordance with the provisions of this Article and pursuant to Chapter 725.06 *Florida Statutes* from and against all claims but not limited to, damages, losses and expenses including attorneys' fees arising out of or resulting from the

performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or (3) results from the Contractor's breach of contract including but not limited to unexcused delay in completion of the Project. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the Owner.

4.17.2 In any and all claims against the Owner or any of his agents or employees or by any employee of the Contractor, 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 Paragraph 4.17 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under the Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

4.17.3 The obligations of the Contractor under this Paragraph 4.17 shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

4.17.4 Assignment of Antitrust Claims

4.17.4.1 Contractor and Owner recognize that in actual economic practice, overcharges resulting from price fixing violations of the antitrust laws are, in fact, usually borne by the Owner. Therefore, the Contractor, for and in consideration of payment in the amount of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby assigns, conveys, sells and transfers to the Owner all right, title and interest in and to all causes of

action it may have under the antitrust laws of the United States and any of the several states for price fixing of services, goods or materials furnished in connection with performance of this contract.

4.17.4.1.1 Contractor and Owner also recognize that the public interest, in vigorous enforcement of the antitrust laws, is furthered by private treble damage actions. Therefore, Owner hereby consents to reassign to Contractor all or part of the antitrust claims assigned herein, at the sole discretion of Owner when it appears that the best interests of the Owner would be served thereby.

4.17.4.1.2 As used herein, the words "price-fixing" include, but are not limited to, price-fixing, resale price maintenance, collusive bidding, bid rigging, complimentary bidding, combinations or conspiracies to restrict output or supply, and all other forms of agreements or understandings which have the purpose or effect of tampering with the price structure of services or articles of commerce.

4.17.4.2 The Contractor shall include the above provisions in each contract with each of his subcontractors and suppliers who have furnished services, goods or contract, so that it shall have the same effect and be binding on each subcontractor and supplier for the same purpose and to the same extent as the contractor.

4.18 The Contractor shall comply with, and be responsible for all costs associated thereto, all Federal, State and Local Laws.

4.19 The Contractor and all subcontractors must comply with the Jessica Lunsford Act effective September 1, 2005. The Act states that contractual personnel who are permitted access on school grounds when students are present or who have direct contact with students must meet Level 2 requirements as described in Section 1012.32, F.S. Contractual personnel shall include any vendor, individual, or entity performing services on a Duval County Public School site where students are present.

ARTICLE 5 - SUBCONTRACTORS

5.1 Definition (Refer to Subparagraph 1.1.24)

5.2 Awards of Subcontracts and Other Contracts for Portions of the Work

5.2.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, within ten (10) days after the award of the Contract, shall furnish to the Owner and the Architect/Engineer in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect/Engineer has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the Owner or the Architect/Engineer has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner or the Architect/Engineer has no reasonable objection, and the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect/Engineer make reasonable objection to such substitution.

5.3 Subcontractual Relations

5.3.1 By an appropriate written agreement, duly notarized or witnessed, the Contractor shall require each Subcontractor, to the extent of the

Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents as enumerated in the Construction Contract contained in Section 00501, and to assume toward the Contractor all obligations and responsibilities which the Contractor assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

- 5.3.2** Nothing contained in the Contract Documents nor any act of the Owner or the Architect/Engineer shall create any contractual relationship between any Subcontractor or material supplier and the Owner nor create any obligation or liability on the part of the Owner to make payment of any sums to any Subcontractor, Sub-subcontractor, materialman or supplier.

ARTICLE 6 - WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 Owner's Right to Perform Work and Award Separate Contracts

- 6.1.1** Should the contractor be unable to perform his work to the satisfaction of the Owner and the Architect/Engineer, the Owner reserves the right to perform work related to the Project with his own or other forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Contract.

- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Construction Contract Agreement.
- 6.1.3 The Owner will provide for the coordination of the Work of his own forces only; each separate contractor shall coordinate his work with the work of any and all other contractor(s), who shall cooperate therewith as provided in Paragraph 6.2.

6.2 Mutual Responsibility

- 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs.
- 6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the Work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report in writing to the Architect/Engineer any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work.
- 6.2.3 Any costs caused by defective or ill-timed Work shall be borne by the party responsible, except as provided in Paragraphs 4.17 and 8.5. The Owner shall not be responsible for any delay, disruption or hindrance damages.
- 6.2.4 Should the Contractor cause damage to the Work or property of the Owner, or to other Work on the site, either directly or by neglect, the Contractor shall promptly remedy such damage.
- 6.2.5 Should the Contractor cause damage to the Work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by **written agreement**, or otherwise to resolve any dispute. If such separate contractor sues or initiates any alternate dispute resolution proceeding against the Owner on account of any damage alleged to have

been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense who is alleged to have caused the damage.

