

	DeKalb County Board of Education Operations Division Sam A. Moss Service Center 1780 Montreal Road Tucker, GA 30084-6705
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Request for Proposals (RFP) No. 23-752-026

for

GENERAL CONTRACTOR SERVICES

Project: Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School HVAC and Controls Replacement

DCSD Project No.: N/A

Owner: DeKalb County Board of Education (the "Board")

Solicitation Timeline Summary (Subject to Change)

EVENT	DATE(S)	TIME	LOCATION
Solicitation Opens	May 18, 2023		http://dekalbschoolsga.ionwave.net
Virtual Mandatory Pre-Proposal Conference	June 1, 2023	11:00 AM	Via TEAMS
Mandatory Site Visits	June 2, 2023	11:00 AM	Various Sites
Final Questions Due	June 7, 2023	2:00 PM	dcsd-op-bidquestion@dekalbschoolsga.org
Final Addendum	June 14, 2023	2:00 PM	http://dekalbschoolsga.ionwave.net
Proposal Due Date & Time	June 22, 2023	2:00 PM	http://dekalbschoolsga.ionwave.net
Public Acknowledgement	June 26, 2023	5:00 PM	http://dekalbschoolsga.ionwave.net
Selection Committee Evaluation	June 26 –30, 2023		
Anticipated Board Review and Approval	August 14, 2023		
Anticipated Notice of Award	August 21, 2023		
Anticipated Notice to Proceed	September 2023		

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Owner's Standard Forms (included with RFP):

Attachment A	General Contractor Checklist and Certification (2 pages)
Attachment B1	Corporate Certificate (1 page)
Attachment B2	Partnership Certificate (1 page)
Attachment B3	Entity Certificate (1 page)
Attachment C1	Subcontractor Listing - Briarlake ES (1 page)
Attachment C2	Subcontractor Listing – Early Learning Center (1 page)
Attachment C3	Subcontractor Listing – Montclair ES (1 page)
Attachment C4	Subcontractor Listing – Tucker MS (1 page)
Attachment D	Offeror's and Individuals' Affidavit of Non-collusion (2 pages)
Attachment E	Conflict of Interest Disclosure Form (2 pages)
Attachment F	Consent to Release Information (1 page)
Attachment G	Vendor Reference Form (1 page)
Attachment H	Bid Bond (1 page)
Attachment I1	Fixed Price for Construction Proposal – Briarlake ES (4 pages)
Attachment I2	Fixed Price for Construction Proposal – Early Learning Center (4 pages)
Attachment I3	Fixed Price for Construction Proposal – Montclair ES (4 pages)
Attachment I4	Fixed Price for Construction Proposal – Tucker MS (4 pages)
Attachment J	Immigration and Security Certification (2 pages)
Attachment K	No Submittal Response Form (1 page)

Owner's Project Specific Information (separate file from RFP)

Appendix A1	Owner's Criteria and Narrative Scope of Work – Briarlake ES (2 pages)
Appendix A2	Owner's Criteria and Narrative Scope of Work – Early Learning Center (2 pages)
Appendix A3	Owner's Criteria and Narrative Scope of Work – Montclair ES (2 pages)
Appendix A4	Owner's Criteria and Narrative Scope of Work – Tucker MS (2 pages)
Appendix B	Special Conditions (5 pages)
Appendix C	Master Project Schedule (1 page)
Appendix D	DeKalb County School District 2022-2023 and 2023-2024 Calendar (2 pages)

Appendix E1	Fixed Price Construction Contract - Briarlake ES (44 pages)
Appendix E2	Fixed Price Construction Contract – Early Learning Center (44 pages)
Appendix E3	Fixed Price Construction Contract – Montclair ES (44 pages)
Appendix E4	Fixed Price Construction Contract – Tucker MS (44 pages)
Appendix F	Subcontractor Affidavit of Non-collusion (1 page)
Appendix G	Performance Bond (3 pages)
Appendix H	Payment Bond (4 pages)
Appendix I	Affidavit for Payment (2 pages)

Plans and Specifications

Available by request: 100% Construction Documents prepared by Epstein Group; Inc. dated March 30, 2023 to
angela_arlene-myrick@dekalbschoolsga.org

I.
ADVERTISEMENT FOR SEALED PROPOSALS
GENERAL CONTRACTOR

Proposals will be received electronically on the DeKalb County School District ("Owner") website at <https://dekalbschoolsga.ionwave.net> until 2:00 p.m. local time on **Thursday, June 22, 2023** for General Contractor services for **RFP No. 23-752-026, Project No. N/A for Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School, HVAC and Controls Replacement**. The Owner shall not consider late proposals.

Scope of Services

To provide General Contractor services for the construction (Site, Bldg. and Systems) of the Owner's Construction Project at Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School as specified per the Proposal Documents.

Request for Proposal ("RFP") documents will be available **Thursday, May 18, 2023**, and may be obtained from the DeKalb County Board of Education website at <https://dekalbschoolsga.ionwave.net>. Plans and Specifications are available electronically in PDF format and can be emailed to prospective Respondents free of charge by submitting a request to angela_arlene-myrick@dekalbschoolsga.org.

VIRTUAL MANDATORY PRE-PROPOSAL CONFERENCE

A **virtual mandatory** Pre-Proposal Conference will be held via TEAMS at **11:00 a.m.** local time on **Thursday, June 1, 2023**. Prospective bidders must provide the following information by **5:00 PM, EST** on **Wednesday, May 31, 2023**:

1. Individual Name and Title
2. Company Name
3. Telephone Number
4. Email Address

This information must be sent to dcsd-op-solicitation@dekalbschoolsga.org. A meeting link will be sent to all those providing the above information no later than **10:30 AM EST** on **Thursday, June 1, 2023**.

There will be a **mandatory site visit** at **11:00 AM EST** on **Friday, June 2, 2023**. **Attendance is mandatory.**

Schedule for Selection (dates are subject to change)

Virtual Mandatory Pre-Proposal Conference*	June 1, 2023 @11:00 am
Mandatory Site Visit	June 2, 2023 @ 11:00 am
Final Questions Due	June 7, 2023 not later than 2:00 pm
Final Addendum Issued (if necessary)	June 14, 2023 not later than 2:00 pm
Proposals Due	June 22, 2023 not later than 2:00 pm
Public Acknowledgement	June 26, 2023 not later than 5:00 pm
Anticipated Board Review and Approval	August 14, 2023

OPEN TO PUBLIC ATTENDANCE

The meeting will be held via TEAMS. Please refer to "Virtual Mandatory Pre-Proposal Conference" for instructions to receive meeting link.

Except as expressly provided in, or permitted by, the Proposal Documents, from the date of issuance of the RFP until final Owner action of approval of contract award, the Contractor submitting a Proposal shall not initiate any communication or discussion concerning the Project, the RFP or the Contractor's Proposal or any part thereof with any employee, agent, or representative of the Owner. Any violation of this restriction may result in the rejection of the Contractor's Proposal.

The Owner reserves the right to reject any or all proposals, and to waive technicalities and informalities.

II. DEFINITIONS

- A.** Proposal Documents means the Advertisement for Proposals, the Instructions to Proposers, the Bid Form, the form of Bid Bond, the form of Subcontractor Listing, the form of Corporate Certificate, the form of Partnership Certificate, the form of Entity Certificate, the form of Offer's and Individuals' Affidavit of Non-collusion, the Form of Fixed Price Construction Contract (with exhibits), the form of Performance Bond, the form of Payment Bond, the Wage Rate Determination (if applicable), the Special Conditions, the Plans and Specifications, all other proposed contract documents, and any Addenda issued prior to Bid opening.
- B.** Definitions contained in the proposed contract documents shall be applicable to the Proposal Documents.
- C.** Addenda are written or graphic instruments issued by the Architect prior to Proposal opening which modify or interpret the Bidding Documents by additions, deletions, clarifications, corrections, or revisions.
- D.** A Proposal is a complete and properly executed proposal to do the Work in accordance with the Contract for the sums stipulated in the Proposal supported by data required by the Proposal Documents, submitted in accordance with the Proposal Documents.
- E.** The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Proposal Documents as the base to which Work may be added, or from which Work may be deleted, for sums stated in the Alternates, if any.
- F.** An Alternate Bid is an amount stated in the Bid to be added to, or deducted from, the amount of the Base Bid if the corresponding change in the Work, as described in the Proposal Documents ("Alternate"), is accepted.
- G.** A Unit Price is an amount stated in the Bid as a price per unit of measurement for specified materials, equipment or services or a portion of the Work as described in the Bidding Documents.
- H.** A Proposer is a person or entity who submits a Proposal.
- I.** A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.
- J.** The Owner for whom the work will be executed is the DeKalb County Board of Education, 1701 Mountain Industrial Boulevard, Stone Mountain, GA 30083.
- K.** The Owner has selected as Architect the Architect listed in the Advertisement for Proposals, who has prepared plans and specifications and who will administer the Contract for construction. If the Owner's design professional for the Project is an engineer rather than an architect, then the term "Architect" as used throughout these Instructions to Proposers shall mean "Engineer".

III. GENERAL CONDITIONS

A. Respondent Performance

The successful Respondent is required to perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of this RFP document and any negotiated contract(s). Failure of the Respondent to fully perform these obligations may result in cancellation of the award and contract.

DCSD will look to the Respondent and his/her identified personnel to coordinate and deliver the services described in this RFP. The obligations of the contract shall not be delegated to subcontractors or assigned to any third party.

B. Non-Discrimination

DCSD does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in any of its employment practices, education programs, services or activities.

DCSD supports an open, fair, and impartial free-market system which maximizes competition and seeks to include all responsible businesses and to provide ample opportunities for business growth and development. Minority businesses are encouraged and given the opportunity to bid on various projects; however, all responses will be evaluated on the same criteria. It is not the intention or desire of DCSD to restrict or impede competition, nor to increase the cost of the work.

C. Drug-Free Workplace

By submission of a response to this RFP, the Respondent certifies that he/she and his/her employees shall not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of controlled substance or drugs during the performance of the contract.

D. Smoke-Free Workplace

By submission of a response to this RFP, the Respondent certifies that he/she and his/her employees shall not use tobacco products on DCSD property at any time during the performance of this contract.

E. Costs Incurred

DCSD is not liable for any costs incurred by a Respondent in preparing and/or submitting a response to this RFP or for any interview if requested. Any and all costs incurred by the Respondent in preparing and/or submitting a response to this RFP and interviewing with DCSD (if requested) shall be the sole responsibility of the Respondent and shall not be reimbursed by DCSD.

F. Insurance

A Certificate of Insurance and/or ACORD form is required with solicitation submittal. Provision of Certificate of Insurance is a mandatory requirement (include with Required Forms). Proposals submitted with certificates of insurance will be considered conditionally responsive to the insurance and indemnification requirement. Final award of this RFP will be contingent upon receipt within five (5) business days of request for insurance documentation complete with the following requirements. In the event the awarded Respondent cannot produce insurance coverage acceptable to the DCSD within the time provided, DCSD reserves the right to award this solicitation to the next highest ranked firm. Please refer to Exhibit "D" of the Contract for required Insurance.

G. Indemnification

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, liens, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses, arising out of or in connection with the Contractor's performance of this Contract and the Work, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The

Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, this indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

H. Interviews

DCSD reserves the right to require Respondents to participate in one or more interviews with DCSD staff. Respondents must be prepared to discuss the salient points of their proposal within three (3) normal working days of being asked to participate in interviews. There are to be no presentations, individually or collectively, without such invitation.

I. Contract Terms

Appendix E is DeKalb County School District's Standard Form of Contract for Fixed Price Construction Services between the DeKalb County Board of Education and the General Contractor; Version 04.2023, which specifically outlines the contractual responsibilities. **All responders should thoroughly review the documents prior to submitting a proposal. Any proposed revisions to the terms or language of these documents must be submitted in writing during the question-and-answer period of the solicitation. All requests must be submitted in writing prior to the close of the final questions.** Requests for revisions will be reviewed and approved or rejected by legal and legal rulings are final. If submitted or proposed thereafter, such proposed revisions to the terms or language of these documents shall not be considered by the Owner and the Service Contractor's Proposal shall be rejected. No alterations can be made in the contract after award by the DeKalb County School District.

J. Permits and Applicable Law

Respondents shall at their own expense obtain all necessary permits, certifications, and licenses and shall comply with all applicable local, state, and federal laws, ordinances, rules, and regulations necessary to fully execute the requirements stated herein. Respondents shall maintain all such permits, licenses, certifications, and compliances in a current status throughout the course of the contract. Respondents shall submit copies of permits, licenses, and certifications evidencing proof of the aforementioned immediately upon request of DCSD. Respondents shall be in compliance with registration with the Georgia Secretary of State's office as applicable.

K. Non-Collusion

Respondents shall fully certify that they, as individuals or as officials of a business entity, have not entered into any agreement, participated in collusion, or otherwise taken any action in restraint of free and competitive responses to this RFP. Further, Respondents guarantee that their response is not made in conjunction with or on behalf of another party and that they have not been directly or indirectly induced in any manner or taken any action to result in a restriction of trade or in an unfair advantage.

L. Conflict of Interest

Respondents shall disclose with their proposal the name of any officer, director, or agent who also is a DCSD employee or DeKalb County Board of Education member. Respondents shall also disclose the name of any DCSD employee or board member who owns, directly or indirectly, an interest in five percent or more in the Respondent's company or any of its branches. Respondents shall certify that their response to this RFP is impartial, at arms-length, and free of any conflict of interest, unfair advantage, or personal benefit to any DCSD official.

M. Confidentiality and Non-Disclosure

Information made available to Respondents by DCSD shall be used only for purposes related to responding to this RFP and shall not be used for any other purpose without the express written permission of DCSD.

Respondents to this RFP unequivocally agree to assume responsibility for protecting and safeguarding the confidentiality of DCSD records that are not public information. Such information may include but is not limited to student and human resource file contents.

N. Business License

Respondents shall submit with their proposal, a copy of their valid company business license. If the Respondent is a Georgia corporation, Respondent shall submit a valid county or city business license. If the Respondent is not a Georgia corporation, Respondent shall submit a certificate of authority to transact business in the state of Georgia and a copy of their valid business license issued by their home jurisdiction. If Respondent holds a professional certification which is licensed by the state of Georgia, Respondent shall submit a copy of their valid professional license. Any license submitted in response to this requirement shall be maintained by the Respondent for the duration of the contract. Provision of a copy of a business license and General Contractor license is a mandatory requirement (include with Required Forms).

O. Rights Reserved

DCSD reserves the right to accept or reject any and/or all parts of responsive proposals received and/or to reject all proposals submitted. DCSD reserves the right to award any resulting contract in the manner that is in the best interest of and most advantageous to DCSD. DCSD reserves the right to waive any technicalities or minor irregularities in responses received and to award the contract in the most beneficial manner for DCSD. The decision of DCSD shall be final.

DCSD reserves the right to request and negotiate a "best and final" response from Respondents.

P. Taxes

Purchases made by DCSD are not subject to federal, state, or local sales tax. A Sales Tax Exemption Certificate will be furnished upon request.

Q. Conditional Proposals

Proposals that are conditional and/or in any way qualify or vary the terms of these instructions, conditions, and specifications shall be considered non-responsive and disqualified.

R. Respondent Failure

In the event services to be furnished by the successful Respondent should for any reason fail to conform to the scope of work contained herein, DCSD reserves the right to reject the services and further reserves the right to terminate the contract.

Failure of the successful Respondent to perform contracted services may also result in the removal of that Respondent from doing business with DCSD for a period of not less than one year.

S. Georgia Open Records Act

Without regard to any designation made by the person or entity making a submission, DeKalb County School District considers all information submitted in response to this invitation or request to be a public record that may be disclosed upon request pursuant to the Georgia Open Records Act, O.C.G.A. 50-18-70 et seq., without consulting or contracting the person or entity making the submission, unless a court order is presented with the submission. You may wish to consult an attorney or obtain legal advice prior to making a submission.

T. No Assignment of Award

The successful Respondent may not assign the award or contract to or subcontract with another party without the express written permission of DCSD.

U. The Laws of the State of Georgia

This RFP and subsequent agreements are subject to the laws of the State of Georgia.

V. Proposal Duration

Proposals submitted in response to this RFP must be valid for a period of ninety (90) days from proposal submission deadline, as indicated by submission of the Fixed Price Proposal Fee Form.

IV. SPECIAL TERMS AND CONDITIONS

Contractor agrees to comply with all requirements of the ESSER and GEER programs and all requirements of the laws establishing and governing the same including, but not limited to, the specific provisions expressly set forth in this Addendum below.

In the event of any conflict between the provisions of this Addendum and the other Contract Documents, the provisions of this Addendum shall take precedence. Except as otherwise specifically set forth in this Addendum, the terms and conditions of the Contract Documents shall remain unmodified.

Article A1 – Additional Contractor Duties and Responsibilities

In addition to the rights, duties and obligations set forth elsewhere in the Contract Documents, Contractor shall have the additional rights, duties, obligations and responsibilities set forth in this Article A1, as follows:

- A1.1** Contractor shall pay all laborers and mechanics employed or working upon the site of the Work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those established for each job classification by the United States Secretary of Labor for the "Building" category in DeKalb County, Georgia, as of the date of the Contract. This determination is currently known as the "GA20230305" rate, as the same may be amended or modified from time to time. (The rate schedules may be obtained by visiting the Department of Labor's website at <http://www.wdol.gov/dba.aspx>.) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and is to be employed on the Work, shall be classified in conformance with the wage determination.
- A1.2** Owner shall, on its own or upon the written request of an authorized representative of the U.S. Department of Labor, be entitled to withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.
- A1.3** Contractor shall maintain all payrolls and basic records relating thereto during the course of the Work and for a period of three (3) years after Final Completion. Such records shall contain the name, address and social security number of each worker, his classification, the hourly rate of wages paid (and fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Contractor shall also maintain all records related to any fringe benefit plan or program during the course of the Work and for a period of three (3) years after Final Completion.
- A1.4** Contractor shall submit to Owner weekly a report containing a copy of all payrolls (including Subcontractor payrolls), which shall set forth the information required by Section A1.3. Each report shall be accompanied by a "Statement of Compliance" signed by Contractor or the Subcontractor (as the case may be) which certifies the following:

 - (a) that the payroll contains the information required by 29 C.F.R. § 5.5(a)(3)(ii), that the information is being maintained in accordance with 29 C.F.R. § 5.5(a)(3)(i) and that all such information is correct and complete;

- (b) that each laborer employed on the Work has been paid the full weekly wages earned, without rebate, and that no deductions have been made except as required by law; and
- (c) that each laborer has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed.

