



Section 00501 Construction Contract

**CONSTRUCTION CONTRACT**

THIS AGREEMENT made and entered into on the **TWO DAYS AFTER BOARD MEETING** day of **MONTH 20\_\_**, (Example, on the 18<sup>th</sup> of July, 2002) by and between **CONTRACTOR'S NAME, ADDRESS, FED ID NO.**, \_\_\_\_\_ hereinafter referred to as the CONTRACTOR and the DUVAL COUNTY PUBLIC SCHOOLS, hereinafter referred to as the OWNER:

WITNESSETH:

That the Contractor, for the consideration fully set out, hereby agrees with the Owner as follows:

A. The Construction Project

The Contractor shall furnish all materials and perform all the work for and in connection with **NAME OF PROJECT, DCSB PROJECT NO., BID REFERENCE NO.**, accepting the base bid **AND ALTERNATES??** in a manner and form provided for by the following enumerated Contract Documents which are attached hereto and are made a part hereof as if fully contained herein:

1. Proposal and all Bid Documents
2. Construction Contract
3. Performance Bond and Statutory Payment Bond
4. General Conditions
5. Supplementary Conditions
6. Special Requirements and Provisions
7. Drawings and Project Manual (Specifications)
8. All Addenda Issued in Connection Therewith
9. Notice of Award
10. Notice to Proceed

B. The Contract Time

The Contractor shall commence the work to be performed under this Agreement on a date to be specified in a written order from the Owner (Notice to Proceed) and shall achieve Substantial Completion (Substantial Completion Date) of all work hereunder within **NUMBER OF DAYS - Spell out and (number)** consecutive calendar days, including holidays and average rain days, from the date identified in the Notice to Proceed. All work and closeout requirements shall be Finally Completed (Final Completion Date) within **NUMBER OF DAYS - Spell out and (number)** consecutive calendar days, including holidays and average rain days, after the date of Substantial Completion. Inasmuch as failure to complete the project within the time fixed in this agreement will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if the project is not substantially completed and finally completed in the time allocated above, the Contractor shall pay to the Owner as liquidated damages, which shall represent the cost for Owner's inconvenience and the extended administrative cost only, the sums stipulated in paragraph D., Liquidated Damages, of this Agreement.

## Section 00501 Construction Contract

These liquidated damages shall be in addition to other actual damages. The Owner shall not be responsible for any costs incurred by the Contractor prior to the issuance of the Notice to Proceed, should the notice be delayed or not issued.

### C. The Contract Amount

For the faithful performance of this Agreement, the Owner hereby agrees to pay the Contractor the sum of **AMOUNT - Spell out and (\$xxx,xxx)** in lawful money of the United States of America, in the manner following:

#### 1. Partial Payments:

Within thirty (30) calendar days of receipt by the Owner of the Contractor's monthly Application for Payment, duly certified and approved by the Architect/Engineer, the Owner shall make partial payments to the Contractor on the basis of the amounts certified and approved estimate made for work performed during the preceding calendar month by the Contractor, less ten percent (10%) of the amount of such estimate which is to be retained by the Owner until all work has been performed strictly in accordance with this agreement. The amount thus withheld may be reduced by the Owner after the Owner and the Architect/Engineer affirm that the project has been substantially completed in accordance with the contract so as to permit use of the facility for its intended purposes without unreasonable inconvenience. The reduction of retainage shall be at the sole discretion of the Owner. The Owner shall not be responsible to the Contractor for any claim or loss that may result from the failure of the Owner to reduce retainage. Upon submission by the Contractor of evidence satisfactory to the Owner that payrolls, material bills and other cost and liability incurred by the Contractor in connection with the construction of the work have been paid in full, or any other documentation requested by the Owner, final payment on account of this agreement shall be made within thirty (30) calendar days after the completion by the Contractor of all work covered by this agreement and the acceptance of such work by the Owner on the issuance of Certificate of Final Inspection by the Office of Facilities Planning and Construction. All applications for payment must contain partial or full release of liens from subcontractors, duly notarized.

#### 2. Schedule of Values

The Contractor shall provide for the Owner and Architect/Engineer's approval, prior to submitting the first Request for Payment, a Schedule of Values setting forth an itemized listing of each major construction area (trade, discipline, etc.) and its respective allocated dollar value. This schedule shall be for the purpose of more accurately determining the aforesaid partial payments.

### D. Liquidated Damages:

The parties hereto mutually agree that time is of the essence and in the event the construction of work is not completed within the time herein specified, it is agreed that from the compensation otherwise payable to the Contractor, the Owner may retain the sum of **Minimum of \$500 or amount based on formula, whichever is greater - Spell out and (\$xxx.xx)** per day for each calendar day thereafter, Sundays and holidays included, that the work remains incomplete. It is also hereby agreed that if the construction of work is not finally completed, without justifiable cause and extension of time by the Owner, within the stipulated time indicated in paragraph B. above for Final Completion, the Contractor then shall pay to the Owner as liquidated damages for such delay, one-half of the rate indicated above. It is further understood and agreed that the aforementioned sum is not a penalty but is the amount stipulated and agreed upon as Liquidated Damages representing cost to the Owner for additional expense of contract administration, and inconvenience only due the Owner as a result of the Contractor's late completion. The assessment of

## Section 00501 Construction Contract

liquidated damages as stated herein shall not preclude the Owner from obtaining actual damages incurred as a result of the Contractor's delay or breach of contract.