6.3 Owner's Right to Clean Up

If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.16, the Owner may clean up and charge the cost thereof to the contractor(s) responsible.

ARTICLE 7 - DISPUTE PROVISIONS

7.1 Governing Law

The laws of the State of Florida shall govern the Contract. The venue for any action that might be brought by any party involved in the construction, insurance, design or supply of materials of this project shall be Duval County, Florida.

7.2 Successors and Assigns

The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives notice.

7.4 Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally or contractually liable, except as provided in Paragraphs 4.17 and 8.5 claim shall be made in writing to such other party within ten (10) days after the first observance of such injury or damage or shall be deemed

waived. The Owner shall not be responsible for any delays, disruptions or hindrance damages.

7.5 Performance Bond and Labor and Material Payment Bond

7.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

7.5.2 In accordance with Chapter 85-104, Laws of Florida, the insurer of a surety bond that does not exceed \$500,000 shall provide a written statement or other appropriate evidence that he meets the following criteria:

7.5.2.1 is authorized to write surety bonds in this state;

7.5.2.2 has twice the minimum surplus and capital required by Florida Statutes;

7.5.2.3 is in compliance with all provisions of the Florida Insurance Code, and;

7.5.2.4 holds a valid Certificate of Authority issued by the United States Department of Treasury under Section 9304 to 9308 of Title 31 of the *United States Code*.

7.6 Rights and Remedies

No action or failure to act by the Owner, or Architect/Engineer shall constitute a waiver of any right or duty afforded them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder by the Contractor or any of his agents or employees, except as may be specifically stated in writing.

7.7 Tests

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect/Engineer and Owner's Inspector timely notice of its readiness

so the Architect/Engineer may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

7.7.2 If the Architect/Engineer determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect/Engineer's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued, except as limited by Paragraph 8.5.

7.7.3 Required Certificates of Inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect/Engineer and the Owner.

7.7.4 If the Architect/Engineer is to observe the inspections, tests or approvals required by the Contract Documents, and notified within a reasonable time, he will do so promptly and, where practicable, at the source of supply.

ARTICLE 8 - TIME

8.1 Definitions

8.1.1 The Date of Commencement of the Work: (Refer to Subparagraph 1.1.7).

8.1.2 The Date of Substantial Completion of the Work: The date of Substantial Completion shall be _____ consecutive calendar days after the issuance of the Notice to Proceed from Owner. (Refer to Subparagraph 1.1.26)

8.1.3 Contract Time: The Contract Time (Construction time to reach Substantial and Final Completion)

shall be _____consecutive calendar days.
(Refer to Subparagraph 1.1.12)

- 8.1.4** The Date of Final Completion of the Work: The date of Final Completion shall be _____ consecutive calendar days after Substantial Completion. (Refer to Subparagraph 1.1.15)

8.2 Progress and Completion

- 8.2.1** All time limits stated in the Contract Documents are of the essence.
- 8.2.2** The Contractor shall begin the Work on the Date of Commencement as defined in Subparagraph 1.1.7. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.3** The Contractor shall take into account all contingent Work which has to be done by other parties, arising from any causes whatsoever, and shall not plead his want of knowledge of said contingent Work as an excuse for delay in his Work, or for the nonperformance thereof.
- 8.2.4** There shall be no recovery by the Contractor for constructive acceleration of his Work on the Project and there shall be no recovery for any acceleration costs unless the Contractor receives prior written authorization by the Architect/Engineer or the Owner.

8.3 Delays and Extensions of Contract Time

- 8.3.1** If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or the Architect/Engineer or by any employee of either, or by any separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated (delays for rain will only be considered when NOAA monthly average is exceeded), unavoidable casualties, or any causes beyond the Contractor's control, or by any other causes which the Architect/Engineer determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Architect/Engineer not more than ten (10) days after the commencement of the event; otherwise, it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for extension of time shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after written request is made for them.

8.4 Liquidated Damages.

8.4.1 Because some of the actual damages for delay are difficult to compute, the Contractor and his Sureties shall be liable for and shall pay to the Owner, stipulated as fixed and agreed Liquidated Damages, that represent the Owner's losses as a result of increased cost of project administration by Owner's personnel, and inconvenience only, the sum of money stated in the section 8.4.2 for each consecutive calendar day of the delay until the Work is substantially completed and accepted. The assessment of Liquidated Damages recited herein shall not preclude the recovery of any other actual damages incurred by the Owner as a result of the Contractor's delay.