In complying with the reporting and certification requirements provided hereunder, Contractor is encouraged (but is not required) to use U.S. Department of Labor Form WH-347.

Falsification of such information, records or certifications may subject Contractor or Subcontractors to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

Contractor and all Subcontractors shall make all records required hereunder available for inspection, copying or transcription by Owner or the U.S. Department of Labor, and shall permit them to interview employees during working hours.

- A1.5** Contractor and Subcontractors shall be permitted to pay apprentices or trainees at less than the predetermined rate; provided, however, that such apprentices and trainees are employed pursuant to and individually registered in a bona fide apprenticeship or trainee program registered with the U.S. Department of Labor or with a state apprenticeship agency recognized by the U.S. Department of Labor.
- A1.6** Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated into this Contract by reference.
- A1.7** Contractor shall insert all clauses contained in this Article A1 in all subcontracts with Subcontractors.
- A1.8** Upon breach of any of the clauses contained in this Article A1, Owner shall have the right to terminate the Contract "for cause".
- A1.9** Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.* and all regulations promulgated thereunder, which are incorporated into the Contract by reference.
- A1.10** Disputes arising out of the provisions of this Article A1 shall not be subject to the general dispute resolution procedures contained in the Contract Documents but shall be resolved in accordance with the procedures set forth in 29 C.F.R. parts 5-7.
- A1.11** By entering into the Contract, Contractor certifies that neither it nor any person or firm who has an interest in Contractor is ineligible to be awarded contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- A1.12** Contractor and Subcontractors shall keep posted on the Work site, in a prominent and accessible location where it can easily be seen at all times, U.S. Department of Labor poster WH-1321.
- A1.13** Contractor and Subcontractors shall not permit any laborers or mechanics to perform work on the Project in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty (40) hours per week.

In the event of any violation of this Section A1.13, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and subject to liquidated damages to be assessed by the U.S. Department of Labor as set forth in 29 C.F.R. § 5.5(b)(2).

- A1.14** Owner shall on its own or upon the written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract plus any liquidated damages which Contractor or any Subcontractor may be liable for pursuant to 29 C.F.R. § 5.5(b)(2). In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.

V.
INSTRUCTIONS TO PROPOSERS

1. INTRODUCTORY:

To be considered, Proposals must be made in accordance with the following instructions and must be received electronically on the DeKalb County School District website at <https://dekalbschoolsga.ionwave.net> not later than the date and time set forth in the "Advertisement for Sealed Proposals – General Contractor" or any extension thereof made by Addendum.

The Owner reserves the right to reject any or all Proposals and to waive any technicalities and informalities.

2. OWNER:

The Owner for whom the GC Services and the Work will be executed is:

DeKalb County Board of Education
1701 Mountain Industrial Boulevard
Stone Mountain, Georgia 30083

3. ARCHITECT:

The Architect is:

Epsten Group, Inc.
101 Marietta Street NW Suite 2600
Atlanta, Georgia 30303

4. VIRTUAL MANDATORY PRE-PROPOSAL CONFERENCE & SITE VISIT

A **virtual mandatory** Pre-Proposal Conference will be held via **TEAMS** at **11:00 AM** local time on **Thursday, June 1, 2023**. Prospective bidders must provide the following information by **5:00 PM, EST** on **Wednesday, May 31, 2023**:

1. Individual Name and Title
2. Company Name
3. Telephone Number
4. Email Address

This information must be sent to dcsd-op-solicitation@dekalbschoolsga.org. A meeting link will be sent to all those providing the above information no later than **10:30 AM, EST** on **Thursday, June 1, 2023**.

There will be a **mandatory site visit** at **11:00 AM EST** on **Friday, June 2, 2023**. **Attendance is mandatory.**

5. PROPOSALS:

Proposals are to be submitted electronically at <http://www.dekalbschoolsga.ionwave.net>.

The following steps must be completed to successfully submit a proposal electronically:

- Respondents are required to register using the IONWAVE portal and obtain a username and password.
- Respondents will be required to upload all required documents identified under the Response Attachments tab.
- After uploading all required documents, Respondents will need to click "Submit Response" under

the Response Submission tab.

- Once all of the required documents have been successfully uploaded, "Submitted" in green will appear next to Response Status.
- Proposal has not been successfully submitted if you see the following message next to Response Status: **NOT SUBMITTED – To complete your response, you must click 'Submit Response' in the Response Submission tab.**

The GC is fully responsible for timely submission. Proposals received after the set specified time will not be considered by the Owner.

6. DOCUMENTS:

Proposal Documents may be obtained by bona fide GC firms from the DeKalb County School District website at: <http://www.dekalbschoolsga.ionwave.net>.

Plans and Specifications are available electronically in PDF format and can be emailed to prospective Respondents free of charge by submitting a request to angela_arlene-myrick@dekalbschoolsga.org.

GC firms shall use complete sets of Proposal Documents in preparing Proposals. The Owner will not be responsible for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents. The GC firms submitting Proposals are responsible for the review of the Proposal Documents, including without limitation the Owner's Standard Forms and Preliminary Design Information.

In making copies of the Proposal Documents available, the Owner does so only for the purpose of obtaining Proposals for the Project and does not confer a license or grant permission for any other use of the Proposal Documents.

7. RFP ADDENDA:

Addenda, if any, will be posted on the DCSD website and it is the responsibility of all Proposers and Subcontractors to check the website for issued addenda. Addenda will also be e-mailed to all who are known by the issuing office to have attended the Pre-Proposal Conference. Copies of Addenda will be made available for inspection wherever Proposal Documents are on file for that purpose. No Addenda will be issued later than 72 hours prior to the time for Proposal opening, except for Addenda withdrawing the Request for Proposals or Addenda which include a postponement of the date through which Proposals may be submitted. Each GC firm shall ascertain prior to submitting a Proposal that the GC firm has received all Addenda issued, if any, and the GC firm shall acknowledge their receipt in the Proposal. Failure of a GC firm to receive or acknowledge any Addendum shall not relieve the GC firm of any obligation under the Proposal. All Addenda shall become part of the Contract Documents.

8. SCOPE OF WORK:

Scope will consist of the following: The Contractor shall supply materials, labor, tools, plant, supplies, equipment, transportation, superintendence, temporary construction of every nature, and other services and facilities necessary to complete the work listed below, including, but not limited to, incidental work described in the Contract Documents.

Demolition of all HVAC systems equipment.

- Replace backup generator with like.
- Replace mechanical room equipment boiler, chiller, and pumps like-with-like equipment:
 - (a) Air Cooled Chiller
 - (b) Pumps
 - (c) Boiler will be replaced with a modular boiler with equal output of existing.

9. INTERPRETATIONS:

The GC firm shall carefully study and compare the Proposal Documents with each other, and with other work being bid or offered concurrently or presently under construction to the extent that it relates to the GC Services for which the Proposal is submitted, shall examine the site of the Project and the local conditions, and shall at once report to the Owner any errors, inconsistencies, or ambiguities in the Proposal Documents. If a GC is in doubt as to the meaning of any part of the Proposal Documents, or otherwise has questions or requires clarification or interpretation of the Proposal Documents, he or she shall request an interpretation from the Owner. Requests for such interpretations shall be made in writing addressed to Mr. Erick Hofstetter, Chief Operating Officer, Sam A. Moss Service Center, 1780 Montreal Road, Tucker, Georgia 30084, email: erick_hofstetter@dekalbschoolsga.org, not later than six (6) business days prior to the time for receiving Proposals, and failure of the successful GC to request such interpretation shall not relieve him or her as a GC of the obligation to execute the GC Services in accordance with a later interpretation by the Owner, without additional charge to the Owner. Interpretations, corrections, and changes of the Proposal Documents will be made by Addendum. No oral interpretations will be made to GC as to the meaning of Proposal Documents. Any purported interpretations, corrections and changes of the Proposal Document made in any manner other than Addendum will not be binding, and GC shall not rely upon them. Any communication, or attempted communication, by a GC or its agents concerning this Request for Proposals by any means or method other than that provided for in this Request for Proposals shall be inappropriate. In the event of such inappropriate communication, or attempted communication, the Owner shall have the right to reject such offending Offeror's Proposal.

10. SUBSTITUTIONS

Unless otherwise indicated in the Proposal Documents, the materials, products and equipment described in the Proposal Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of the Proposals unless written request for approval has been received by the Owner no later than **June 7, 2023 by 2:00 PM EST**. All substitution requests shall be sent to dcsd-op-bidquestion@dekalbschoolsga.org. Such requests shall include the name of the specified product, material or equipment, and the specification section or other reference to the Proposal Documents as appropriate. The request shall provide a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. The request for approval shall explain fully the difference, if any, between the proposed product and the one or more named in the specifications, including difference in cost. A statement setting forth changes in other materials, equipment or other portions of the Work including changes in the work of other contracts that incorporation of the proposed substitution would require shall be included in the request. The burden of proof of the merit of the proposed substitution is upon the proposer. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

If the Owner approves a proposed substitution prior to the date for receipt of Proposals, such approval will be set forth in an Addendum. GC firms shall not rely upon approvals made in any other manner.

No substitutions will be considered after the Contract award unless specifically provided in the Contract Documents.

11. WITHDRAWAL OF PROPOSALS:

Except as may be otherwise expressly provided by law, a GC's Proposal cannot be withdrawn after it has been electronically submitted at <http://www.dekalbschoolsga.ionwave.net>, for a period of ninety (90) calendar days after the date fixed for receiving said Proposals, and all Proposals are subject to acceptance by the Owner during said period, and each Offeror so agrees by submitting a Proposal.

12. BACKGROUND CHECKS:

A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers and vendors (hereinafter jointly referred to as "Individuals") who provide services on DCSD premises, supervise services on DCSD premises, or has contact with students. These Individuals shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Individual at a cost of \$45.00 per individual. Additionally, any charges against the Individual may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the Individual have no contact with DCSD students, parents, or provide services to DCSD premises. Any failure of the contractor to obtain a criminal records background check through DCSD, as stated herein, may result in termination of any resulting contract between contractor and DCSD.

13. IRREGULARITIES:

The Owner, at its sole option, may accept or reject Proposals that contain irregularities of any kind, or Proposals that do not comply fully with the Proposal Documents.

14. CONTRACT AWARD:

Subject to the Owner's right to reject any or all Proposals, it is the intent of the Owner to award a contract, at the sole option of the Owner, in due course and after a reasonable Proposal evaluation period, on a fixed price basis and within the funds available, to the responsible and responsive GC whose Proposal is determined to be the most advantageous to the Owner, provided that the Proposal otherwise fulfills the requirements of the Proposal Documents. **The Owner shall have the right to waive informalities or irregularities in a Proposal received and to accept the Proposal that, in the Owner's judgment, is in the Owner's best interest.** Proposals will be evaluated on a combination of factors. These factors, and their relative importance, are:

1. Proposed Project Staff	15 Points
Resumes of key staff assigned to Project	10
Location of Office	2
Organizational Chart as it relates to Project	3
2. Project Approach	20 Points
Knowledge of working on active campuses/codes/ordinances	5
Approach	5
Schedule	5
QA/QC	5
3. Successful Building Experience	15 Points
4. Current Workload	15 Points
5. Proposed Fixed Price	35 Points
*Equitable Distribution	15 Points(maximum)

NOTE: All information identified above in items #1 – 5 is required for this Proposal to be considered.

*The chart included in Section VI. Instructions for Submitting Proposals will be used to award a maximum of 15 points based on dollar amount of projects currently under contract, as well as those awarded by DCSD, but not yet under contract and those recommended but not yet awarded. This single score will be allocated to each firm by the Selection Process Facilitator and added to the cumulative score of the committee members.

Upon approval of the General Contractor (GC) by the DeKalb County Board of Education, the District will issue a Notice of Award (NOA) in writing, to the GC. The selected GC shall submit all required documentation, payment and performance bonds on the exact forms provided by the Owner in the RFP, insurance certifications, executed contract, etc. within five (5) days of NOA issuance. The GC shall submit the Builder's Risk policy required by the RFP and contract. The Contractual Schedule included in the RFP and in the contract will be reduced by any days that exceed the total of five (5) business days identified in Section 12.0. Notice to Proceed (NTP) with the final executed contract and a revised schedule, if appropriate, shall be issued to the GC upon receipt of all documents.

After evaluation of the Proposals received in response to the RFP, DeKalb County School District **may** interview two or more proposers deemed fully qualified, responsive, responsible, and suitable on the basis of initial responses, and with professional competence to provide the required services. **DCSD is under no obligation to perform interviews for this RFP.**

At the conclusion of the interviews, if they are held, and based on evaluation factors set forth in Section III and the information provided and developed in the selection process to this point, DeKalb County School District Selection Committee shall rank, in the order of preference and begin negotiations with the firm whose proposal is determined to be most advantageous to the Owner. If a contract satisfactory and advantageous to DeKalb County School District cannot be negotiated, then the Owner reserves the right to automatically, without notification, terminate such negotiations and enter negotiations with the second most qualified firm. Failing accord with the second most qualified firm, DCSD shall terminate negotiations and enter negotiations with the third most qualified firm. Should DCSD be unable to negotiate a contract at a fair and reasonable price with any of the top three selected firms, the selection committee shall select additional firms in order of their rankings, and DCSD shall continue negotiations until an agreement is reached.

15. GC'S QUALIFICATIONS:

The Owner, before Contract award, will require GC to document that they are "responsible" to the satisfaction of the Owner. They will thus be required to show that they have the necessary facilities, technical ability, licenses, and financial resources to execute the Services and the Work in a satisfactory manner, and within the time specified; that they have had experience in the Services and Work of a similar nature; and that they have past history and references which will verify their qualifications for executing the Services and the Work. The Owner shall have the right to make such additional inquiry as it deems necessary to determine the ability of the GC to perform the Services and the Work in a prompt and efficient manner in accordance with the Contract Documents. The failure of a GC to promptly supply information in connection with the Owner's inquiry shall be grounds for a determination that such GC is not responsive, not responsible, or both. In determining the qualifications and responsibility of the GC, the Owner may take into consideration any and all relevant facts and circumstances available to it including, but not limited to, the GC's experience, capacity, facilities, previous work standing with DCSD, financial standing, skill, available supervisory personnel, available labor, current volume of work being performed for DCSD at the time of this procurement process, quality and efficiency of construction plant and equipment proposed to be utilized on the Project. The Owner shall have the right to reject the Proposal of any GC failing to show to the satisfaction of the Owner the GC could perform the Services and the Work in a prompt and efficient manner in accordance with the Contract Documents. GCs may be afforded an opportunity for discussion, negotiation, and revision of Proposals for the purpose of obtaining best and final offers. In the event the Owner deems it necessary or appropriate, responsible GCs found by the Owner to have submitted Proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations and revisions.

The successful GC will also be required to submit appropriate entity and authority certificates acceptable to Owner as a part of this RFP.

16. OWNER'S CONSTRUCTION MANAGEMENT CONTRACT FORM:

Included and made a part of this RFP is the Owner's Standard Form of Fixed Price Construction Contract (the "Agreement" or the "Contract"). GCs are responsible for the review of this document in the preparation of their Proposals. The successful GC shall comply with all insurance requirements set forth in the Agreement and any other Contract Documents, and the GC's attention is directed to the insurance exhibit to the Agreement. These insurance requirements shall be considered in the preparation of the GC's Proposal.

17. COMMENCEMENT, PROSECUTION, AND COMPLETION:

The GC will be required to commence its services under the Owner's form of Agreement immediately after its receipt of a written Notice-to-Proceed from the Owner and to prosecute the effort with competence, faithfulness and energy.

18. BID BOND:

The GC's Proposal shall be accompanied by a Bid Bond in the exact form set forth herein. The Bid Bond shall be in an amount not less than 5% of the Fixed Price Proposal. **The amount stated in the Bid Bond shall be included as an exact dollar figure written in numeric and word form. Failure to do so shall result in your proposal being deemed non-responsive. A Bid Bond submitted using an AIA document is unacceptable and shall result in your proposal being deemed non-responsive.** The attorney-in-fact who executes the Bid Bond on behalf of the surety shall affix to the Bid Bond a certified and current power of attorney. The surety must be satisfactory to the Owner and must be licensed to do business in Georgia as approved by the State Insurance Commissioner's Office. No other form of bid security will be accepted. The Owner shall have the right to retain the Bid Bond of all GCs until either (a) the Agreement has been executed and a satisfactory Payment Bond and Performance Bond have been furnished, or (b) ninety (90) days after Proposal opening, or (c) all Proposals have been rejected. Except as otherwise expressly allowed by law, no Proposal may be withdrawn for a period of ninety (90) days following the closing time and date for receipt of Proposals, and all Proposals are subject to acceptance by the Owner during said period, and each GC so agrees by submitting a Proposal.