E. Revision of Surety Bond:

It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the Surety Bond entered into for its faithful performance and for the payment of all obligations incurred in connection therewith, the Owner shall deem that Surety, or Sureties, upon such Bond to be unsatisfactory, or if, for any reason, such Bond ceases to be adequate to cover the performance of the Work, the Contractor shall, at his expense within five (5) calendar days after the receipt of notice from the Owner to do so, furnish an additional Bond, or Bonds, in such form and amount with Surety, or Sureties, as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Owner. Nothing herein shall be construed to relieve the Contractor to obtain bonding for any addition of approved work.

F. Indemnification:

The Contractor agrees to indemnify and hold harmless the Owner, and his Agents and Employees as set forth herein and to the maximum extent permitted by law, from and against all claims but not limited to damages, losses and expenses, including code upgrades, 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 to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, 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 any contract provision, 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, which would otherwise exist as to the Owner.

In any and all claims against the Owner or any of his agents or employees or by any employee of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this provision 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.

G. Contractor shall provide fully completed daily project reports to the Architect/Engineer by Monday of the following week for the work of the preceding week.

H. Subcontractor: A subcontractor is a person or organization that has a direct contract with the Contractor to perform any of the work at the site. Nothing contained in the Contract Documents shall create any contractual relation between the Owner or Architect/Engineer and any subcontractor.

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, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by these Documents, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar

## Section 00501 Construction Contract

- agreements with his Sub-Subcontractor.
2. The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.
  3. The Contractor shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Contractor.
  4. Upon request, the Contractor shall provide a copy of each subcontract, including the general supplementary conditions, to the Owner.
- I. Sales Tax Exemption: If Owner determines it to be in its best interests, the Contractor may serve as the Owner's agent for the limited purpose of obtaining quotes for materials and to otherwise assist in the procurement of materials that will be purchased directly by the Owner in compliance with §212, *Florida Statutes*. As part of the Contractor's responsibility, he shall administer this procurement process consistent with the following procedures and requirements:
1. A Purchase Order Requisition Form (in a form acceptable to the Owner and Contractor) shall be prepared by the Contractor and submitted to the Owner prior to ordering Owner-purchased materials. The requisition form will provide the name, address, telephone number and contact person for the materials supplier; a list of required items, the quantity needed, the price and sales tax associated with the materials, and delivery dates established by the Contractor.
  2. The Owner will prepare and issue standard Owner Purchase Order Forms to the Vendors. In conjunction with the execution of the Owner's Purchase Orders, the Contractor shall execute and deliver to the Owner, deductive change orders reflecting the full value of all materials directly purchased by the Owner, plus all sales tax savings associated with the materials.
  3. The Contractor will be responsible for all matters relating to the receipt of materials purchased by the Owner including verifying correct quantities and inspection and acceptance of the goods at the time of delivery. Vendors will forward the invoice directly to the Owner for payment.
  4. Title to the Owner-purchased materials will vest in the Owner at the time the materials are delivered to the Owner-owned construction site (F.O.B. job site).
  5. Owner is billed directly by the selling Vendor for purchases of building materials. All discounts are for the account of the Owner.
  6. The Owner makes payment for the building materials directly to the selling vendor.
  7. The reasonable costs of all Payment and Performance Bonds and Owner's Insurance including Builder's Risk Insurance shall be a reimbursable expense to the Contractor by Owner. The Owner is an additional named insured on the Contractor's Builder's Risk Insurance and, in the event of damage or destruction to Owner-purchased materials, the Owner will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction, or as is in the best interests of the Owner.

**Section 00501 Construction Contract**

- 8. Contractor shall be responsible for coordinating the delivery, storage and incorporation of material purchases made by the Owner pursuant to this section. Once the materials are incorporated into the project they become the responsibility of the Contractor. Failure by the Contractor to comply with the tax exemption procedures which results in taxes, fines or damages to the Owner shall be the sole responsibility and liability of the Contractor.
  
- J. Termination Due to Dishonesty: Should the Contractor be determined by the Owner to have misrepresented the utilization of funds or of misappropriation of property belonging to the Owner, the Owner has the right to terminate this contract immediately without recourse and have no further obligations to the Architect/Engineer under this contract. The Owner shall not be responsible for any payments under a termination for cause based on dishonesty.
  
- K.1. The Contractor shall comply with, and be responsible for all costs associated thereto, all Federal, State and Local Laws.
  
- K.2. 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.

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

**NAME OF FIRM**

**WITNESSES:**

**CONTRACTOR:**

BY: \_\_\_\_\_  
(Type name of Witness)

BY: \_\_\_\_\_  
Signature of Authorized Principal  
or Corporate Officer

(Corporate Seal)

\_\_\_\_\_  
Type Name and Title of Individual above

**DUVAL COUNTY PUBLIC SCHOOLS**

**ATTEST:**

**APPROVED:**

BY: \_\_\_\_\_  
Nancy Snyder  
Superintendent

BY: \_\_\_\_\_  
Nancy Broner, Chairman  
Duval County School Board

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Anthony B. Zebouni, Esquire  
Assistant General Counsel  
Office of General Counsel

Section 00501 Construction Contract

End of Section