8.4.2 The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Board will suffer financial loss if the work is not substantially complete within the time specified, plus any extensions thereof, allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in determining the actual loss suffered by the Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that, as liquidated damages for the delay (but not as a penalty) representing the Owner's loss due to the increased cost of project administration and inconvenience only, the Contractor shall pay the Owner \$ _____ (Insert Amount) - per day for each calendar day that expires after the time specified

for Substantial Completion until the work is substantially complete and one-half of that amount for each calendar day that expires after the time specified for Final Completion until the work is finally completed. The assessment of liquidated damages shall not preclude the recovery of actual damages by the Owner from the Contractor.

8.5 No Damages for Delay - Contractors

8.5.1 The Contractor shall not be entitled to any compensation on account of hindrances, disruptions or delays from any cause whatsoever, whether or not the Owner causes such hindrances, disruptions or delays solely or in part. If the hindrances, disruptions or delays are caused by an act of God, by the willful or grossly negligent acts of the Owner, or by the Owner's active interference with the Work of the Contractor, such hindrance, disruption or delay may entitle the Contractor to a reasonable extension of time in which to complete the Work which shall be determined at the sole discretion of the Owner, provided that the Contractor shall give the Owner written notice of such hindrances, disruptions or delays within ten (10) days after their occurrences. Said extension of time in which to complete the Work shall be Contractor's sole and exclusive remedy for damages on account of hindrances, disruptions or delays from any cause whatsoever, whether or not such hindrances, disruptions or delays are caused solely or in part by the Owner.

8.5.2 For purposes of this section, events giving rise to delays, hindrance, disruption, or inefficiencies shall include but shall not be limited to situations, associated with differing site conditions; associated with obtaining rights-of-way, easements and other interests in real property; modifications or increases of the Scope of the Work; in acquiring permits; the Owner's or a third party's failure to furnish access to a site; untimely approval of plans or shop drawings; delay in approval or rejection of proposed changes; subsurface conditions; moratoria on excavation or construction; governmental action, inaction or regulation; asbestos removal and any other cause whatsoever whether or not caused solely or in part by the Owner.

ARTICLE 9 - PAYMENTS AND CONDITIONS

9.1 Schedule of Values

Within ten (10) days of Notice to Proceed, the Contractor shall submit to the Architect/Engineer 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 the Architect/Engineer and Owner may require. This Schedule, unless objected to by the Architect/Engineer, shall be used only as a basis for the Contractor's Applications for Payment. The Schedule of Values shall be submitted on AIA Document G702/G703, 1992 Edition.

9.2 Applications for Payment

9.2.1 At least ten (10) days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Architect/Engineer an itemized Application for Payment, notarized and supported by such data substantiating the Contractor's right to payment as the Owner or the Architect/Engineer may require, and reflecting retainage, and any schedule information as provided in Subparagraph 4.12 or any other data that may be required by the Architect/Engineer or the Owner. Each Application for Payment shall be submitted on AIA Document G702/ G703, 1983 Edition with the identical format and data as the approved Schedule of Values.

9.2.2 Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials and equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. No materials stored off site may be moved to any location other than the project construction site without the written authorization of the Owner.

9.2.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by another person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3 Certificates for Payment

9.3.1 The Architect/Engineer will, within seven (7) days after the receipt of the Contractor's monthly Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.3.2 The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests, deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate; and that the Contractor is entitled to payment in the amount certified.

9.4 Progress Payments

9.4.1 After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in

the manner and within the time provided in the Construction Contract.

- 9.4.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate **written agreement** with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner, and obtain and provide sworn affidavits attesting that the payments have been made.
- 9.4.3 The Architect/Engineer may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect/Engineer on account of Work done by such Subcontractor.
- 9.4.4 The Owner shall not have any obligation to make payment nor to mandate the payment of any monies to any Subcontractor, Sub-subcontractor, supplier or materialman.
- 9.4.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents by the Owner.