19. AFFIDAVIT:

As a part of the response to this RFP, the GC shall submit with its proposal an affidavit in the form of the Offeror's and Individuals' Affidavit of Non-collusion included in the Proposal Documents as Attachment D. If the proposing GC is a partnership, all of the partners and any officer, agent, or other person who intend to represent or act for them in proposing for or procuring the Contract for the Project shall also sign the affidavit. If the proposing GC is a corporation or other entity, all officers, agents, or other persons who intend to act for or represent the corporation or other entity in proposing for or procuring the Contract for the Project shall also sign the affidavit.

The Subcontractor's Affidavit of Non-collusion is included with the Proposal Documents as Appendix F. Not later than simultaneously with the execution of the Contract, the successful Offeror shall deliver to the Owner the completed and executed Subcontractor's Affidavit of Non-collusion in accordance with O.C.G.A. § 36-91-21(e). The GC awarded the contract shall require every Subcontractor from whom the GC received a bid or proposal to complete and sign the Subcontractor's Affidavit of Non-collusion.

20. CONFLICT OF INTEREST:

If any officer, director, or agent of the GC is also an employee of the DeKalb County Board of Education, then the GC shall clearly identify it in your Proposal including the name of the individuals(s) and the position he or she holds in the organization. Further, the GC shall disclose the name(s) of any DeKalb County Board of Education employee(s) who owns, directly or indirectly, any interest in your organization or any of its affiliates, excluding stock in a publicly traded organization if such person owns an interest of ten percent (10%) or less. The GC shall complete and have notarized a Conflict of Interest Form and include it in the Proposal.

21. EXISTING CONDITIONS:

The GC is responsible to visit, examine and inspect the site of the proposed Project, obtain first-hand knowledge of existing conditions, the conformation of the ground, the character, quality and quantity of the products needed preliminary to and during the prosecution of the Work, the general and local conditions and all other matters which can in any way affect the Services or the Work to be done under the Agreement, and become thoroughly familiar with all conditions under which the Work is to be performed and correlate all the GC's observations and any other facts or conditions that are known to or reasonably knowable by the GC with the requirements of the Proposal Documents, including the proposed Contract Documents.

22. SUBSURFACE INVESTIGATIONS:

If soil and subsurface investigations were conducted at the site of the proposed Project, a copy of the report is included in this RFP as an Appendix. Such information is provided for the purpose of disclosure only, and shall not relieve the GC from its obligation to investigate the soil and subsurface conditions. The Owner does not guarantee the accuracy or completeness of the data and shall not be responsible therefore. The GC shall not rely on such subsurface information and shall make its own investigation of subsurface conditions. The Owner will not be responsible in any way for additional compensation because of the reliance on or assumptions based on the soil investigation data furnished with the Proposal Documents.

23. CONSENT TO RELEASE INFORMATION:

By submitting a Proposal, the GC (and in the case of a joint venture, each partner in the joint venture) authorizes the Owner, and the Owner's agents, attorneys and other representatives, to contact each and every reference, person or entity identified in the Proposal. The GC (and in the case of a joint venture, each partner in the joint venture) agrees that any information concerning the GC (and in the case of a joint venture, each partner in the joint venture) in possession of any identified reference, person or entity may be fully disclosed, and made available, to the Owner and its agents, attorneys and other representatives. The enclosed Consent to Release Information must be executed by the GC (and in the case of a joint venture, by each partner in the joint venture) and submitted to the Owner with the Proposal.

24. COMMUNICATIONS WITH DCSD STAFF:

It is intended that this proposal be adequate for any vendor to respond to the DeKalb County School District requirements. However, should proposers have questions, all questions should be submitted electronically via email to the Procurement Manager at dcscd-op-bidquestion@dekalbschoolsga.org. **Questions submitted to any other email address will not be considered.** The deadline for receipt of vendor questions is **Wednesday, June 7, 2023 at 2:00 p.m.** Questions received after the deadline time will not be considered. Questions received by the deadline time will be answered in writing and posted to the website <http://www.dekalbschoolsga.ionwave.net> no later than **Wednesday, June 14, 2023 at 2:00 p.m.**

No response other than written by the Procurement Manager, will be binding upon DCSD.

The assigned contact persons for this RFP are Belinda Quillet, Procurement Manager and Angela Arlene-Myrick, Procurement Specialist. Mrs. Quillet can be reached at (678) 676-1373 or by email at dcscd-op-bidquestion@dekalbschoolsga.org. Ms. Myrick can be reached at (678) 676-1554 or by email at angela_arlene-myrick@dekalbschoolsga.org. Prospective Respondents must limit their contact regarding this RFP to the assigned contact persons.

Except with the consent of the proposal contact person, all proposers, including any persons affiliated with or in any way related to proposers, are strictly prohibited for contacting DeKalb County School District on any matter having to do in any respect with this RFP, other than as provided herein. Any and all contacts with such persons associated with DeKalb County School District shall be in writing, in appropriate circumstances or cases, as directed by the contact person above. Except as expressly provided in, or permitted by, the RFP documents, for the date of issuance of the Request for Proposals until final DeKalb County Board of Education action of approval of contract award, the proposer submitting a bid shall not initiate any communication or discussion concerning this procurement with any employee, agent, representative or member of the Board of Education for DeKalb County School District. Any violation of this restriction may result in the rejection of the proposal response.

Except as expressly provided in, or permitted by, the Proposal Documents, from the date of issuance of the RFP until final Board action of approval of contract award, the Contractor submitting a Proposal shall not initiate any communication or discussion concerning the Project, the RFP or the Contractor's Proposal or any part thereof with any employee, agent, or representative of the Board or Architect. Any violation of this restriction may result in the rejection of the Contractor's Proposal.

VI.**INSTRUCTIONS FOR SUBMITTING PROPOSALS****A. SUBMISSION OF PROPOSALS:**

Electronic proposals shall be submitted to the website <https://dekalbschoolsga.ionwave.net> and include the following:

- 1) Letter of Introduction - To be included with Technical Proposal under "Response Attachments".
- 2) Table of Contents - To be included with Technical Proposal under "Response Attachments".
- 3) Compliance - To be included with Technical Proposal under "Response Attachments".
- 4) Proposed Project Staff - To be included with Technical Proposal under "Response Attachments".
- 5) Project Approach - To be included with Technical Proposal under "Response Attachments".
- 6) Experience - To be included with Technical Proposal under "Response Attachments".
- 7) Current Workload - To be included with Technical Proposal under "Response Attachments".
- 8) Fixed Price Proposal - To be uploaded individually under "Response Attachments".

B. The Offeror's sealed proposal shall be submitted in the following order and format:

1. Letter of introduction and interest signed by an officer or partner of responding firm. Letter shall include specific reason(s) why firm would be the best choice for the services listed. Letter shall include name of entity submitting, contact name, phone number, e-mail address, fax number and address of firm submitting.

2. Table of Contents**3. Compliance Information**

This is a compliance section and carries no evaluation points. Firms must meet minimum criteria as specified to receive further consideration. Proposals shall include the following:

- 3.1 The GC must be properly certified by the Georgia Secretary of State to do business in Georgia at the time of submission.
 - 3.1.1 State the legal name of entity submitting and if Firm submitting is a corporation, joint venture, or partnership. Note: It is understood that if selected for this project the stated entity name will be used in all legal contracting documents derived from this selection.
 - 3.1.2 Provide a copy of certification for proper incorporation or registration from Georgia Secretary of State. In the alternative, joint ventures and partnerships should provide a copy of their joint venture or partnership agreement and certification from

the Georgia Secretary of State establishing that each joint venture partner or partner is authorized to do business in Georgia.

3.2 The GC must be properly registered, licensed, and certified at the time of submission:

3.2.1 Provide copy of current Georgia Professional Registration Certificate for general contractor.

3.2.2 If GC is a joint venture, provide copy of the joint venture agreement and either:

- a. Copy of current Georgia Professional Registration Certificate of the joint venture; or
- b. A copy of the current Georgia Professional Registration Certificate of one of the joint venture partners.

3.3 Financial Information (Y/N):

3.3.1 The Firm's financial capability is to be expressed in the financial statement (audited financial information current within the past twelve months, such as a balance sheet and statement of operations) and should indicate the resources and the necessary working capital to assure financial stability through the completion of the projects. A certified audit is preferred; however, the Firm's most recent tax return and balance sheet will be accepted.

3.3.2 Bonding Capacity: The GC must submit a letter from their insurer or surety stating their current bonding capacity for a single job and their aggregate capacity, current value of work under contract and current value of bonded work. (The firm will be required to bond 100% of the cost of the Project).

3.3.3 Compliance Letter: Provide a compliance letter from a bonding company indicating the bonding company's A.M. Best financial rating and whether the bonding company will provide separate Payment and Performance Bonds, each in the amount of 100% of the Contract Price, on the exact forms provided by the Owner for your services as GC. **Upon award, GC must submit Payment and Performance Bonds on the exact forms provided by the Owner.**

3.4. Litigation/Capacity/Convictions Information (Y/N):

3.4.1 Identify and briefly discuss any instances in the past five (5) years where your contract was terminated, with or without cause. Provide Owner name, project name and Owner Project Representative Name and Number. For joint ventures responding to this RFP, provide the above information as it pertains to the joint venture and for each partner or entity creating said joint venture. If there is no failure or failures to complete a contract, please include a statement that the Firm has never failed to complete a contract or contracts or have defaulted or have been declared in default on any contract.

3.4.2 Capacity: Based on your current workforce and staffing in addition to the number of projects your firm currently has under contract or in negotiation, please demonstrate your firm's capacity to complete this project. Describe any claims, mediation, litigation, arbitration or other form of dispute resolution filed by or against your company regarding K-12 projects (and, in the case of a joint venture, by or against any partner in the joint venture) in the past five (5) years, including case name, number, location of court or arbitration. This list shall also disclose

any failure or failures to complete a contract, or contracts, and any instances of having defaulted or having been declared to be in default, on any contract(s).

- 3.4.3 Convictions:** Include a statement as to whether or not the GC (and in the case of a joint venture, each of the partners in the joint venture) or any of its officers has been convicted or entered a guilty plea (or plea of nolo contendere) in any court within the two (2) years prior to the date of application of a violation of any State or Federal statute concerning competitive bidding or competitive proposals or the restraint of trade.

EVALUATION CRITERIA

4. Proposed Project Staff (15 points):

The quality, experience and quantity of staff and their functions will be evaluated by the Committee.

The firm shall name the actual key personnel to be assigned to this Project, describe their ability and experience, and indicate the function of each within their organization and their proposed role on this Project. It is the intent that the proposed staff shall be assigned to this Project unless otherwise approved by Owner. All proposed key staff members must be present at the time of interview unless prior written approval is received from the Owner.

- 4.1** Give brief resumes of key personnel (project manager, superintendent, and controls specialist at a minimum) to be assigned to the Project including, but not limited to, the following:
- a.** Name and title.
 - b.** Job assignment for other projects.
 - c.** How many years with this firm. For sub-consultants, list prior projects your firm has worked with sub-consultant.
 - d.** How many years with other firms.
 - e.** Experience including types of projects, size of projects (dollar value and square footage of project), and specific project involvement.
 - f.** Education.
 - g.** Active registrations (if any).
 - h.** Proliance experience (if any).
- 4.2** Provide the location of the office(s) that will be providing the required services.
- 4.3** Organization Chart: Develop an organization chart as it relates to **this Project** indicating key personnel and their relationship.

5. Project Approach (20 points):

- 5.1** The firm shall provide information regarding its knowledge of working on active school campuses, local codes and ordinances, local subcontractors and suppliers as an indication of its ability to deliver quality workmanship in an effective and timely manner.
- 5.2** The firm shall demonstrate verbally and graphically its plan for performing the Project, documenting the services to be provided and showing the interrelationships of all parties, including the District's consultants, departments (IT, FF&E, Transportation, Nutrition, etc.) local authorities, architects, and Program Manager, to name a few. As part of its services,

the firm shall indicate knowledge and experience in the evaluation of building systems, construction techniques, and the recommendation of materials to create the optimum value in meeting the design and budget requirements.

5.3 Schedule: The Project Master Schedule has been included in this RFP identifying the start and finish dates for construction. Use the dates shown and develop a Preliminary Schedule that you plan on using to construct this project.

5.4 QA/QC: Describe your experience and technical expertise your firm will employ with regard to safety, cost and quality assurance and quality control.

6. Successful Building Experience (15 points)

Please list past experience, including examples of renovations, refurbishments, repairs and new construction projects completed by the firm. Consideration will be given to the successful completion of previous projects comparable in design, scope and complexity. This will include evaluating the firm's performance and quality of work on previous projects.

List the projects which best illustrate the experience of the firm which utilized the current staff which is being assigned to this Project. (List no more than 10 projects and do not list projects which were not completed by your firm or completed more than ten years ago). Include the following for each project:

- a. Name and location of the project.
- b. Project owner's representative name, address, telephone and facsimile number.
- c. Project user's representative name, address and telephone number.
- d. Date project was completed. Provide comparison of original schedule completion to actual completion date.
- e. Size of project (construction gross square feet).
- f. Cost of project (construction cost). Provide comparison of original contract amount with final contract amount
- g. Work for which firm and firm's staff was responsible.
- h. Firm's project manager, superintendent, and other key professionals involved on the project and who of that staff would be assigned to the Project covered by this RFP.

7. Current Workload (15 points)

7.1 As part of the evaluation criteria, the Committee will review the firms and their sub-consultant's current workload. If the submitting firm is a joint venture, the Committee will review the current workload of each of the firms comprising the submitting entity.

7.2 Firms and their sub-consultant(s) shall provide a list of projects in construction or closeout, client names, percent complete on the project, anticipated completion date, and dollars committed on open project workload. Furthermore, if the submitting firm is a joint venture, they shall also include projects for each firm comprising the joint venture.

7.3 Definition of sub-consultant as it relates to this selection process: An individual and/or firm contracted or to be contracted by the submitting entity to provide services related to or part of those which this will be required as part of this selection process.

8. Proposed Fixed Price (35 points) (Use Owner's "Bid Form" included in this Request for Proposal.)

8.1 Indicate your proposed Fixed Price for the Services and Work as required by the

Proposal Documents and the Owner's Agreement. Provide this Fixed Price on the "Bid Form" attached to this RFP.

- a. Indicate any breakdown of the proposed Fixed Price required by the attached "Bid Form."
- b. Indicate any alternates to the proposed Fixed Price required by the attached "Bid Form."
- c. Acknowledge receipt of addendum, if any.
- d. All blanks shall be filled in and shall be filled in by typewriter or manually and legibly in ink. Where so indicated on the Owner's forms, amounts and sums shall be expressed in both words and numerals, and in case of a discrepancy between the two, the amount of sum written in words shall govern. Interlineations, alterations, and erasures must be initialed by the signer of the Proposal.

- 8.2 The "Bid Form" provided by the District provides a space at the bottom of the first page for Contractors to add or deduct from their Base Bid at any time up to the official submittal date and time. This space is identified as "Voluntary Deduct/ Add to the Base Bid." The deduct/add amount cannot exceed 25% of the Base Bid; if it does, the Bidder will be disqualified from the procurement.

9. Equitable Distribution (Maximum 15 points):

- 9.1 In an effort to consider the equitable distribution of work, the Selection Process Facilitator shall evaluate data showing dollar amounts of contracts and projects awarded by DCSD to the submitting firm(s). The dollar amount of projects awarded will reflect the estimated construction value listed on the RFP awarded to each firm. The projects taken into account in the calculation will be those awarded by DCSD within two years from this RFP bid opening. For those projects already under contract, the awarded amount will be replaced by the GMP and/or Bid amount(s) contracted, not including change orders. For projects recommended but not yet awarded, the contract value will reflect the estimated fee based on the budget listed within the RFP for which the firm was selected. In the case of submittals received by joint ventures, the projects awarded to each of the firms comprising the joint venture will be included in the calculation of the projects awarded by DCSD. Furthermore, this calculation will include all projects awarded to the submitting firm, either as a joint venture or as a separate entity, whereby the submitting firm(s) was one of the entities included in the award and/or contract.
- 9.2 The chart below will be used to award a maximum of 15 points based on dollar amount of projects currently under contract, as well as those awarded by DCSD, but not yet under contract and those recommended but not yet awarded. This single score will be allocated to each firm by the Selection Process Facilitator and added to the cumulative score the committee members.

Contract Value Awarded/ Recommended by DCSD	Point Value
0 to \$5,000,000	15 points
\$5,000,001 to \$10,000,000	13 points
\$10,000,001 to \$20,000,000	11 points
\$20,000,001 to \$30,000,000	9 points
\$30,000,001 to \$50,000,000	7 points
Greater than \$50,000,000	0 points

THE INFORMATION FOR THE FOLLOWING TWO SECTIONS IS NOT TO BE INCLUDED WITH THE TECHNICAL PROPOSAL.

C. INTERVIEWS AND PRESENTATION

After evaluation of the Proposals received in response to the RFP, DeKalb County School District may interview two or more proposers deemed fully qualified, responsive, responsible, and suitable on the basis of initial responses, and with professional competence to provide the required services.

At the time of its scheduled interview, each short-listed firm shall provide additional information about its firm and operations as may be required by DCSD. This additional information shall include, but is not limited to, the following:

1. Overall Approach, Methodology and Knowledge of the Site (35 points)

- 1.1. The firm shall provide information regarding its knowledge of working on active school campuses, local codes and ordinances as an indication of its ability to deliver quality workmanship in an effective and timely manner.
- 1.2. The firm shall demonstrate verbally its plan for performing the services outlined in the RFP, documenting the services to be provided and showing the interrelationship of all parties.

2. Project Team (10 points)

- 2.1. The firm shall express the general and specific project related experience and capability of in-house staff and sub-consultants and their functions as it relates to the project.
- 2.2. The firm shall develop an organization chart as it relates to the Project indicating key personnel and their relationship. **It shall be understood that it is the intent of the District to insist that the staff presented at the time of the interview as those key personnel indicated as the project team in the RFP actually executes the Project.**

3. Project Scheduling (25 points)

As part of the project approach, the firm shall propose a schedule for effectively managing and executing the work in the optimum time. Provide a schedule and describe any major milestones for achieving the schedule and any other recommendations that may directly impact the schedule.