9.5 Partial Release of Lien

The Contractor, subcontractors, suppliers shall provide with each Application, a Partial Release of Lien and Certificate of Payment based upon the preceding pay request, thereby extinguishing all claims or action against the Owner for any work or materials performed as of that date. **All applications for payment must contain partial or full release of liens from subcontractors, duly notarized.**

9.6 Payments Withheld

9.6.1 The Architect/Engineer may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion, he is unable to make representations to the Owner as provided in Subparagraph 9.3.2. If the Architect/Engineer is unable to make representations to the Owner as provided in Subparagraph 9.3.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.3.1. If the Contractor and the Architect/Engineer cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect/Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify from the beginning the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- 9.6.1.1** Defective Work not remedied;
- 9.6.1.2** Third party claims filed or reasonable evidence indicating probable filing of such claims;
- 9.6.1.3** Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 9.6.1.4** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 9.6.1.5** Damage to the Owner or another Contractor;
- 9.6.1.6** Reasonable evidence that the Work will not be completed within the Contract Time;
- 9.6.1.7** Persistent failure to carry out the Work in accordance with the Contract Documents;

- 9.6.1.8 Failure of the Contractor to provide documentation, schedules or any materials or tests required by the Owner or Architect/Engineer pursuant to the Contract Documents;
- 9.6.1.9 Failure to meet the approved (by the Architect/Engineer schedule timetable; or,
- 9.6.1.10 Failure of the Contractor to maintain his insurance as set forth in Article 11.
- 9.6.1.11 Any amount withheld as a result of any of the above shall be paid at the next regular pay request upon completion of the discrepancy. No interest will be paid as a result of this action.

9.7 Force Account Work

9.7.1 **Definition** (Refer to Subparagraph 1.1.16)

9.7.2 Payment for all Work performed and labor or materials furnished on a force account basis will be made as follows:

9.7.2.1 Labor - For all labor and foremen employed on the specific operations, the Contractor will receive the rate of wage (or scale) plus subsistence or travel costs agreed upon in writing before beginning Work for each and every hour that said labor and foremen are actually engaged in such Work and paid therefore. Agreed wage rates will not be in excess of the rates paid for comparable Work on the project. The Contractor will receive compensation for his costs of payroll tax levies, insurance premiums, and employment benefits generally applicable to his employees, in proportion to the wages paid above. If a fixed percentage is stated in the special provisions, the amount of such compensation will be the product of the fixed percentage and the actual cost of wages paid above, excluding fringe benefits. Fringe benefits will be reimbursed separately and in addition to the fixed percentage. If no

fixed percentage is stated in the special provisions, compensation will be the actual amount paid by the Contractor for these items.

9.7.2.2 Materials - For materials delivered to the Work and accepted by the Architect/Engineer, the Contractor will receive the actual costs of such materials including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth), to which cost ten percent (10%) will be added.

9.7.2.3 Equipment

9.7.2.3.1 For any machinery or special equipment (other than small tools), the use of which has been authorized by the Architect/Engineer, the Contractor will be paid the rental rates agreed upon in writing before starting such Work, except when the equipment rental rates to be paid are stated in the special provisions. Payment will be made for the actual number of hours that the equipment is in operation on the Work and will include fuel and lubricants. Downtime due to equipment breakdowns is not billable.

9.7.2.3.2 Transportation charges for each piece of equipment to and from the site of the Work will be paid provided (1) the equipment is obtained from the nearest approved source, (2) the return charges do not exceed the delivery charges, (3) haul rates do not exceed the established rates of licensed haulers, and (4) such charges are restricted to those units of equipment not

already available and on or near the project.

9.7.2.3.3 Whenever equipment has been ordered held on the job on a standby basis by the Architect/Engineer, half-time rates for the equipment will be paid for such standby time during normal working hours.

9.7.2.3.4 All equipment used will be presumed to be in good operating condition. No percentage shall be added to equipment rental rates, and no additional compensation will be made for repairs.

9.7.2.4 Miscellaneous - No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

9.7.2.5 Records - The Contractor's representative and the Architect/Engineer shall compare records of the cost of Work done at the end of each day as ordered on a force account basis. Copies of these records shall be made upon suitable forms approved by the Architect/Engineer for this purpose and signed by both the Architect/Engineer and the Contractor's representative, one copy being retained by each party.

9.7.2.6 Statements - No payment will be made for Work performed on a force account basis until the signed records required in 9.7.2.5, detailed as follows have been prepared:

9.7.2.6.1 Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.

9.7.2.6.2 Designation, dates, daily hours, total hours, rental rates, and extension for each

unit of machinery and equipment.

9.7.2.6.3 Quantities of materials, prices, and extensions.

9.7.2.6.4 Transportation of materials.

9.7.2.6.5 Cost of payroll tax levies, insurance premiums, and employee benefits, if no fixed percentage appears in the special provisions.