4. Cost Control/Value Engineering (25 points)

- 4.1. Describe how you develop cost estimates, and how they are updated, providing specific examples of successful recommendations implemented and cost containment strategies utilized to maintain project budgets without sacrificing quality.
- 4.2. The firm shall provide a comparison of any representative current projects demonstrating their ability to hold to original budgets.
- 4.3. The firm shall provide suggestions for potential savings to the project that will maintain the design intent and still maintain exceptional quality.

5. References (5 points)

The GC must demonstrate a positive relationship with prior clients on similar projects.

- 5.1. The GC shall submit written recommendations from previous owners and discuss their strategy to provide a positive working relationship with DCSD. This strategy must include actual examples of how the GC has demonstrated their cooperation with other Owners. DCSD reserves the option of contacting any of the references provided to confirm information provided.
- 5.2. If applicable, DCSD staff will provide input on a firm's past work performance, this information includes but is not limited to the number of warranty requests and responsiveness, contract and process compliance, and information from the DCSD contractor evaluation process if available.

VII.

QUALIFICATIONS FOR SELECTION AND THE SELECTION PROCESS

A. QUALIFICATIONS FOR SELECTION OF GENERAL CONTRACTOR

The evaluation of the Proposals will be based upon consideration of the demonstrated qualifications and capabilities of the GC based on the identified evaluation factors and their relative weight, which will result in an award that is in the best interest of the DeKalb County Board of Education.

B. SELECTION PROCESS

A Selection Committee will perform Proposal evaluations and, following completion of the evaluations and subject to the Owner's right to reject any or all Proposals, the responsible and responsive GC whose Proposal is determined to be the most advantageous to the Owner will be selected to perform the GC Services and Work for the Chapel Hill Middle School Roof, HVAC and Controls Replacement. The evaluation factors that will be employed, and their relative importance, are identified at Part IV, Section 14, above.

Offerors may be afforded an opportunity for discussion, negotiation and revision of Proposals for the purpose of obtaining best and final offers. In the event the Owner deems it necessary or appropriate, responsible Offerors found by the Owner to have submitted Proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations and revisions.

The Owner reserves the right to reject any or all Proposals, before or after opening, for any reason whatsoever including, but not limited to, any failure of any Proposal to be accompanied by a proper Bid Bond or by other data required by the Proposal Documents, any incompleteness or irregularity of any Proposal received, any evidence of collusion with the intent to defraud or other illegal practices on the part of the GC, failure to comply with the requirements of the Proposal Documents, or exceeding the funds available. The Owner also reserves the right to waive any technicalities or informalities, and to award the Contract in the best interests of the Owner.

VIII. PROTEST PROCESS

This section describes the mandatory administrative procedure whereby Offerors submitting sealed competitive bids/proposals (hereinafter referred to as "bidders") to DCSD directly related to design and construction, for proposals worth \$100,000 or more may challenge the solicitation process, and whereby bidders/Offerors on sealed competitive bids directly related to Facilities Management for proposals worth \$100,000 or more, may challenge contract awards.

1. **Protests.** A bidder may file a written protest challenging DCSD's compliance with applicable procurement procedures subject to the bidder's compliance with the provisions outlined below. Any such written protest will be resolved in accordance with these provisions.
2. **Types of Challenges.** Any bidder interested in and capable of responding to a competitive solicitation may file a protest with respect to the competitive solicitation process including, but not limited to, a challenge to specifications or any events or facts arising during the solicitation process. Any bidder submitting a timely bid/proposal in response to a competitive solicitation may file a protest with respect to DCSD's intended or actual contract award including, but not limited to, events or facts arising during the evaluation and/or negotiation process.
3. **Form of protest.** At a minimum, the written protest must include the following:
 - a. the name and address of the protestor;
 - b. appropriate identification of the solicitation;
 - c. a statement of reasons for the protest;
 - d. supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time (in which case the Offeror must proceed to file the protest during the filing period identified below but state the expected availability of the material); and
 - e. the desired remedy.

DCSD, at its discretion, may deem issues not raised in the initial protest as waived with prejudice by the protesting Offeror.

4. **Filing Protests.** A protest is considered to be properly filed when it is in writing, signed by a company officer authorized to sign contracts on behalf of the Offeror, and is received by the Design and Construction Department. The protest may be sent by any of the following means:

MAIL: Attention:

**Mr. Erick Hofstetter
Chief Operating Officer
DeKalb County School District
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084**

EMAIL:

dcsd-op-solicitation@dekalbschoolsga.org

The Offeror must observe the following deadlines when filing a protest:

Type of Protest	Protest Filing Deadline
Challenge to Competitive Solicitation Process	Two (2) business days prior to the closing date and time of the solicitation as identified on the Invitation to Bid.
Challenge to an Intended or Actual Contract Award	In the event DCSD posts a Notice of Intent to Award ("NOIA"), the protest must be filed within ten (10) calendar days of the date the NOIA is posted.
	In the event DCSD does not post a NOIA, the protest must be filed within ten (10) calendar days of the date the Notice of Award ("NOA") is posted.

If a bidder fails to file a protest by the applicable deadline, such failure shall be deemed as a waiver with prejudice of any grounds the bidder may have for protest.

5. Stay of procurement during protest review. When a protest challenging the competitive solicitation process has been timely filed at least two (2) business days prior to the closing date and time, the solicitation shall not close until a final decision resolving the protest has been issued, unless the facilities management department makes a written determination that the closing of the solicitation without delay is necessary to protect the interests of DCSD.

When a protest challenging an intended contract award has been timely filed, DCSD shall not proceed to actual contract award unless the Design and Construction Department makes a written determination that the issuance of a contract or performance of the contract without delay is necessary to protect the interests of DCSD. If it is determined that it is necessary to proceed with contract performance without delay, the bidder/Offeror with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract. The provisions of this paragraph are not applicable to a protest pertaining to events or facts arising during the solicitation process.

6. **Protest Resolution.** The Design and Construction Department shall review and issue a written decision on the protest within seven (7) business days. This decision shall be deemed final. Available remedies for sustained protests are as follows:
 - If a protest is sustained prior to the closing date and time of the solicitation, available remedies may include, but are not limited to, the following: modification of the solicitation document including, but not limited to, specifications and terms and conditions; extension of the solicitation closing date and time (as appropriate); and cancellation of the solicitation.
 - If a protest of the intended/actual contract award is sustained, available remedies may include but are not limited to, the following: revision or cancellation of the NOIA/NOA, re-evaluation and re-award, or re-solicitation with appropriate changes to the new solicitation.
7. **Costs.** In no event shall a bidder be entitled to recover any costs incurred in connection with the solicitation or protest process, including, but not limited to, the costs of preparing a bid/proposal, the costs of participating in the protest process, or any attorney fees.

ATTACHMENT A: GENERAL CONTRACTOR CHECKLIST AND CERTIFICATION

The undersigned, hereby acknowledges having received **Request for Proposal (RFP) No. 23-752-026 for Project No. N/A; GC Services for Chapel Hill Middle School Roof, HVAC and Controls Replacement** containing a full set of documents:

Owner's Project Specific Information

Appendix A1	Owner's Criteria and Narrative Scope of Work – Briarlake ES (2 pages)
Appendix A2	Owner's Criteria and Narrative Scope of Work – Early Learning Center (2 pages)
Appendix A3	Owner's Criteria and Narrative Scope of Work – Montclair ES (2 pages)
Appendix A4	Owner's Criteria and Narrative Scope of Work – Tucker MS (2 pages)
Appendix B	Special Conditions (5 pages)
Appendix C	Master Project Schedule (1 page)
Appendix D	DeKalb County School District 2022-2023 and 2023-2024 Calendar (2 pages)
Appendix E1	Fixed Price Construction Contract - Briarlake ES (44 pages)
Appendix E2	Fixed Price Construction Contract – Early Learning Center (44 pages)
Appendix E3	Fixed Price Construction Contract – Montclair ES (44 pages)
Appendix E4	Fixed Price Construction Contract – Tucker MS (44 pages)
Appendix F	Subcontractor Affidavit of Non-collusion (1 page)
Appendix G	Performance Bond (3 pages)
Appendix H	Payment Bond (4 pages)
Appendix I	Affidavit for Payment (2 pages)

IMPORTANT NOTICE: The omission of any of the required items listed below shall cause the bid submission to be declared non-responsive and to be rejected.

Owner's Standard Forms:		Include with Proposal	Check Box to Confirm Inclusion
Attachment A	Contractor's RFP Checklist (2 pages)	YES	☐
Attachment B1	Corporate Certificate (1 page)	B1 or B2 or B3 as applicable	☐
Attachment B2	Partnership Certificate (1 page)		☐
Attachment B3	Entity Certificate (1 page)		☐
Attachment C1	Subcontractor Listing - Briarlake ES (1 page)	YES	☐
Attachment C2	Subcontractor Listing – Early Learning Center (1 page)		
Attachment C3	Subcontractor Listing – Montclair ES (1 page)		
Attachment C4	Subcontractor Listing – Tucker MS (1 page)		
Attachment D	Offeror's and Individuals' Affidavit of Non-collusion (2 pages)	YES	☐
Attachment E	Conflict of Interest Disclosure Form (2 pages)	YES	☐
Attachment F	Form of Consent to Release Information (1 page)	YES	☐
Attachment G	Vendor References Form (1 page)	YES	☐

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Attachment H	Bid Bond (1 page)	YES	☐
Attachment I	Fixed Price for Construction Proposal (4 pages)	YES	☐
Attachment J	Immigration and Security Certification (2 Pages)	YES	☐
Attachment K	No Submittal Response Form (1 page)	N/A	

Other Requirements:	Include with Proposal	Check Box to Confirm Inclusion
Sample Certificate of Insurance, per General Conditions Item F.	YES	☐
Copy of Business and GC License, per General Conditions Item N.	YES	☐
Acknowledgement of ALL addenda (if any) below.	YES	☐

Indicate **Addenda(s) Nos.** _____ received (**none unless indicated here**). The General Contractor is responsible for reading and understanding all sections of this RFP, and affirms that the General Contractor shall be bound by all of the terms and conditions contained in this RFP.

Further, the undersigned, being duly sworn, states on oath that no disclosures of ownership have been withheld from the Board, that the information provided herein is current, and General Contractor and its officers and employees have not entered into any agreement with any other General Contractor or prospective General Contractor or with any other person, firm or corporation relating to any prices or other terms named in this RFP or any other RFP, nor has it entered into any agreement or arrangement under which a person, firm or corporation is to refrain from responding to this RFP.

Name of General Contractor: _____

Signature: _____ Printed Name: _____

Title: _____ Date: _____

Sworn to and subscribed before me this ____ day of _____, 2____.

Notary Public: _____ My commission expires: ____/____/____.

(SEAL)

THE DEKALB COUNTY SCHOOL DISTRICT RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS AND TO WAIVE INFORMALITIES.

**ATTACHMENT B1: CORPORATE CERTIFICATE
(Proposals)**

STATE OF _____
COUNTY OF _____

I, _____, certify that I am the Secretary of the
corporation named as offeror in the foregoing proposal; that
_____ who signed said proposal on behalf of the offeror
was then _____ of said corporation; that said proposal was duly signed for
and in behalf of said corporation by authority of its Board of Directors, and is within the scope of
its corporate powers; and that said corporation is organized under the laws of the State of
_____.

[signature]

[typed name]

Subscribed and sworn to
before me this ____ day of
_____, 2____.

(SEAL)

Notary Public

My Commission Expires:
____/____/____

ATTACHMENT B2: PARTNERSHIP CERTIFICATE
Proposals

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20____, personally appeared _____, who executed the above proposal, and being first duly sworn, deposes and says that he or she is a general partner in the firm of _____ and that said firm consists of himself or herself and _____ and that he or she executed the foregoing proposal on behalf of said firm for the uses and purposes stated therein, and that no one except the above named members of the firm have any financial interest whatsoever in said proposed contract.

[Affiant's Signature]

Partner

Partner

Partner

Partner

Subscribed and sworn to
before me this ____ day of
_____, 2____.

(seal)

Notary Public

My Commission Expires:
____/____/____

NOTE: If only one partner signs, a Power of Attorney executed by all other partners authorizing him or her to act in the name of the partnership must be attached; otherwise, all partners must sign.

ATTACHMENT B3: ENTITY CERTIFICATE
Proposals

STATE OF _____
COUNTY OF _____

I, _____, certify that I am the Secretary of the entity
named as offeror in the foregoing proposal; that _____
who signed said proposal in behalf of the offeror was then _____ of said
entity; that said proposal was duly signed for and on behalf of said entity by due authority, and is
within the scope of its legal powers; and that said entity is a _____
organized under the laws of the State of _____.

[signature]

[typed name]

Subscribed and sworn to
before me this ____ day of
_____, 2____.

(SEAL)

Notary Public

My Commission Expires:
____/____/____

[name and title]

ATTACHMENT C2: SUBCONTRACTOR LISTING
(Proposals)

TO: DEKALB COUNTY BOARD OF EDUCATION
hereinafter called "Owner"

RFP No. 23-752-026
Project No. N/A

Pursuant to proposal requirements for the Projects known as DCSD Project No. N/A for GC Services for Early Learning Center, HVAC and Controls Replacement

the undersigned proposes to use the following subcontractors for principal portions of the Project:

PORTION OF THE WORK	SUBCONTRACTOR NAME CONTACT PERSON	ADDRESS TELEPHONE NUMBER

Use Additional Sheets If Necessary
Provide Signature Identical To That
Shown On The Proposal Form

OFFEROR: _____
[typed proper name of Offeror]

By: _____
[signature]

[name and title]

ATTACHMENT C3: SUBCONTRACTOR LISTING

(Proposals)

TO: DEKALB COUNTY BOARD OF EDUCATION
hereinafter called "Owner"

RFP No. 23-752-026
Project No. N/A

Pursuant to proposal requirements for the Projects known as DCSD Project No. N/A for GC Services for Montclair Elementary School, HVAC and Controls Replacement

the undersigned proposes to use the following subcontractors for principal portions of the Project:

PORTION OF THE WORK	SUBCONTRACTOR NAME CONTACT PERSON	ADDRESS TELEPHONE NUMBER

Use Additional Sheets If Necessary
Provide Signature Identical To That
Shown On The Proposal Form

OFFEROR: _____
[typed proper name of Offeror]

By: _____
[signature]

[name and title]

ATTACHMENT C4: SUBCONTRACTOR LISTING

(Proposals)

TO: DEKALB COUNTY BOARD OF EDUCATION
hereinafter called "Owner"

RFP No. 23-752-026
Project No. N/A

Pursuant to proposal requirements for the Projects known as DCSD Project No. N/A for GC Services for Tucker Middle School Roof, HVAC and Controls Replacement

the undersigned proposes to use the following subcontractors for principal portions of the Project:

PORTION OF THE WORK	SUBCONTRACTOR NAME CONTACT PERSON	ADDRESS TELEPHONE NUMBER

*Use Additional Sheets If Necessary
Provide Signature Identical To That
Shown On The Proposal Form*

OFFEROR: _____
[typed proper name of Offeror]

By: _____
[signature]

[name and title]

ATTACHMENT D: OFFEROR'S and INDIVIDUALS' AFFIDAVIT OF NON-COLLUSION

(This affidavit to be executed in accordance with O.C.G.A. § 36-91-21(e))

STATE OF _____

COUNTY OF _____

COMES NOW,

[name of Offeror] ("Offeror"),

appearing by and through _____, it's _____
[insert name of individual with authority to bind Offeror] *[title]*

(averring both individually and in his or her representative capacity on behalf of Offeror) (the "Individual And Representative Affiant"), and

[in these blanks insert the names of all those required to give the oath under O.C.G.A. § 36-91-21(e)]

(collectively, the "Individual Affiants"), and each of the Individual And Representative Affiant and the Individual Affiants, after first being sworn, deposes and says that:

1. He, she or it, as applicable, has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated Section 36-91-21, which subsection provides as follows:

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

2. If the Offeror is a partnership, then the Individual And Representative Affiant, together with the Individual Affiants, constitute all of the partners and any officer, agent or other person who may have

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represented or acted for them in bidding or proposing for or procuring the contract for the DeKalb County

Board of Education Project No. N/A for GC Services for Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School, HVAC and Controls Replacement (the "Project").

3. If the Offeror is a corporation or other entity, then the Individual And Representative Affiant, together with the Individual Affiants, constitute all officers, agents, or other persons who may have acted for or represented the corporation or other entity in bidding for or procuring the contract for the Project.

Further, the Individual And Representative Affiant and the Individual Affiants sayeth not.

This _____ day of _____, 2____

[insert name of Offeror]

and

[insert name of Individual And Representative Affiant]

By: _____, both individually and on behalf of Offeror as its
[signature]

[insert title]

Individual Affiants' signatures and names:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

x _____
Name:

Sworn to and subscribed before me this ____ day of _____, 2____.

Notary Public: _____ My commission expires: __/__/__.