9.7.2.6.6 Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the force account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

9.7.2.7 Payment - Payment for authorized Work done under this subsection will be made with the monthly Applications for Payment. The amounts to be paid will be based on the signed daily records of Work performed and the Contractor's statements of costs are required by Subparagraphs 9.7.2.5 and 9.7.2.6 above. The additional payment, based on the percentage stated in Subparagraphs 9.7.2.1 and 9.7.2.2 above, shall constitute full compensation for all items of expense not specifically designated. The total payment made as provided above shall constitute full compensation for such Work.

9.8 Substantial Completion

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 1.1.26, the Contractor shall prepare for submission to the Architect/Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Requests for Substantial Completion inspections that are not accompanied by this list will not be honored. When the Architect/Engineer, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect/Engineer, the Owner may make payment, reflecting adjustment in retainage, if any, an amount equal to three times the estimated value (as determined by the Architect/Engineer of the punch list items remaining to be completed for such Work or portion thereof, as provided in the Contract Documents. Nothing in this section shall preclude the retention of additional amounts as provided for in Paragraph 9.6 or other contract provisions.

9.9 Final Completion and Final Payment

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon

receipt of a final Application for Payment, the Architect/Engineer will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled. The date of Final Completion shall be that date indicated on the Contractor's Final Application for Payment and validated by the Architect/Engineer signing and dating of the Certificate for Payment. Final payment shall not be made until inspection and approval of the Work by the Office of Building Code Enforcement, Duval County Public Schools.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) Consent of Surety, if any, to final payment and, (3) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens or claims, **duly notarized**, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor, at his expense, may furnish a Bond satisfactory to the Owner to indemnify him against such lien or claim.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect/Engineer so certifies, the

Owner shall, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected plus additional amounts retained pursuant to the Contract Documents is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by the Owner only.

9.9.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing in strict compliance with the time requirements as set forth in the Contract Documents and identified by the Contractor in writing as unsettled at the time of the final Application for Payment.

9.9.5 The Application for Payment for the final payment under the Contract shall include the following forms:

9.9.5.1 Consent of Surety to Final Payment on AIA Document G707.

9.9.5.2 Contractor's Affidavit of Release of Liens on AIA Documents G706 and G706A certifying that the prime Contract, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor, or services on the project, release or waive any lien or claim, **duly notarized**, against the Owner arising in the construction project.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all

reasonable protection to prevent damage, injury or loss to:

- 10.1.1.1 All employees on the Work and other persons who may be affected thereby;
 - 10.1.1.2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors;
 - 10.1.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, pavements, roadways, structures, and utilities not designated for removal, relocations, or replacement in the course of construction.
- 10.1.2 The Contractor shall promptly remedy all damage or loss caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them and for which the Contractor is responsible. Nothing in this section shall limit the Contractor's obligations or responsibilities under Paragraphs 4.17 or 10.2.
- 10.1.3 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner or the Architect/Engineer.
- 10.1.4 The Contractor shall not load with materials nor permit any part of the Work to be loaded with materials so as to endanger its safety.
- 10.1.5 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.1.6 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs,

- erecting of barriers and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 10.1.7 No powder-driven fasteners will be used on school sites that utilize a cartridge charge without prior approval of the Owner. This requirement prevails for all disciplines and areas of Work.
- 10.1.8 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 10.1.9 The Contractor shall be responsible for compliance with all O.S.H.A. regulations and standards.
- 10.1.10 Prior to issuance of the Notice to Proceed, a safety plan shall be provided by the Contractor, which clearly delineates areas, for construction, safety barriers, exits, construction traffic during the various phases of the project and when conditions change. Where heavy machinery, as is used for earth moving or scraping, is required to work on a construction site, the work shall be separated from occupants by secure double barriers with a distance of ten (10) feet in between. New construction, remodeling or renovations in existing facilities shall not reduce the means of egress below the requirements for new buildings; safe means of egress from a student-occupied space may be accomplished as authorized by NFPA 101. New construction (additions) shall not block or reduce safe means of egress.

10.2 **Emergencies**

In any emergency affecting the safety of persons or property, the Contractor shall act immediately to prevent threatened damage, injury or loss. Any such emergency must be reported to the Architect/Engineer as soon as possible but not later than twenty-four (24) hours from the time that the emergency is discovered by the Contractor.

ARTICLE 11 - INSURANCE

11.1 **Insurance**

Duval County Public Schools shall be named as an additional insured on all Insurance Policies and all insurance related documents and must indicated the DCPS project name and project number.