(SEAL)

ATTACHMENT E: CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT

I HEREBY CERTIFY, UNDER OATH, that

- I (*Printed Name*), _____ am the (*Title*) _____ and I am the duly authorized representative of the firm of (*Firm Name*) _____ (the “Firm”) for purposes of this Affidavit, whose address is (*Firm Address*) _____, and I possess the legal authority to make this Affidavit on behalf of myself and the Firm, as follows:
- The following employee(s), officer(s) or agent(s) of the Firm (collectively, “Firm Representative”) is/are related, by blood or marriage, to an employee, agent or Board Member of the DeKalb County Board of Education (collectively, “Owner Representative”), as indicated below:

<u>Firm Representative</u>	<u>Owner Representative</u>	<u>Relation</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- Except as listed below under “EXCEPTIONS”, neither the Firm nor any Firm Representative have any conflicts of interest, whether real or potential, due to kinship, ownership, other clients, other contracts, interests, or otherwise concerning the DeKalb County Board of Education, the Project or any Owner Representative:

EXCEPTIONS (*fully disclose and completely explain*)

[Continued on Next Page]

4. This disclosure is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid, proposal or qualification statement for the same contract or project, and is in all respects without collusion or fraud.

Wherefore, the foregoing disclosure is fully complete and true, and may be relied upon by the DeKalb County Board of Education:

Signature: _____

Printed Name: _____

Firm Name: _____

Date: _____

Sworn to and described before me this _____ day of _____

Personally known: _____

OR Produced Identification: _____

Type of Identification: _____

Notary Public – State of _____

My Commission Expires _____

Affix Notary Seal Here:

ATTACHMENT F: CONSENT TO RELEASE INFORMATION

The undersigned, having submitted a competitive sealed Proposal to the DeKalb County Board of Education in respect of a local government entity public works construction project (or being a partner in a joint venture that has submitted such proposal), hereby authorizes any person or entity having in its possession, custody or control any information regarding the undersigned to fully disclose and make available such information to the DeKalb County Board of Education, its agents, attorneys and other representatives.

This ____ day of _____, 2____.

[Printed name of person or entity consenting to release of information]

By: _____

Printed name: _____

Printed Title: _____

ATTACHMENT G: VENDOR REFERENCE FORM

VENDOR REFERENCES FOR:

Insert Company Name

References must be completed by ALL Vendors. It is the vendor's responsibility to provide COMPLETE and ACCURATE reference information on the form below, completing ALL fields. Failure to do so can result in DCSD being unable to verify vendor's past work, which may affect DCSD's determination that the vendor is responsive and responsible. DCSD reserves the right to consider past experience with vendor.

1. _____
Company

Address, City, State, Zip Code

Telephone Number

Fax Number

Name of Contact Person

E-Mail Address

2. _____
Company

Address, City, State, Zip Code

Telephone Number

Fax Number

Name of Contact Person

E-Mail Address

3. _____
Company

Address, City, State, Zip Code

Telephone Number

Fax Number

Name of Contact Person

E-Mail Address

ATTACHMENT H: BID BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____,
[insert proper name of Surety]
a corporation duly organized and existing under the laws of the State of _____,
as surety ("Surety"), and _____
[Insert proper name and address of Bidder]
as principal ("Bidder"), enter into, execute this bond ("Bid Bond"), and firmly bind ourselves,
our heirs, administrators, executors and successors, jointly and severally, in favor of the
DeKalb County Board of Education, as obligee ("Owner"), in the penal sum of:
_____ dollars (\$ _____),
[Insert penal sum, written in words and in numerals, which shall equal 5% of the Base Bid]
as of the ____ day of _____ 20____.

WHEREAS, the Bidder has submitted a bid for construction of the DCSD Project No. N/A for GC Services for Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School (RFP No. 23-752-026) Project in DeKalb County, Georgia; and

WHEREAS, the Owner has required the Bidder to furnish this Bid Bond containing the terms and conditions set forth herein as a condition to submission of the bid.

NOW THEREFORE, the Surety and the Bidder, for themselves, their heirs, administrators, executors and successors, both joint and severally, agree that if the Owner accepts the bid of the Bidder and within ninety (90) days of the bid opening delivers to the Bidder a Notice of Award, and the Bidder, within ten (10) calendar days after receipt of such Notice of Award, has not executed a contract with the Owner in accordance with the terms of such bid and furnished such bonds as are specified in the bidding documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and materials furnished in the prosecution thereof, then the Surety and the Bidder shall pay to the Owner the full penal sum hereof as liquidated damages and not as a penalty.

SIGNED AND SEALED this ____ day of _____, 2____.

BIDDER

SURETY

_____[SEAL]
[Typed Name]

_____[SEAL]
[Typed Name]

BY: _____
[Signature]

BY: _____
[Signature]

[Printed Name, Title and Address]

[Printed Name, Title and Address]

ATTACHMENT I1: General Contractor Fixed Price Proposal

BID FORM

DeKalb County Board of Education
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

The “Bid Form” provided by the District provides a space in section B below for Contractors to add or deduct from their Base Bid at any time up to the official submittal date and time. This space is identified as “Voluntary Deduct/ Add to the Base Bid.” The deduct/add amount cannot exceed 25% of the Base Bid; if it does, the Bidder will be disqualified from the procurement.

In compliance with the Request for Sealed Proposals, the undersigned Contractor,

_____,
[legal name of Contractor]

[address of Contractor]

[telephone number of Contractor]

having carefully examined the proposed Standard Form of Fixed Price Construction Contract (the “Agreement” or the “Contract”) and the Owner’s other Proposal Documents included or referenced in the Request for Proposals, any Addenda thereto, for DCSD Project No. N/A for GC Services for Briarlake Elementary School, HVAC and Controls Replacement (RFP No. 23-752-026), proposes and agrees, if this proposal is accepted, to enter into the Agreement with the Owner and to perform the Work including all services, supervision, labor, coordination, equipment and material in conformance with the Contract Documents, in the time and for the Contract Price set forth below, and submits the following proposed Fixed Price, schedule and other matters set forth below:

- a. The proposed Fixed Price amount to insert in as the Contract Price in Section 6.1 of the Agreement:

1. General Conditions	\$ _____
2. Site Work	\$ _____
3. Concrete	\$ _____
4. Masonry	\$ _____
5. Metals	\$ _____
6. Carpentry	\$ _____
7. Thermal and Moisture Protection	\$ _____
8. Doors and Windows	\$ _____
9. Finishes and Accessories	\$ _____

10. Specialties	\$
11. Equipment	\$
12. Furnishings	\$
13. Special Construction	\$
14. Conveying Systems	\$
15. Mechanical	\$
16. Electrical	\$
Total Base Bid	\$

_____dollars
Total Base Bid written in words

b. Voluntary Deduct/Add to Base Bid

_____dollars
(written in words)
(\$ _____), shall be added / deducted **(circle which one)** from
the Base Bid.

c. **Alternates to your Base Bid**

None

d. **Unit Prices and Allowances**

None

The Contractor understands that the Owner reserves the right to reject any or all Proposals, and to waive any technicalities and informalities.

The Contractor agrees that this Proposal may not be withdrawn for a period of ninety (90) calendar days after the date and time fixed for receiving said Proposals.

The person signing this bid form must be legally authorized to bind the company.

Respectfully submitted,

[typed name of Contractor]

By: _____[seal]
[signature]

[typed name and title]

[address of Contractor]

(_____)_____
[business telephone number]

[date of execution]

[If the Contractor is a joint venture, utilize this page of this proposal form for signatures.]

By submission of this Proposal, the Contractor certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Contractor or with any competitor. The Contractor hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Contractor will timely submit to the Owner the Offeror's and Individuals' Affidavit of Non-collusion and the Subcontractor's Affidavit of Non-collusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Contractor agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted _____,
[typed name of Joint Venture]

By: _____
[typed name of Joint Venture partner]

By: _____ [seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

By: _____
[typed name of Joint Venture partner]

By: _____ [seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

ATTACHMENT I2: General Contractor Fixed Price Proposal

BID FORM

DeKalb County Board of Education
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

The “Bid Form” provided by the District provides a space in section B below for Contractors to add or deduct from their Base Bid at any time up to the official submittal date and time. This space is identified as “Voluntary Deduct/ Add to the Base Bid.” The deduct/add amount cannot exceed 25% of the Base Bid; if it does, the Bidder will be disqualified from the procurement.

In compliance with the Request for Sealed Proposals, the undersigned Contractor,

_____,
[legal name of Contractor]

[address of Contractor]

[telephone number of Contractor]

having carefully examined the proposed Standard Form of Fixed Price Construction Contract (the “Agreement” or the “Contract”) and the Owner’s other Proposal Documents included or referenced in the Request for Proposals, any Addenda thereto, for DCSD Project No. N/A for GC Services for Early Learning Center, HVAC and Controls Replacement (RFP No. 23-752-026), proposes and agrees, if this proposal is accepted, to enter into the Agreement with the Owner and to perform the Work including all services, supervision, labor, coordination, equipment and material in conformance with the Contract Documents, in the time and for the Contract Price set forth below, and submits the following proposed Fixed Price, schedule and other matters set forth below:

- a. The proposed Fixed Price amount to insert in as the Contract Price in Section 6.1 of the Agreement:

1. General Conditions	\$ _____
2. Site Work	\$ _____
3. Concrete	\$ _____
4. Masonry	\$ _____
5. Metals	\$ _____
6. Carpentry	\$ _____
7. Thermal and Moisture Protection	\$ _____
8. Doors and Windows	\$ _____
9. Finishes and Accessories	\$ _____

10. Specialties	\$
11. Equipment	\$
12. Furnishings	\$
13. Special Construction	\$
14. Conveying Systems	\$
15. Mechanical	\$
16. Electrical	\$
Total Base Bid	\$

_____ dollars
Total Base Bid written in words

b. Voluntary Deduct/Add to Base Bid

_____ dollars
(written in words)
(\$ _____), shall be added / deducted (**circle which one**) from
the Base Bid.

c. **Alternates to your Base Bid**

None

d. **Unit Prices and Allowances**

None

The Contractor understands that the Owner reserves the right to reject any or all Proposals, and to waive any technicalities and informalities.

The Contractor agrees that this Proposal may not be withdrawn for a period of ninety (90) calendar days after the date and time fixed for receiving said Proposals.

The person signing this bid form must be legally authorized to bind the company.

Respectfully submitted,

[typed name of Contractor]

By: _____[seal]
[signature]

[typed name and title]

[address of Contractor]

(_____)_____
[business telephone number]

[date of execution]

[If the Contractor is a joint venture, utilize this page of this proposal form for signatures.]

By submission of this Proposal, the Contractor certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Contractor or with any competitor. The Contractor hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Contractor will timely submit to the Owner the Offeror's and Individuals' Affidavit of Non-collusion and the Subcontractor's Affidavit of Non-collusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Contractor agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted _____,
[typed name of Joint Venture]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

ATTACHMENT I3: General Contractor Fixed Price Proposal

BID FORM

DeKalb County Board of Education
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

The “Bid Form” provided by the District provides a space in section B below for Contractors to add or deduct from their Base Bid at any time up to the official submittal date and time. This space is identified as “Voluntary Deduct/ Add to the Base Bid.” The deduct/add amount cannot exceed 25% of the Base Bid; if it does, the Bidder will be disqualified from the procurement.

In compliance with the Request for Sealed Proposals, the undersigned Contractor,

_____,
[legal name of Contractor]

[address of Contractor]

[telephone number of Contractor]

having carefully examined the proposed Standard Form of Fixed Price Construction Contract (the “Agreement” or the “Contract”) and the Owner’s other Proposal Documents included or referenced in the Request for Proposals, any Addenda thereto, for DCSD Project No. N/A for GC Services for Montclair Elementary School, HVAC and Controls Replacement (RFP No. 23-752-026), proposes and agrees, if this proposal is accepted, to enter into the Agreement with the Owner and to perform the Work including all services, supervision, labor, coordination, equipment and material in conformance with the Contract Documents, in the time and for the Contract Price set forth below, and submits the following proposed Fixed Price, schedule and other matters set forth below:

- a. The proposed Fixed Price amount to insert in as the Contract Price in Section 6.1 of the Agreement:

1. General Conditions	\$ _____
2. Site Work	\$ _____
3. Concrete	\$ _____
4. Masonry	\$ _____
5. Metals	\$ _____
6. Carpentry	\$ _____
7. Thermal and Moisture Protection	\$ _____
8. Doors and Windows	\$ _____
9. Finishes and Accessories	\$ _____

10. Specialties	\$
11. Equipment	\$
12. Furnishings	\$
13. Special Construction	\$
14. Conveying Systems	\$
15. Mechanical	\$
16. Electrical	\$
Total Base Bid	\$

_____ dollars
Total Base Bid written in words

b. Voluntary Deduct/Add to Base Bid

_____ dollars
(written in words)
(\$ _____), shall be added / deducted (**circle which one**) from
the Base Bid.

c. **Alternates to your Base Bid**

None

d. **Unit Prices and Allowances**

None

The Contractor understands that the Owner reserves the right to reject any or all Proposals, and to waive any technicalities and informalities.

The Contractor agrees that this Proposal may not be withdrawn for a period of ninety (90) calendar days after the date and time fixed for receiving said Proposals.

The person signing this bid form must be legally authorized to bind the company.

Respectfully submitted,

[typed name of Contractor]

By: _____[seal]
[signature]

[typed name and title]

[address of Contractor]

(_____)_____
[business telephone number]

[date of execution]

[If the Contractor is a joint venture, utilize this page of this proposal form for signatures.]

By submission of this Proposal, the Contractor certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Contractor or with any competitor. The Contractor hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Contractor will timely submit to the Owner the Offeror's and Individuals' Affidavit of Non-collusion and the Subcontractor's Affidavit of Non-collusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Contractor agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted _____,
[typed name of Joint Venture]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

ATTACHMENT I4: General Contractor Fixed Price Proposal

BID FORM

DeKalb County Board of Education
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

The “Bid Form” provided by the District provides a space in section B below for Contractors to add or deduct from their Base Bid at any time up to the official submittal date and time. This space is identified as “Voluntary Deduct/ Add to the Base Bid.” The deduct/add amount cannot exceed 25% of the Base Bid; if it does, the Bidder will be disqualified from the procurement.

In compliance with the Request for Sealed Proposals, the undersigned Contractor,

_____,
[legal name of Contractor]

[address of Contractor]

[telephone number of Contractor]

having carefully examined the proposed Standard Form of Fixed Price Construction Contract (the “Agreement” or the “Contract”) and the Owner’s other Proposal Documents included or referenced in the Request for Proposals, any Addenda thereto, for DCSD Project No. N/A for GC Services for Tucker Middle School, HVAC and Controls Replacement (RFP No. 23-752-026), proposes and agrees, if this proposal is accepted, to enter into the Agreement with the Owner and to perform the Work including all services, supervision, labor, coordination, equipment and material in conformance with the Contract Documents, in the time and for the Contract Price set forth below, and submits the following proposed Fixed Price, schedule and other matters set forth below:

- a. The proposed Fixed Price amount to insert in as the Contract Price in Section 6.1 of the Agreement:

1. General Conditions	\$ _____
2. Site Work	\$ _____
3. Concrete	\$ _____
4. Masonry	\$ _____
5. Metals	\$ _____
6. Carpentry	\$ _____
7. Thermal and Moisture Protection	\$ _____
8. Doors and Windows	\$ _____
9. Finishes and Accessories	\$ _____

10. Specialties	\$
11. Equipment	\$
12. Furnishings	\$
13. Special Construction	\$
14. Conveying Systems	\$
15. Mechanical	\$
16. Electrical	\$
Total Base Bid	\$

dollars

Total Base Bid written in words

- b.
Voluntary Deduct/Add to Base Bid

dollars

(written in words)

(\$), shall be added / deducted **(circle which one)** from the Base Bid.
- c.
Alternates to your Base Bid

None
- d.
Unit Prices and Allowances

None

The Contractor understands that the Owner reserves the right to reject any or all Proposals, and to waive any technicalities and informalities.

The Contractor agrees that this Proposal may not be withdrawn for a period of ninety (90) calendar days after the date and time fixed for receiving said Proposals.

The person signing this bid form must be legally authorized to bind the company.

Respectfully submitted,

[typed name of Contractor]

By: _____[seal]
[signature]

[typed name and title]

[address of Contractor]

(_____)_____
[business telephone number]

[date of execution]

[If the Contractor is a joint venture, utilize this page of this proposal form for signatures.]

By submission of this Proposal, the Contractor certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Contractor or with any competitor. The Contractor hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Contractor will timely submit to the Owner the Offeror's and Individuals' Affidavit of Non-collusion and the Subcontractor's Affidavit of Non-collusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Contractor agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted _____,
[typed name of Joint Venture]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

By: _____
[typed name of Joint Venture partner]

By: _____[seal]
[signature]

[typed name and title]

[address of Joint Venture partner]

(_____) _____
[business telephone number]

[date of execution]

ATTACHMENT J: IMMIGRATION AND SECURITY CERTIFICATION

If you are providing service, performing work or delivering goods to the DeKalb County Board of Education/DeKalb County School District including, but not limited to schools, warehouses and central offices, the applicable Georgia Security and Immigration Compliance documents found here must be completed, signed, notarized and submitted with your bid/proposal. Failure to provide this document with your bid/proposal will result in the disqualification of the bid/proposal.

1) Offeror/Bidder (the "Offeror") shall at all times comply with the Georgia Security and Immigration Compliance Act, as amended, O.C.G.A. § 13-10-90 et. seq.

2) In order to ensure compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011, O.C.G.A. § 13-10-90 et. seq. (collectively the "Act"), the Offeror **MUST INITIAL** the statement applicable to Offeror below:

(a) _____ **(Initial here):** Offeror declares under penalties of perjury that, Offeror has registered at <https://e-verify.uscis.gov/enroll/> to verify information of all new employees in order to comply with the Act; is authorized to use and uses the federal authorization program under the federal work authorization user identification number issued on the date of authorization below; will continue to use the authorization program throughout the contract period; Offeror further warrants and agrees Offeror shall execute and return any and all affidavits required by the Act and the rules and regulations issued by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 et. seq. **[Offerors who initial (a) must attach and return a signed, notarized Contractor Affidavit and Agreement with the Contract if awarded];**

or

(b) _____ **(Initial here):** Offeror warrants that he/she does not employ any other persons, and he/she does not intend to hire any employees or to perform the Contract. **[Offerors who initial (b) must attach and return a signed, notarized Affidavit of Exception with the Contract if awarded];**

or

(c) _____ **(Initial here)** Offeror is an *individual* who is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for services to be rendered by such *individual* and thus does not have to provide an affidavit.

3) _____ **(Initial here)** Offeror will not employ or contract with any subcontractor in connection with a covered contract unless the subcontractor is registered, authorized to use, and uses the federal work authorization program; and provides Offeror with all affidavits required by the Act and the rules and regulations issued by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 et. seq.

4) _____ **(Initial here)** Offeror agrees that, if Offeror employs or contracts with any subcontractor in connection with the covered contract under the Act and DOL Rules 300-10-1-.01, et seq that Offeror will secure from each sub-contractor at the time of the contract the sub-contractor's name and address, the employee-number applicable to the sub-

contractor, the date the authorization to use the federal work authorization program was granted to sub-contractor; the subcontractor's attestation of the subcontractor's compliance with the Act and Georgia Department of Labor Rule 300-10-1-.01, et seq.; and the subcontractor's agreement not to contract with sub-subcontractors unless the sub-subcontractor is registered, authorized to use, and uses the federal work authorization program; and provides subcontractor with all affidavits required by the Act and the rules and regulations issued by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 et. seq.

- 5) _____ **(Initial here)** Offeror agrees to provide the DeKalb County School District with all affidavits of compliance as required by O.C.G.A. § 13-10-90 *et seq.* and Georgia Department of Labor Rules 300-10-1-.01, et seq within five (5) business days of receipt.

Signature

Date

EEV/Basic Pilot Program
User Identification Number

Date of Authorization

Firm Name: _____

Street/Mailing Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email Address: _____

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 20____

Notary Public

My Commission Expires: _____

ATTACHMENT K: NO SUBMITTAL RESPONSE FORM

RFP Number: 23-752-026
Title: GC Services for Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School, HVAC and Controls Replacement

Project No.: N/A

If your company will not be submitting a proposal in response to this Request for Proposal, please complete this form and return or fax, prior to the RFP due date established within to:

DeKalb County Board of Education (the "Board")
Attention: Procurement Manager
Email: belinda_quillet@dekalbschoolsga.org

This information will assist Procurement Services in the preparation of future RFPs.

Company Name: _____

Contact: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

Please check reason for a "no submittal."

_____ Specifications "too tight," geared toward one brand or manufacturer (explain below)

_____ Insufficient time to respond

_____ Specifications unclear (explain below)

_____ We do not offer this service or an equivalent

_____ Our schedule does not permit us to perform

_____ Unable to meet specifications

_____ Unable to meet bond requirements

_____ Unable to hold prices respondent throughout the term of the contract period

_____ Unable to meet insurance requirements

_____ Other _____

Explanation: _____

If submitting this form, **only** this form needs to be returned.

(End of RFP Document Consisting of 65 Pages)

Appendices Included in Separate Package

Appendix A1: Owner's Criteria and Narrative Scope of Work
Briarlake Elementary School – HVAC and Controls Replacement

Work under this Contract consists of furnishing all labor, materials and equipment necessary to perform the quality remedial HVAC and controls replacement at Briarlake Elementary School, located at 3590 LaVista Road, Decatur, GA 30033, as shown on the Construction Documents. The work will include, but is not necessarily limited to the following:

- Demolition of all HVAC systems equipment.
 - Replace backup generator with like.
 - Replace mechanical room equipment boiler, chiller, and pumps like-with-like equipment:
 - (a) Air Cooled Chiller
 - (b) Pumps
 - (c) Boiler will be replaced with a modular boiler with equal output of existing.
1. The Bidder will perform new construction in accordance with the contract drawings and specifications.
 2. The Bidder shall be responsible for paying all sales tax in accordance with GA Law section 48-8-63(c) on all material purchases.
 3. If the property is being utilized by the DeKalb County School District (DCSD) during construction, the Bidder shall be responsible for coordinating with the DCSD Project Manager and all material and equipment suppliers to schedule delivery of equipment and material to the school/facility during normal business hours. Once the Bidder takes possession of material at the site, the care and storage of the material becomes the responsibility of the Bidder.
 4. The Bidder shall obtain all necessary permits required for construction of all work in this scope. The Bidder shall complete all phases of his work in strict accordance with all applicable local, state, and federal codes and guidelines. The Bidder will verify that the necessary DeKalb Board of Education approvals have been obtained prior to beginning of construction.
 5. The Bidder is responsible for surveying the existing conditions at the site, to assess installation requirements. The Bidder is responsible for installing equipment in a workmanlike manner, in compliance with DCSD standards as well as all applicable codes and regulations.
 6. Care shall be taken to minimize damage to surrounding structures and surfaces. The Bidder is responsible for the repair of any disturbed areas, including ceiling tiles, patching and/or repainting walls and floors, and restoring any disturbed landscaped or paved areas. The Bidder shall submit color samples to the Owner for any new materials and/or paint used for these corrections, to ensure the best match possible for existing finishes. It is the responsibility of the Bidder to restore any areas damaged by their work to the original condition, or better.
 7. The Bidder is responsible for the proper demolition, removal and disposal of existing material disturbed in the installation of the new equipment. The Bidder is to dispose of all debris and removed materials offsite, with the exception of any salvageable material: any salvageable material shall be offered to the Owner for possible reuse. All construction waste is to be recycled to the extent practicable.
 8. The Bidder is to keep the work area clean during the completion of the project and must provide final cleaning of the work area to the satisfaction of DCSD.
 9. The Bidder is responsible for coordinating work and ensuring that Project Manager, Stakeholders, and project parties are informed of where and when work is taking place.
 10. The Bidder shall restore all construction areas to a condition acceptable to the Owner.
 11. The Bidder shall include warranty for his labor.
 12. The construction site must be fully closed off from existing school and construction traffic managed as to not disrupt operations or cause any unsafe situations while school is in session.

Substantial Completion

The Contractor is to mobilize and commence work no later than **September 2023**. All work must be substantially completed by **August 2024**. Final Completion must take place no later than 30 days after Substantial Completion. The Contractor will be allowed to work evening and weekend hours as long as the facility is returned to normal building functions for regular school hours. While the facility is in operation, all work shall be performed without interruption to facility operations and activities.

Briarlake Elementary School, HVAC and Controls Replacement

All construction documents produced by Epsten Group, Inc. dated March 30, 2023.

Appendix A2: Owner's Criteria and Narrative Scope of Work Early Learning Center – HVAC and Controls Replacement

Work under this Contract consists of furnishing all labor, materials and equipment necessary to perform the quality remedial HVAC and controls replacement at Early Learning Center, located at 797 Fayetteville Road SE, Atlanta, GA 30316, as shown on the Construction Documents. The work will include, but is not necessarily limited to the following:

- Demolition of all HVAC systems equipment.
 - Replace backup generator with like.
 - Replace mechanical room equipment boiler, chiller, and pumps like-with-like equipment:
 - (a) Air Cooled Chiller
 - (b) Pumps
 - (c) Boiler will be replaced with a modular boiler with equal output of existing.
1. The Bidder will perform new construction in accordance with the contract drawings and specifications.
 2. The Bidder shall be responsible for paying all sales tax in accordance with GA Law section 48-8-63(c) on all material purchases.
 3. If the property is being utilized by the DeKalb County School District (DCSD) during construction, the Bidder shall be responsible for coordinating with the DCSD Project Manager and all material and equipment suppliers to schedule delivery of equipment and material to the school/facility during normal business hours. Once the Bidder takes possession of material at the site, the care and storage of the material becomes the responsibility of the Bidder.
 4. The Bidder shall obtain all necessary permits required for construction of all work in this scope. The Bidder shall complete all phases of his work in strict accordance with all applicable local, state, and federal codes and guidelines. The Bidder will verify that the necessary DeKalb Board of Education approvals have been obtained prior to beginning of construction.
 5. The Bidder is responsible for surveying the existing conditions at the site, to assess installation requirements. The Bidder is responsible for installing equipment in a workmanlike manner, in compliance with DCSD standards as well as all applicable codes and regulations.
 6. Care shall be taken to minimize damage to surrounding structures and surfaces. The Bidder is responsible for the repair of any disturbed areas, including ceiling tiles, patching and/or repainting walls and floors, and restoring any disturbed landscaped or paved areas. The Bidder shall submit color samples to the Owner for any new materials and/or paint used for these corrections, to ensure the best match possible for existing finishes. It is the responsibility of the Bidder to restore any areas damaged by their work to the original condition, or better.
 7. The Bidder is responsible for the proper demolition, removal and disposal of existing material disturbed in the installation of the new equipment. The Bidder is to dispose of all debris and removed materials offsite, with the exception of any salvageable material: any salvageable material shall be offered to the Owner for possible reuse. All construction waste is to be recycled to the extent practicable.
 8. The Bidder is to keep the work area clean during the completion of the project and must provide final cleaning of the work area to the satisfaction of DCSD.
 9. The Bidder is responsible for coordinating work and ensuring that Project Manager, Stakeholders, and project parties are informed of where and when work is taking place.
 10. The Bidder shall restore all construction areas to a condition acceptable to the Owner.
 11. The Bidder shall include warranty for his labor.
 12. The construction site must be fully closed off from existing school and construction traffic managed as to not disrupt operations or cause any unsafe situations while school is in session.

Substantial Completion

The Contractor is to mobilize and commence work no later than **September 2023**. All work must be substantially completed by **August 2024**. Final Completion must take place no later than 30 days after Substantial Completion. The Contractor will be allowed to work evening and weekend hours as long as the facility is returned to normal building functions for regular school hours. While the facility is in operation, all work shall be performed without interruption to facility operations and activities.

Early Learning Center, HVAC and Controls Replacement

All construction documents produced by Epstein Group, Inc. dated March 30, 2023.

Appendix A3: Owner's Criteria and Narrative Scope of Work Montclair Elementary School – HVAC and Controls Replacement

Work under this Contract consists of furnishing all labor, materials and equipment necessary to perform the quality remedial HVAC and controls replacement of Montclair Elementary School, located at 1680 Clairmont Place NE, Atlanta, GA 30329, as shown on the Construction Documents. The work will include, but is not necessarily limited to the following:

- Demolition of all HVAC systems equipment.
 - Replace backup generator with like.
 - Replace mechanical room equipment boiler, chiller, and pumps like-with-like equipment:
 - (a) Air Cooled Chiller
 - (b) Pumps
 - (c) Boiler will be replaced with a modular boiler with equal output of existing.
1. The Bidder will perform new construction in accordance with the contract drawings and specifications.
 2. The Bidder shall be responsible for paying all sales tax in accordance with GA Law section 48-8-63(c) on all material purchases.
 3. If the property is being utilized by the DeKalb County School District (DCSD) during construction, the Bidder shall be responsible for coordinating with the DCSD Project Manager and all material and equipment suppliers to schedule delivery of equipment and material to the school/facility during normal business hours. Once the Bidder takes possession of material at the site, the care and storage of the material becomes the responsibility of the Bidder.
 4. The Bidder shall obtain all necessary permits required for construction of all work in this scope. The Bidder shall complete all phases of his work in strict accordance with all applicable local, state, and federal codes and guidelines. The Bidder will verify that the necessary DeKalb Board of Education approvals have been obtained prior to beginning of construction.
 5. The Bidder is responsible for surveying the existing conditions at the site, to assess installation requirements. The Bidder is responsible for installing equipment in a workmanlike manner, in compliance with DCSD standards as well as all applicable codes and regulations.
 6. Care shall be taken to minimize damage to surrounding structures and surfaces. The Bidder is responsible for the repair of any disturbed areas, including ceiling tiles, patching and/or repainting walls and floors, and restoring any disturbed landscaped or paved areas. The Bidder shall submit color samples to the Owner for any new materials and/or paint used for these corrections, to ensure the best match possible for existing finishes. It is the responsibility of the Bidder to restore any areas damaged by their work to the original condition, or better.
 7. The Bidder is responsible for the proper demolition, removal and disposal of existing material disturbed in the installation of the new equipment. The Bidder is to dispose of all debris and removed materials offsite, with the exception of any salvageable material: any salvageable material shall be offered to the Owner for possible reuse. All construction waste is to be recycled to the extent practicable.
 8. The Bidder is to keep the work area clean during the completion of the project and must provide final cleaning of the work area to the satisfaction of DCSD.
 9. The Bidder is responsible for coordinating work and ensuring that Project Manager, Stakeholders, and project parties are informed of where and when work is taking place.
 10. The Bidder shall restore all construction areas to a condition acceptable to the Owner.
 11. The Bidder shall include warranty for his labor.
 12. The construction site must be fully closed off from existing school and construction traffic managed as to not disrupt operations or cause any unsafe situations while school is in session.

Substantial Completion

The Contractor is to mobilize and commence work no later than **September 2023**. All work must be substantially completed by **August 2024**. Final Completion must take place no later than 30 days after Substantial Completion. The Contractor will be allowed to work evening and weekend hours as long as the facility is returned to normal building functions for regular school hours. While the facility is in operation, all work shall be performed without interruption to facility operations and activities.

Montclair Elementary School, HVAC and Controls Replacement

All construction documents produced by Epstein Group, Inc. dated March 30, 2023.

Appendix A4: Owner's Criteria and Narrative Scope of Work Tucker Middle School – HVAC and Controls Replacement

Work under this Contract consists of furnishing all labor, materials, and equipment necessary to perform the quality remedial HVAC and controls replacement at Tucker Middle School, located at 2160 Idlewood Road, Tucker, GA 30084, as shown on the Construction Documents. The work will include, but is not necessarily limited to the following:

- Demolition of all HVAC systems equipment.
 - Replace backup generator with like.
 - Replace mechanical room equipment boiler, chiller, and pumps like-with-like equipment:
 - (a) Air Cooled Chiller
 - (b) Pumps
 - (c) Boiler will be replaced with a modular boiler with equal output of existing.
1. The Bidder will perform new construction in accordance with the contract drawings and specifications.
 2. The Bidder shall be responsible for paying all sales tax in accordance with GA Law section 48-8-63(c) on all material purchases.
 3. If the property is being utilized by the DeKalb County School District (DCSD) during construction, the Bidder shall be responsible for coordinating with the DCSD Project Manager and all material and equipment suppliers to schedule delivery of equipment and material to the school/facility during normal business hours. Once the Bidder takes possession of material at the site, the care and storage of the material becomes the responsibility of the Bidder.
 4. The Bidder shall obtain all necessary permits required for construction of all work in this scope. The Bidder shall complete all phases of his work in strict accordance with all applicable local, state, and federal codes and guidelines. The Bidder will verify that the necessary DeKalb Board of Education approvals have been obtained prior to beginning of construction.
 5. The Bidder is responsible for surveying the existing conditions at the site, to assess installation requirements. The Bidder is responsible for installing equipment in a workmanlike manner, in compliance with DCSD standards as well as all applicable codes and regulations.
 6. Care shall be taken to minimize damage to surrounding structures and surfaces. The Bidder is responsible for the repair of any disturbed areas, including ceiling tiles, patching and/or repainting walls and floors, and restoring any disturbed landscaped or paved areas. The Bidder shall submit color samples to the Owner for any new materials and/or paint used for these corrections, to ensure the best match possible for existing finishes. It is the responsibility of the Bidder to restore any areas damaged by their work to the original condition, or better.
 7. The Bidder is responsible for the proper demolition, removal and disposal of existing material disturbed in the installation of the new equipment. The Bidder is to dispose of all debris and removed materials offsite, with the exception of any salvageable material: any salvageable material shall be offered to the Owner for possible reuse. All construction waste is to be recycled to the extent practicable.
 8. The Bidder is to keep the work area clean during the completion of the project and must provide final cleaning of the work area to the satisfaction of DCSD.
 9. The Bidder is responsible for coordinating work and ensuring that Project Manager, Stakeholders, and project parties are informed of where and when work is taking place.
 10. The Bidder shall restore all construction areas to a condition acceptable to the Owner.
 11. The Bidder shall include warranty for his labor.
 12. The construction site must be fully closed off from existing school and construction traffic managed as to not disrupt operations or cause any unsafe situations while school is in session.

Substantial Completion

The Contractor is to mobilize and commence work no later than **September 2023**. All work must be substantially completed by **August 2024**. Final Completion must take place no later than 30 days after Substantial Completion. The Contractor will be allowed to work evening and weekend hours as long as the facility is returned to normal building functions for regular school hours. While the facility is in operation, all work shall be performed without interruption to facility operations and activities.

Tucker Middle School, HVAC and Controls Replacement

All construction documents produced by Epstein Group, Inc. dated March 30, 2023.

APPENDIX B: SPECIAL CONDITIONS

ARTICLE 1 WRITTEN NOTICE

No notice shall be deemed to have been provided to the Architect and the Owner or either of them as appropriate under the Contract unless and until the writing in which such notice is contained has been physically placed in the hands of an employee of the Architect or the Owner, respectively, either by registered or certified mail, Return Receipt Requested, or hand delivery to the following addresses for the Architect and the Owner, respectively:

To Architect: *Epsten Group, Inc.
101 Marietta Street NW Suite 2600
Atlanta, Georgia 30303
Attention: Neal Ridge III, Project Manager*

To Owner: *DeKalb County Board of Education
1780 Montreal Road
Tucker, Georgia 30084
Attention: Eric Hofstetter, Chief Operating Officer*

ARTICLE 2 COMPUTATION OF TIME

Unless otherwise specifically provided in the Contract, when a period of time measured in days, weeks, months, years or other measurements of time except hours is prescribed by the Contract for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted. Unless otherwise specifically provided in the Contract, "day" shall mean calendar day.