- 11.1.1 Contractor's Liability Insurance: The Contractor shall provide and maintain during the life of the Contract as provided below, insurance that will provide protection from claims under Worker's Compensation Acts and from claims for damages including automobile liability or bodily injury, including property not in the Contractor's care, custody or control, which may arise from and during operations under this Contract including delay damages, whether such operations be by the Contractor or any Subcontractor or anyone directly or indirectly employed by either in connection with the Work.
- 11.1.2 Worker's Compensation Insurance: **The Contractor shall provide and maintain during the life of the Contract, Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law and any applicable Federal Workmen's Compensation Laws. In case any class of employees engaged in hazardous work under this contract is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.**
- 11.1.3 The Contractor shall procure and carry Public Liability Insurance insuring against Bodily Injury, Personal Injury, and Property Damage, in limits of not less than five hundred thousand dollars (\$500,000) per claimant, five hundred thousand dollars (\$500,000) per incident or occurrence, with Motor Vehicle Liability Insurance provided in the sum of not less than five hundred thousand dollars (\$500,000) per claimant, five hundred thousand dollars (\$500,000) for each occurrence, for both bodily injury and property

damage, all indicated coverages insuring the Contractor and the Owner as their interest may appear. Broad form property damage is required on Contractor's public liability so that completed operations coverage extends to Work performed by the Contractor. Such insurance shall protect the Owner from claims from such operations under the Contract, whether such operations are conducted by the Contractor or by any Subcontractor, or anyone directly employed by either. Coverage shall include Comprehensive General Liability and products and completed operations liability. Owners and Contractors Protective Liability shall be carried by the Contractor for the Owner. During the life of the Contract, the Contractor shall maintain Excess Liability Umbrella Form coverage in the amount of \$1,000,000 for projects with contract values not exceeding \$5,000,000. For projects with contract values exceeding \$5,000,000, the Contractor shall maintain coverage in the amount of at least 20% of the contract value or \$5,000,000, whichever is less.

- 11.1.4** The Contractor shall provide insurance either on a Builders Risk completed value form or an Installation Floater form to cover the perils of fire, wind, extended coverage, vandalism, malicious mischief and theft for 100 percent (100%) of the value of the Work under this Contract. Insurance shall be provided in the name of the Owner and the Contractor.
- 11.1.5** The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligation under Paragraph 4.17.
- 11.1.6** The Contractor shall furnish assurance and evidence (prior to executing the Contract) that the insurance specified and required to be carried by the Contractor under these articles and/or elsewhere in and by the Contract Documents by filing with the Owner the original policies thereof or standard form of certificate stating that said insurance shall not be lapsed or canceled during the progress of the Work covered thereby prior to first having given the Owner forty-five (45) days notice in writing by return receipt or certified mail, of intentions to lapse or cancel same and receiving written authorization for the substitution of any insurance by the Owner.

- 11.1.7 All insurance companies shall be licensed and registered to do business in the State of Florida. In addition, the Insurance Company shall be acceptable to the Owner.
- 11.1.8 The Contractor shall maintain all insurance in full force and effect until receipt by the Contractor of final acceptance of the Work by the Owner.
- 11.1.9 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy shall not be unreasonably withheld.
- 11.1.10 It shall be the Contractor's exclusive responsibility to notify the bonding company or surety company of any changes that occur which may require additional coverage.

11.2 Loss of Use Insurance

The Owner, at his option, may purchase and maintain such insurance as will insure him against loss or use of his property due to fire or other hazards, however caused.

ARTICLE 12 - CHANGES IN THE WORK

12.1 Change Orders

- 12.1.1 **Definition** (Refer to Subparagraph 1.1.6)
- 12.1.2 The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement to the change to include **any** adjustment in the Contract Sum or the Contract Time. Without a specific written statement on the face of the Change Order document stating otherwise, the Contractor waives any claims for additional time

or compensation related to the items contained in that Change Order.

- 12.1.3** The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.
- 12.1.4** The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

 - 12.1.4.1** by mutual acceptance of a lump sum properly itemized and supported by sufficient acceptable substantiating data to permit evaluation;
 - 12.1.4.2** by unit prices stated in the Contract Documents or subsequently agreed upon;
 - 12.1.4.3** by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
 - 12.1.4.4** for all Work done by his own organization, the Contractor may add ten percent (10%) of his net increase in direct costs for combined overhead and profit;
 - 12.1.4.5** for all Work done by Subcontract, the respective Subcontractors may add ten percent (10%) of their net increase in direct costs for combined overhead and profit, and the Contractor may then add five percent (5%) of the above Subcontractor's total for his overhead and profit;
 - 12.1.4.6** where changes involve the Contractor and one or more Subcontractors, the breakdown shall itemize the above percentages separately, by use of individual change order estimate forms.
- 12.1.5** The Contractor shall keep and present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. All costing shall be done by discreet accounting

and Contractor must follow generally accepted accounting procedures in the administration of its financial records under the contract. Failure to keep records shall result in waiver of any claim not supported as required above, by the Contractor. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor including social security, old age and unemployment insurance, and fringe benefits required by agreement; worker's compensation insurance; bond premiums; and rental value of equipment and machinery. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increases, if any, with respect to that change.

12.1.6 The requirement to give written notice to the Owner or the Architect/Engineer, for any event that may give rise to a claim for a Change Order or equitable adjustment of time, shall be specifically adhered to, or the Contractor shall waive his right to submit a claim not complying with the notice requirements.

12.1.7 For any additive Change Order or Change Order seeking an extension of the Contract Completion date, the Contractor shall provide a Consent of Surety indicating that the Surety agrees to bond the Work associated with each Change Order. The Consent of Surety shall be executed by the Surety who provided the Performance and Payment Bond and shall indicate the Change Order number, the adjustment of the Contract Sum and be dated the same as the Change Order. Any premiums associated with the Consent of Surety shall be included in the proposed adjustment.

12.2 Concealed Conditions

12.2.1 Should concealed conditions be encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, and by careful prebid site examination and investigation by the Contractor or should unknown physical conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing

structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract be encountered, the Contract Time and/or Sum may be equitably adjusted by Change Order upon claim by either party made within ten (10) days after the first observance of the conditions.

12.3 Claims for Additional Cost or Time

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum or extension of Contract Time, he shall give the Architect/Engineer written notice thereof within ten (10) days after the occurrence of the event-giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall act immediately and notify the Architect/Engineer or the Owner as soon as possible. No such claim shall be valid unless so made. Any change in the Contract Sum or Contract Time resulting from such claim shall be authorized by Change Order. The Contractor shall not submit a claim for any delay, disruption or hindrance damages as set forth in Paragraph 8.5.

12.3.2 Failure to receive prior written authorization to perform any additional Work by the Contractor shall preclude the Contractor from recovering from the Owner.

12.4 Minor Changes in the Work

The Architect/Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13 - UNCOVERING AND CORRECTION OF WORK

13.1 Uncovering of Work

- 13.1.1** If any portion of the Work should be covered contrary to the request of the Architect/Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for his observation and shall be replaced at the Contractor's expense.
- 13.1.2** If any other portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor as provided in Article 6, in which event the separate contractor shall be responsible for the payment of such costs.

13.2 Correction of Work

- 13.2.1** The Contractor shall promptly correct all Work rejected by the Architect/Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs for correcting such rejected Work.
- 13.2.2** If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of notification from the Owner to do so. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 13.2.3** The Contractor shall remove from the site all portions of the Work, which are defective, or non-

conforming, which have not been corrected under Paragraph 4.5, and Subparagraphs 13.2.1 and 13.2.2, unless removal is waived by the Owner.

- 13.2.4** If the Contractor fails to correct defective or nonconforming Work as provided in Paragraph 4.5 and Subparagraph 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 13.2.5** If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove it and may store the materials or equipment at the expense of the Contractor.
- 13.2.6** If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect/Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor or his Surety shall pay the difference to the Owner.
- 13.2.6** The Contractor shall bear the cost of making good all Work of the Owner or separate Contractors destroyed or damaged by such correction or removal.
- 13.2.7** Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation that the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation

to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.3 Acceptance of Defective or Nonconforming Work

If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum. Such adjustment shall be effected whether or not final payment has been made. Remedy other than contract reduction, such as extended warranty for defective or non-conforming work may be acceptable at the option of the Owner.

ARTICLE 14 - TERMINATION OF THE CONTRACT

14.1 Termination by the Contractor

Should the Work be stopped by any public authority for a period of thirty (30) days or more, through no fault of the Contractor, or should the Work be stopped through act or neglect of the Owner for a period of fifteen (15) days, or should the Owner fail to pay the Contractor any payment within twenty (20) days after it is due, then the Contractor, upon seven (7) days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work actually completed and approved by the Architect/Engineer, and materials purchased and delivered, plus contractual markup thereon representing profit and overhead and reasonable costs of demobilization only.