ARTICLE 3 FF&E

The Contractor is to provide staff on-site to coordinate with the Architect to provide access to all spaces for the delivery of FF&E.

The Contractor is responsible for final cleaning of all furniture prior to occupancy. This includes all vertical and horizontal surfaces, inside and out.

ARTICLE 4 PROLIANCE DOCUMENT CONTROL

DCSD has adopted and implemented Proliance as the District's project management software. The Contractor will receive a Proliance license at no cost to the Contractor. The Contractor will be responsible for inputting all of the Construction Phase documentation it produces into Proliance. This management will be performed in conjunction with DCSD and the Program Manager. This includes but is not limited to:

1. General
 - All documentation will be processed through Proliance
 - All meeting minutes will be produced and issued through Proliance
 - All questions and answers will be processed through Proliance

- All invoicing – architect's, contractor's, vendors', etc. will be processed through Proliance
 - RFIs will be processed in Proliance
 - Submittals will be processed in Proliance
 - Shop drawings will be processed in Proliance
 - Samples (color boards, brick, etc.) will be processed outside Proliance, but will be tracked by a transmittal inside Proliance
 - All O&Ms will be processed in Proliance
 - All As-Built/Record Documents will be processed in Proliance

ARTICLE 5

COMMENCEMENT, POSSESSION AND COMPLETION OF THE WORK

5.1 Before commencing Work, the Owner, Architect, Contractor and all interested subcontractors shall inspect the entire existing building (if there is an existing building or buildings) and Contractor shall prepare a list of any and all defects or inoperative systems. The list shall be signed by all parties and retained by the Architect.

5.2 At the time of commencement of Work, the existing building, if any, shall be assumed to be in structurally sound condition, free from cracks and leaks and that all electrical, heating and air conditioning and plumbing systems are operational, except as noted on said list.

5.3 Upon completion of the Work, all then existing defects not recorded upon said list shall be repaired, replaced or made operative by the Contractor at his own risk and expense.

5.4 Certain existing systems (if there is an existing system or systems) may be under warranty or critical to the Owner's operation, or both, and, if damaged by Contractor, shall, unless otherwise directed in writing by the Owner, be repaired only by the Warrantor or the Owner at the Contractor's expense. The Contractor shall protect all piping, wiring, equipment and related devices from damage during progress of the Work and ensure operation unless outages are specifically coordinated with the Owner. These systems include, without limitation:

- a. All utility services to existing facilities, if any, including, water, electricity, telephone, sewer, and media cable data or video.
- b. Security System
- c. Fire Alarm System
- d. Intercom System
- e. Energy Monitoring and Control System
- f. TV / Cable Distribution
- g. Computer Network System

In the event of damage to any such system, the Contractor shall immediately notify the Architect and the Owner in writing.

ARTICLE 6

TEMPORARY UTILITIES

The Contractor shall arrange and pay for the installation, set up, use and removal of all temporary utility service at the Project site. Temporary utilities shall include, but not be limited to sanitary, water, heating and ventilation, telephone and electrical service.

ARTICLE 7
CLEAN UP

Mud and construction related debris shall be cleaned from roadways and walkways outside construction limits on a daily basis.

ARTICLE 8
CODE AND STANDARDS

Any codes and standards referred to in the contract documents are minimum standards. Where the requirements of the contract documents exceed those of the codes and standards, the contract documents shall govern.

ARTICLE 9
INTERRUPTION OF UTILITIES

Work shall be scheduled to avoid as much as possible interference with the normal operation of the buildings. The Contractor shall give written notice to the Owner at least ten (10) days in advance of the date on which he wishes to interrupt power, phones, gas, water or other service. The duration of each separate interruption shall not exceed forty-eight (48) hours. Interruption may be scheduled between Friday after the hour of four o'clock (4:00) p.m. and Monday before the hour of eight o'clock (8:00) a.m. Interruptions of electrical service within buildings exceeding one hour shall be scheduled only between four o'clock (4:00) p.m. Friday and eight o'clock (8:00) a.m. Monday unless written permission is obtained from the Owner. The Contractor may otherwise interrupt service at any time that he shall have written permission from the Owner to do so. In the event of an emergency affecting, or potentially affecting in the opinion of the Architect or the Owner, the safety of property, health or life, the Owner may restrict interruptions.

ARTICLE 10
PROTECTION OF ROADWAYS, SIDEWALKS, PROPERTY SURFACES AND PERSONS

10.1 The Contractor shall repair and clean roadway, sidewalk and property surfaces located outside construction limits free of dirt and mud where caused by conveyance of construction or demolition materials, equipment and personnel to and from the construction site. Contractor shall provide the Architect for his review a written schedule, by which the Contractor shall perform corrective and clean-up Work. Such Work shall be done at no additional expense to the Owner.

10.2 The Contractor shall be responsible for damage to property and persons which result from its Work inside and outside the construction limits. The Contractor shall promptly correct conditions it has caused which create a health, safety or property danger.

ARTICLE 11
TRASH DISPOSAL

11.1 Burning of trash, refuse or debris or other material on the site is not permitted.

ARTICLE 12
DEMOLITION

12.1 All materials indicated to be removed shall be disposed of off the Owner's property.

12.2 The use of explosives will not be permitted.

12.3 The amount of dust resulting from the operations shall be controlled to prevent the spread of dust to avoid creating a nuisance in the surrounding area.

12.4 The procedure proposed for the accomplishment of demolition Work shall be submitted to the Architect for approval. The procedure shall provide for safe conduct of the Work, careful removal and disposition of materials, protection of property which is to remain undisturbed and coordination with other Work in progress. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations.

ARTICLE 13
PROTECTION OF PERSONNEL

Where the safety of pedestrians and drivers are endangered in the area of Work, the Contractor shall use barricades and other necessary precautions at no additional expense to the Owner.

ARTICLE 14
VEHICLE PARKING REGULATIONS

Designated Parking Areas: The Contractor must park all vehicles inside the designated construction area. The Contractor is responsible for transporting its employees to and from the job site from offsite staging areas.

ARTICLE 15
STREET ADDRESS

For purposes of utility work, the street address of the site is:

Briarlake Elementary School
3590 LaVista Road
Decatur, GA 30033

Early Learning Center
797 Fayetteville Road SE
Atlanta, GA 30316

Montclair Elementary School
1680 Clairmont Place NE
Atlanta, GA 30329

Tucker Middle School
2160 Idlewood Road
Tucker, GA 30084

ARTICLE 16
SITE LIMITATIONS

Construction and staging are limited to the areas within the "Limits of Fenced Construction Area" indicated on the plans.

ARTICLE 17
ACCESS TO SITE BY PERSONNEL OF OWNER

The Contractor agrees that mechanics, electricians, and maintenance personnel of the Owner may enter onto the site during the progress of the Work for the purpose of maintaining existing facilities, if any, and for the purpose of taking emergency measures necessary to preserve life or property. The Contractor shall have the right to exclude from the site any mechanic or maintenance personnel who undertakes to enter without a hard hat or who violates any of the safety regulations imposed by the U.S. Department of Labor, OSHA (Occupation Safety & Health Act), by the Contractor, by law, or by the State Commissioner of Labor.

ARTICLE 18
HAZARDOUS MATERIALS

18.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

18.2 Disposal of Environmental Hazardous Items: The Owner has contracted with a special contractor to dispose of Asbestos Type Hazardous items on a large scale. If the Contractor comes in contact with small amounts then, the Owner is prepared to remove these items with its own crew. The Contractor is hereby notified that these are the conditions from which they will work by providing a Bid for any work with Owner. Exception: PCB in Ballast. The Contractor shall remove and separate the ballasts from the lights into two groups. The first group is all ballasts which clearly state that they contain NO PCB. These can be disposed of as waste. The second group consists of all ballasts which are marked CONTAINS PCB. These ballasts shall be packed to a maximum of 1050 pounds in three ring metal drums consistent with requirements for packing group III under DOT MT - 181 regulations. A manifest for each group shall be prepared for Owner's signature for each shipment. There is no limit to the number of drums to be shipped. Inspections will be made of drums on a random basis to determine the quality of the ballast sort. Summary: It will be the Contractor's responsibility to remove and separate each type of ballasts. It will be the Contractors responsibility to properly load all metal drums. The Owner will be responsible for providing the proper drums and getting these items delivered to a Hazardous Dumping site.

ARTICLE 19
DESIGN PROFESSIONAL

If the Owner's design professional for the Project is an engineer rather than an architect, then the term "Architect" as used throughout these Special Conditions shall mean "Engineer".

Appendix - C

All Sites

Activity	Duration	Start Date	End Date
Advertise for GC Services	28 Days	05/18/23	06/15/23
Board Approval	1 Day	08/14/23	08/14/23
Contract Execution	30 Days	08/14/23	09/13/23
Notice to Proceed	1 Day	09/14/23	09/14/23
Construction	325 Days	09/14/23	08/04/24
Construction	325 Days	09/14/23	08/14/24
Substantial Completion	1 Day		08/14/24
Closeout	30 Days	08/04/24	09/03/24
Start Warranty Period - 1 Year		08/04/24	
Final Documentation	30 Days	08/04/24	09/03/24

Appendix D

DeKalb County School District | 2022-2023 CALENDAR (Approved by the Board of Education on December 13, 2021)

4 Independence Day

JULY '22						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JANUARY '23						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

- 2 Winter Break
- 3 Post/Pre-Planning Day
- 4 First Day of 2nd Semester
- 16 Dr. M. L. King, Jr. Day

19 Instructional Days

- 1-5 Pre-Planning Days
- 8 First Day of School

AUGUST '22						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY '23						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

- 17 February Break
- 20 Presidents' Day

18 Instructional Days

5 Labor Day

SEPTEMBER '22						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

MARCH '23						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

- 10 Independent Learner Day / Professional Development Day

23 Instructional Days

- 7 Fall Break
- 10 Columbus Day/ Indigenous Peoples Day

OCTOBER '22						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

APRIL '23						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

- 3-7 Spring Break

15 Instructional Days

- 8 Independent Learner Day / Professional Development Day
- 21-25 Thanksgiving Break

NOVEMBER '22						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MAY '23						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

- 24 Last Day of School
- 25 Post Planning
- 29 Memorial Day

18 Instructional Days

- 16 Last Day of 1st Semester
- 19-30 Winter Break

DECEMBER '22						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

JUNE '23						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

First/Last Day of Semester
Holiday/Break (School Closed)
Teachers' Workday/
Professional Development Day
(School Closed)

Independent Learner Day/
Professional Development Day

93 Instructional Days Total

12 Instructional Days

87 Instructional Days Total

DeKalb County School District | 2023-2024 CALENDAR

(Approved by the Board of Education on December 13, 2021)

4 Independence Day

July '23						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

31 Pre-Planning Day

19 Instructional Days

1-4 Pre-Planning Days
7 First Day of School

August '23						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

19 Instructional Days

4 Labor Day

September '23						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

20 Instructional Days

6 Fall Break
9 Columbus Day/
Indigenous Peoples
Day

20 Instructional Days

October '23						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

20 Instructional Days

7 Independent Learner
Day / Professional
Development Day

20-24 Thanksgiving Break

17 Instructional Days

November '23						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

17 Instructional Days

15 Last Day of 1st Semester
18-29 Winter Break

11 Instructional Days

87 Instructional Days Total

December '23						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

January '24						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

1 Winter Break
2 Post/Pre-Planning Day
3 First Day of 2nd Semester
15 Dr. M. L. King, Jr. Day

20 Instructional Days

February '24						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

16 February Break
19 Presidents' Day

19 Instructional Days

March '24						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

8 Independent Learner
Day / Professional
Development Day

21 Instructional Days

April '24						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

1-5 Spring Break

17 Instructional Days

May '24						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

22 Last Day of School
23 Post Planning
27 Memorial Day

16 Instructional Days

June '24						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

First/Last Day of Semester
Holiday/Break (School Closed)
Teachers' Workday/
Professional Development Day
(School Closed)

Independent Learner Day/
Professional Development Day

93 Instructional Days Total

APPENDIX E1

**STANDARD FORM OF
FIXED PRICE CONSTRUCTION CONTRACT
BETWEEN
THE DEKALB COUNTY BOARD OF EDUCATION
AND**

[Contractor]

PROJECT: Briarlake Elementary School, HVAC and Controls Replacement

Project Address: 3590 LaVista Road
Decatur, GA 30033

ARCHITECT: Epsten Group, Inc.

Architect's Address: 101 Marietta Street NW Suite 2600
Atlanta, Georgia 30033

Cost Code: 448.0605.30521.GENCONTR.R_HV

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This FIXED PRICE CONSTRUCTION CONTRACT (the "Contract") is made and entered into by and between THE DEKALB COUNTY BOARD OF EDUCATION (the "Owner") and _____ (the "Contractor"). This Contract shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Briarlake Elementary School, HVAC and Controls Replacement (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes this instrument, all exhibits hereto, the plans and specifications for the Project identified thereon as such, the Contractor's Proposal, Supplemental Conditions, if any, Special Conditions, if any, and all Addenda issued prior to execution of the Contract, if any, plus the following (if any):

all of which are hereby incorporated herein by reference and made a part hereof. Attached hereto as Exhibit "E" is a list of the plans and specifications for the Project. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract. The Contract, of which this instrument is a part, may sometimes be referred to as the "Contract Documents."

ARTICLE 2

REPRESENTATIONS OF THE CONTRACTOR

2.1 General. In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, and without limiting or restricting any other representation or warranty set forth elsewhere or implied by law, the Contractor, by executing this Contract, makes the following express representations and warranties to the Owner:

2.1.1 The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project.

2.1.2 The Contractor has visited, inspected and become familiar with the Project site and the local conditions under which the Project is to be constructed and operated.

2.1.3 The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and believes them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

2.2 Qualification Information. The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Contractor's Prequalification Statement and/or proposal documents, if any, and in any other communication from the Contractor

regarding the Contractor's qualifications or responsibility to perform the obligations of the Contractor under this Contract (all such information being referred to herein as "Qualification Information"). The Contractor further represents, warrants and affirms that in the event that any Qualification Information changed in any material way after it was communicated from Contractor and before this Contract is signed by all parties, Contractor has immediately notified the Owner, in writing, of such change or changes and Contractor agrees that Owner may take such action thereon as Owner deems appropriate. The Contractor acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Qualification Information. The Contractor acknowledges and agrees that all Qualification Information is material and important to the Owner's evaluation of the Contractor's qualifications and responsibility to undertake the Contractor's obligations under this Contract. Contractor acknowledges and agrees that if the Contractor knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Qualification Information, or failed to advise the Owner in writing of any material change in such information as set forth in this Paragraph, this Contract shall be deemed to be materially breached by Contractor and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

ARTICLE 3

CONTRACT CONSTRUCTION

3.1 Intent and Interpretation. With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1.1 This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents, but only to the extent that it is inconsistent therewith.

3.1.2 Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

3.1.3 Nothing contained in this Contract shall create, nor be interpreted to create privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor.

3.1.4 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Contractor observe any conflicts, ambiguity, errors or omissions within the documents, he shall, by written notice, bring them to the Owner's and Architect's attention for decision and revision as soon as possible after originally observed and before proceeding with the affected Work. In the event of duplication or conflicts between the documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no

representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor again hereby acknowledges and represents that it has received, reviewed, and carefully examined such documents, believes them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

3.1.6 Plans are not intended to be scaled or to act as shop drawings.

3.1.7 In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, interpretation will be based on the following priority:

3.1.7.1 Addenda (if any), with those of later date having precedence over those of earlier date.

3.1.7.2 This Agreement.

3.1.7.3 Supplemental or Special Conditions (if any).

3.1.7.4 Specifications.

3.1.7.5 Plans, with the following priority:

(a) As between figures given on plans and scaled measurements, the figures shall govern.

(b) As between large scale plans and small-scale plans, the large scale plans shall govern.

3.1.8 Whenever an item is specified or shown on the plans by detail or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function in the building.

3.1.9 Any material specified by reference to the number, symbol, or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such references. The standards referred to, except as modified in the Contract, shall have full force and effect as though printed in the Contract. The Contractor shall make itself aware of the contents of such standards and shall furnish the field office with one (1) full set of each.

3.1.10 If Owner elects to accept any items proposed by the Contractor as a substitution, the Contractor shall assume full responsibility for the proper performance of any substitution to the criteria set forth in the Contract and assume the costs of any changes in the Work which may be due to such substitution.

3.1.11 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.1.12 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

3.1.13 Wherever the terms "necessary", "suitable", "as directed", "when directed", "satisfactory", "good and sufficient", "approved", or other general qualifying terms are used on the plans, they are deemed to be followed by the words "in the opinion of the Architect", or "by the Architect", as the case may be.

3.1.14 Unless otherwise stated, the terms “approval”, “approved”, “approved equal”, “or equal”, or “other approved”, are deemed to be followed by the words “in the opinion of the Architect”, or “by the Architect”, as the case may be.

3.1.15 If the Owner’s design professional for the Project is an engineer rather than an architect, then the term “Architect” as used throughout this Contract shall mean “Engineer”.

3.1.16 Unless otherwise stated, the term “day” means “calendar day” and the term “days” means “calendar days”.

3.1.17 “Work” means any and all labor, supervision, coordination, work, supplies, fixtures, appliances, furnishings, vehicles, equipment, services, facilities, tools, materials, computers, transportation, storage, power, fuel, heat, light, cooling, utilities, insurance, bonds, items, documents and things required by the Contract Documents to be performed, obtained, furnished, provided, or supplied by Contractor, including without limitation all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purposes.

3.2 Ownership. The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner’s prior written authorization.

ARTICLE 4

CONTRACTOR’S PERFORMANCE

4.1 Generally. The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

4.1.1 Construction of the Project.

4.1.2 The furnishing of required surety bonds and insurance.

4.1.3 The provision, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits, licenses, fees and governmental inspections required for the construction of the Project.