14.2 Termination by the Owner

14.2.1 Should the Contractor refuse or fail to prosecute the Work or any part thereof properly and diligently and in substantial accord and compliance with the schedule or schedules agreed upon and filed with the Architect/Engineer, or any extension thereof, or if the Contractor should fail or refuse to perform any requirement or provision of the Contract specified to be performed by the Contractor, then and in either event, the Owner, after ten (10) days written notice to the Contractor of the default, may take over the Work, or such a portion thereof as may be in default or arrears, and correct the fault and make good the deficiency and the cost thereof will be deducted

from the Contract Sum and may be withheld from any amount due or that may become due the Contractor from the Owner; or, at the Owner's option, may declare the entire Contract terminated and take possession of all materials, tools, machinery, equipment and appliances on the site of the Work and complete the Work by the Owner's own forces, or in such other manner and means as the Owner may deem necessary or expedient; the Owner to remain accountable to the Contractor only for any excess that may remain between the cost of the Work completed by either such methods and the Contract Sum, the Contractor and his Sureties remaining at all times liable to the Owner for any deficit remaining between the cost of the completion of the Work by either of the methods aforesaid and the Contract Sum; provided that the exercise of any right or option in this Article reserved by or granted to the Owner shall not be prejudiced, estopped, nor shall it bar any right or remedy the Owner may have under the full terms of the Contract. The Contractor or his Sureties shall be liable for the payment of Liquidated Damages that have accrued from the completion date established up to and including the Contractor's right to proceed.

14.2.2 The Contractor may not be assessed Liquidated Damages for any delays due to unforeseeable causes beyond the fault or negligence of the Contractor, including, but not restricted to the Acts of God, acts of Government, acts of the Owner, fires, floods, epidemics, strikes (with which the Contractor has no direct connections) and unusually severe weather. The Contractor shall, within ten (10) days from the beginning of such delay, notify the Architect/Engineer in writing the causes of the delay and the anticipated consequences to the completion of the project and the Owner may, when it is certified by the Architect/Engineer and supported by findings of fact justify an extension and award the Contractor an extension of Contract Time to complete the Work based on excusable noncompensable delay.

14.2.3 The Owner may terminate performance of the Work under this contract or terminate the Contractor in whole or, from time to time, in part if the Owner determines that the termination is in the Owner's best interest. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of the termination and

the effective date. After Notice of Termination, the Contractor shall cease work pursuant to the Notice and not incur any additional cost and submit a final termination accounting to the Owner. The Contractor shall submit the accounting promptly, but no later than thirty (30) days from the effective date of termination, unless extended in writing by the Owner. The Contractor shall receive payment representing the cost of Work done, materials ordered and delivered prior to the issuance of the Notice of Termination plus no more than ten percent (10%) additional for overhead and profit unless costs otherwise include overhead and profit. The Contractor shall not be entitled to any other recovery as a result of the Owner's termination for convenience.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 Owner's Right to Audit

The Contractor agrees that the Owner has the absolute right at reasonable times to perform, at its expense, an audit of the Contractor's financial records.

15.2 No Claim for Attorney Fees or Preparation Costs

The Contractor agrees that under no circumstances shall it make a claim for nor receive any attorney's fees or claims preparation costs from the Owner.

15.3 No Claim for Home Office Overhead

Should for any reason, a court refuse to enforce the no damages for delay clause, the Contractor shall not make a claim nor receive any compensation for home office overhead.

15.4 Owner's Access to Records

The Owner shall have access at any time, or as many times as necessary, to review and obtain copies from the Contractor (at a cost not to exceed \$.10 per copy) of all correspondences, records, logs, diaries, financial information and all documents other than attorney/client privileged materials held or obtained by the Contractor related to this project. If any documents or construction data shall be collected at any site other than the Project site, these locations must be provided to the Owner.

15.5 Contractor's Proof of Cost

The Contractor must provide proof of the costs of any claim by actual discreet accounting methods, recognized by generally accepted accounting principles and no claim shall be permitted based on estimation, average, MEANS, hypothetical formula or the like.

15.6 Contractor waives attorney fees & construction preparation cost.

The Contractor waives any right to seek attorney fees and construction preparation costs from the Owner.

15.7 Methodologies used in computations

The Contractor shall not present nor recover on any claim from the Owner based on any formula(s), hypothetical or statistical methodologies used in damage computation. The Contractor may only recover for damages, which are documented using discreet accounting records, and with pay records that specifically indicate any alleged damage, loss or cost.

END OF SECTION