4.1.4 The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon Final Completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

4.1.5 The Contractor shall develop a written site safety plan incorporating the most recent site evacuation plan submitted by the Architect and shall submit such safety plan to the Owner for review and comment. The Contractor shall be solely responsible for site safety.

4.1.6 The Contractor shall develop a written site security plan incorporating the most recent information obtained from the District’s police force and the school principal and shall submit such security plan to the Owner for review and comment. The Contractor shall be solely responsible for site security.

ARTICLE 5

TIME FOR CONTRACTOR'S PERFORMANCE

5.1 Time for Performance. The Contractor shall commence the performance of this Contract on the day identified in the Master Schedule issued with the RFP and will be completed no later than the Substantial and Final Completion dates identified in the same Master Schedule. The Substantial and Final Completion dates will not be extended because the Contractor is delinquent in providing the DCSD BOE with the properly executed contract, payment and performance bonds, and required certificates of insurance, including, but not limited to, builder risk riders. These documents are required to be submitted to the DeKalb County Board of Education per the timeframe identified in the Notice of Award. The Contractor shall accomplish Substantial Completion of the Project on or before: _____.

Final Completion of each phase shall occur on or before thirty (30) calendar days from the substantial completion date of each phase. The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time."

5.2 Liquidated Damages for Delay of Substantial Completion. The Contractor shall pay the Owner for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion the sum indicated at Exhibit "B" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.3 Substantial Completion. The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

5.4 Time Is Of The Essence. All limitations of time set forth herein are material and are of the essence of this Contract.

ARTICLE 6

FIXED PRICE AND CONTRACT PAYMENTS

6.1 Contract Price. The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of _____ Dollars (\$_____). The price set forth in this Paragraph 6.1 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. The Contract Price includes the following Alternate(s), if any: _____.

6.2 Schedule of Values. Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not front-end load its Schedule of Values by imbalancing it or by increasing any element thereof in excess of the

actual cost, and any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.

6.3 Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both including, without limitation, supporting pay applications submitted by all Subcontractors and an itemization and/or invoices of all direct costs incurred by Contractor for labor, materials, equipment and/or any third-party services which are being included in such Payment Request. Therein, the Contractor may request payment for ninety-five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.

Prior to or concurrent with Contractor's second Payment Request, Contractor shall submit to Owner a draft proposed closeout submittal for review and comment by the Owner and the Architect. If the Owner or Architect provide comments, Contractor shall make any required changes to the draft proposed closeout submittal and resubmit to the Owner with Contractor's next Payment Request.

When fifty percent (50%) of the Contract Price, as it may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the Architect, the Owner, at its sole discretion, may reduce retainage withheld. If, after discontinuing the retention, the Architect determines that the Work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality and digital copies on cd depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require. With each payment request, Contractor will provide a fully updated, detailed construction schedule for use by the Architect and Owner in determining the actual progress of the project with respect to the payment application.

Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other

encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien, in a form acceptable to the Owner, from Contractor and from all subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

6.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, material man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

6.5 No Acceptance of Work. Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

6.6 Refusal to Make Payment. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

6.6.1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract.

6.6.2 The quantity of the Contractor's Work not being as represented in the Contractor's Payment Request, or otherwise.

6.6.3 The Contractor's rate of progress being such that, in the opinion of the Owner or the Architect, or both, Substantial Completion or Final Completion, or both, may be inexcusably delayed.

6.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.

6.6.5 The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers.

6.6.6 Claims made, or likely to be made, against the Owner or its property.

6.6.7 Loss or damage caused by the Contractor.

6.6.8 The Contractor's failure or refusal to perform any of its obligations relating to safety and/or security, including without limitation the safety related obligations set forth in the Specifications Division 1 – General Requirements.

6.6.9 The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph 6.6 the Contractor shall promptly comply with such demand.

6.7 Untimely Payments. If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease Work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease Work to the Owner.

6.7.1 Payments due from the Owner to the Contractor under the terms of this Contract which remain unpaid for thirty (30) days after the date when due will thereafter accrue interest at the rate of six percent (6%) per annum until payment of such amount as is due has been made in full provided that notice has been given as set forth in O.C.G.A. § 13-11-7. Acceptance of progress payments or final payments shall release all claims for interest on said payments. To the fullest extent allowed by law, the Contract Documents shall supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*

6.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a detailed and quantified punchlist of those matters yet to be finished and proposed cost estimates for each item on the punchlist. The Architect will thereupon conduct an inspection to confirm that the Work is in fact substantially complete and shall review the Contractor's punchlist for accuracy as to the items on the punchlist and the Contractor's cost estimate for completing each item on the punchlist. Upon its confirmation that the Contractor's Work is substantially complete and approval of the punchlist and cost estimates and upon delivery of the Contractor's punchlist to the Owner and the approval by Owner of the punchlist, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims.

6.9 Final Completion. "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract, including start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate the Project.

6.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder including completion of all items on the Contractor's punchlist to the satisfaction of the Architect, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in form and manner acceptable to Owner, consent(s) of surety to release retainage, together with an original power of attorney with current certificate attached thereto.

6.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion. If the Contractor fails to achieve Final Completion within 30 days of the date of Substantial Completion, the Contractor shall pay the Owner one-tenth (1/10) of the sum indicated at Exhibit "B" per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.12 Conditions Precedent to Final Payment. Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

6.12.1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.

6.12.2 If required by the Owner, separate releases of claims and liens and claim and lien waivers from Contractor and each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have, a claim against the Owner or the Owner's property and an affidavit that all such releases and waivers have been provided.

6.12.3 Consent(s) of Surety to final payment, together with an original current power of attorney with current certificate attached thereto.

6.12.4 All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.

6.13 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Paragraph 6.6 above, make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Approval for Payment.

ARTICLE 7

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

7.1 Generally. The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

7.2 Easements. The Owner shall obtain all required easements and the like, **but not the building permit and other permits or fees required of the Contractor by this Contract or permits and fees customarily the responsibility of the Contractor.**

7.3 Contract Copies. The Owner or Architect will provide the Contractor three (3) copies of the complete Contract Documents. The Contractor will be charged, and shall pay the Owner or Architect, actual cost of reproduction for each additional copy of the Contract Documents requested by the Contractor.

ARTICLE 8

CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect'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 shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 9

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

9.1 Generally. In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

9.1.1 The Contractor is again reminded of its continuing duties set forth in Subparagraph 3.1.5 which are by reference hereby incorporated in this Subparagraph 9.1.1. The Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.

9.1.2 All Work shall strictly conform to the requirements of this Contract.

9.1.3 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

9.1.4 A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers, and vendors (hereinafter jointly referred to as "Individuals") who provide services on DCSD premises, supervise services on DCSD premises, or has contact with students. These Individuals shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Individual at a cost of \$45.00 per individual. Additionally, any charges against the Individual, may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the Individual have no contact with DCSD students or parents or provide services to DCSD premises. Any failure of an Individual to obtain a criminal records

background check through DCSD, as stated herein, may result in termination of any resulting contract between such Individual and DCSD. **The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work.**

9.1.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent must be satisfactory to the Owner. The superintendent shall represent the Contractor and communications given to the superintendent shall be as binding as if given to the Contractor. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 9.1.5 as though such individuals had been listed above.

9.1.6 The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.

9.1.7 Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Architect shall develop the submittal log which shall include, at a minimum, specification number, submittal name, submittal number. The Contractor shall provide the planned submittal date for each item and then maintain the log with the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall carefully review, inspect and examine any and all submittals before submission of same to the Architect.

9.1.8 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

9.1.9 At all times relevant to this Contract, the Contractor shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the Work without formality or other procedure.

9.2 Warranty.

9.2.1 The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.

9.2.2 The Contractor shall provide any and all specific or special warranties or guarantees of materials, equipment, items, systems and other things as required elsewhere in this Contract.

9.3 Schedule for Completing Work. The Contractor, within fifteen (15) days of receipt of the N.T.P., shall provide to the Owner and the Architect, and comply with, the Contractor's Schedule of Construction for timely completing the Work. Such schedule shall be a detailed critical path (CPM) schedule in a form acceptable to the Owner. The Contractor's Schedule of Construction shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. In addition to, and not in limitation of, any other requirements of this Contract, the Contractor shall comply with the requirements of Exhibit "F," Minimum Requirements for Contractor's Schedule of Construction, attached hereto and incorporated herein by reference. Strict compliance with the requirements of this Paragraph 9.3 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

9.3.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's Schedule of Construction with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract, the Contractor shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six days a week until such time as Contractor shall have overcome the delinquency and brought the amount of critical path Work in place into compliance with the Contractor's Schedule of Construction, all at no additional cost to the Owner. Nothing herein shall relieve the Contractor from liability for failure to timely progress the Work or any other breach of the Contract Documents.

9.4 Storm Water Discharge Permits. Unless otherwise directed in writing by the Owner, the provisions of this Paragraph 9.4 shall apply and the Contractor shall have and perform the duties, obligations and responsibilities of the Contractor set forth herein. The Owner has contracted with the Architect to: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSWD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSWD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSWD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSWD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSWD Permit. Excepting only the foregoing items (i) through (iv) performed by the Architect, the Contractor shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSWD Permit, including, without limitation, obtaining the permit, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSWD Permit. The Contractor's duties and obligations shall not be relieved by any duties of the Architect. The Contractor shall timely notify the Architect of any rain or other precipitation requiring the inspections referred to in item (iii) above so as to facilitate the Architect's timely performance of such inspections. The Contractor shall timely notify the Owner and Architect of any failure by the Architect to timely perform the inspections referred to in item (iii) above.

ARTICLE 10

INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, liens, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses, arising out of or in connection with the Contractor's performance of this Contract and the Work, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, this indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11

THE PROJECT ARCHITECT

11.1 **Architect.** The architect for this Project is Epsten Group, Inc. (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

11.1.1 Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract.

11.1.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect.

11.1.3 When requested by the Contractor in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.

11.1.4 The Architect shall draft proposed Change Orders.

11.1.5 The Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

11.1.6 The Architect shall be authorized to refuse to accept Work which is defective or otherwise fails to comply with the requirements of this Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of this Contract.

11.1.7 The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in this Contract.

11.1.8 The Architect shall, upon written request from the Contractor, perform those inspections required in Article 6 hereinabove.

11.1.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract.

11.1.10 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 12

CLAIMS BY THE CONTRACTOR

12.1 Generally. Claims by the Contractor against the Owner are subject to the following terms and conditions, and strict compliance with this Article 12 shall be a condition precedent to any liability of Owner therefore.

12.1.1 All Contractor claims against the Owner, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to the Owner and the Architect. Such written notice of claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim, including the amount claimed. Contractor agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.2 Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Contractor shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

12.1.3 No later than ten (10) days after the date of the written notice of claim, Contractor shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Contractor discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Contractor's formal written claim shall also include Contractor's good faith estimate of the change in the Contract Price, the Contract Time, or both, determined in accordance with Article 14 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.4 Contractor shall provide, and continue to provide, to Owner and Architect all such documentation, including cost and time records, as and when Owner or Architect may request so that Owner and Architect may evaluate Contractor's claim.

12.1.5 The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor.

12.1.6 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical

location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 12.1.6 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

12.1.7 In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 12.1.1 above and such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.

12.1.8 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost reasonably incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following claims: loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; and, loss of future or anticipated profits from other work. Notwithstanding the foregoing first two sentences of this Subparagraph 12.1.8, the Owner's limitation of liability shall not apply to the Owner's liability to the Contractor, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

12.2 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the Substantial Completion Date, or as applicable, the date for Final Completion, shall be appropriately adjusted by the Owner upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as Owner may determine. The Contractor's sole remedy for delay caused by any of the bases listed in this paragraph 12.2 shall be a time extension. A task is critical within the meaning of this paragraph 12.2 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of paragraph 12.1.1 above and such notice shall be given by Contractor before proceeding to execute any additional or changed Work. If the Contractor fails to make such claim as required in this paragraph 12.2, any claim for an extension of time shall be waived. For the avoidance of doubt, the Contractor shall not be entitled to a time extension if the Contractor is delayed in performing any task as a sole result of the following: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of materials, equipment, or supplies unless solely caused by an act or omission by the Owner or someone acting in the Owner's behalf, (iv) local or direct strikes, or other similar labor actions, (v) unavailability of subcontractors, sub-subcontractors, or suppliers, or (vi) nonperformance or delay by the Contractor or its subcontractors, sub-subcontractors, or suppliers.

12.2.1 "Unusually severe weather" as used above in paragraph 12.2.1 includes abnormal and unexpected weather conditions including catastrophic storms or floods, lightning, tornadoes, hurricanes, and earthquakes. The Contractor shall not be entitled to any extension of time due to adverse weather conditions unless the number of adverse weather days in any given calendar month exceeds the historic averages as maintained by the national Oceanic and Atmospheric Administration. Adverse weather conditions is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within twenty-four (24) hours: (i) precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure, (ii) temperatures which do not rise above 32 degrees F

by 10:00 A.M., (iii) temperatures which do not rise above that specified for the day's construction activity by 10:00 A.M. if any is specified, (iv) sustained wind in excess of twenty-five (25) mph, or (v) standing snow in excess of one inch (1.00"). Weather conditions including precipitation (rain, snow, and hail) amounts and times at the jobsite, activities and durations affected, shall be recorded on a daily basis and submitted to the Owner on a weekly basis.

12.2.2 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure full completion thereof within the time required by the Contract Documents. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2, and after consideration of all such contingencies and factors, Contractor has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2.

12.2.3 The date for achieving Substantial Completion or, as applicable, Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes access to the Project site) after the Project is enclosed or due to normal severe weather. For the purpose of this Paragraph, the term "enclosed" is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. There shall be no extension of the time for completion due to any lost days that are not weekday working days (based on a Monday through Friday work week). No change in the Contract Price shall be due because of weather.

12.3 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Contractor shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or a court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Subject to the express approval of the DeKalb County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 13

SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below. The Architect will not enter into disputes between the Contractor and any subcontractor or supplier, nor shall

the Architect be called upon to settle same. Neither shall the Architect be called upon to enter into or to settle disputes between any subcontractors or suppliers.

ARTICLE 14

CHANGE ORDERS

14.1 **Generally.** One or more changes to the Work within the general scope of this Contract, or the time for the Contractor's performance, or any combination thereof, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

14.1.1 "Change Order" shall mean a written order to the Contractor executed by the Owner and the Architect after execution of this Contract and approved by the Georgia Department of Education if so required, directing a change in the Work, the time for the Contractor's performance, or any combination thereof.

14.1.2 A change in the Work (excepting only changes required by the Architect pursuant to Paragraph 11.1.9 of this Contract) or the time for the Contractor's performance may be made only by Change Order. The Owner will not be responsible for any change in the Work involving extra costs unless approval in writing is furnished by the Owner before such Work is begun. Note that the Architect does not have authority to order changes in the Work that involve changes in cost or time.

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

14.1.3.1 Any increase in the Contract Price must be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract, and any such request for an increase in the Contract Price shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner and Architect in accordance with Article 12 of this Contract of any request for an increase in the Contract Price shall constitute a waiver by Contractor of any entitlement to an increase in the Contract Price.

14.1.3.2 The change in the Contract Price, if any, shall be established by one of the following methods:

14.1.3.2.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

14.1.3.2.2 Unit prices stated in the Contract Documents or subsequently agreed upon; or

14.1.3.2.3 On the basis of, and shall be limited to, the reasonable actual costs incurred, or savings achieved, resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect costs or components. The Contractor shall keep and present, in such form as the Architect may require, an itemized accounting together with appropriate supporting data. Actual costs for the purposes of this Paragraph shall be limited to the following:

.1 Costs of labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, sales, use or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

14.1.3.2.4 The allowance for overhead and profit for any Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision, superintendence, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined, shall be determined as follows:

.1 If, and to the extent, the change involves Work of one or more subcontractors, the overhead and profit component for subcontractors shall be five percent (5%) and the overhead and profit component for the Contractor shall be five percent (5%) of the amount allocable for subcontracted Work; provided, however, that the foregoing five percent (5%) overhead and profit component for subcontractors is intended to cover all subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier subcontractors of the Contractor. For the avoidance of doubt, all Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

.2 If the change involves only Work of the Contractor, the component for overhead and profit shall be ten percent (10%).

14.1.3.2.5 Any other provision of the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Change Orders performed concurrently with the Work, unless the cost includes a claim for extension of time by the ordering of the change.

14.1.3.3 The Contractor shall continue to diligently perform the Work, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Subparagraph 14.1.3 above. Pending final determination of reasonable actual costs incurred or savings achieved, payments on account shall be made to Contractor in accordance with said Subparagraph 14.1.3 and Article 6 of this Contract.

14.1.3.4 If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Subparagraph 14.1.3.4 shall be made only with respect to the difference between

the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Subparagraph 14.1.3.4 shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

14.1.4 Any extension of the time for the Contractor's performance requested by Contractor for performance of any change in the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Contractor's performance shall be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract and any such request for extension of time shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner in accordance with Article 12 of this Contract of any request for extension of time, or the Contractor's execution of a Change Order, shall constitute a waiver by Contractor of any entitlement to an extension of time arising out of or relating to such Change Order.

14.1.5 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. The stated extension of time, if any, is equitable in nature, and includes all compensation to Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change Order, and that no further claims for any extension of time or adjustment in the Contract Price, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of time or adjustment in the Contract Price are waived in their entirety.

14.1.6 The Contractor shall notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's Surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the Surety has been notified of, and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

14.1.7 No Change Order shall contain any reservation of rights or have any qualifying language placed on it.

ARTICLE 15

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

15.1 Work in Violation of Contract. In the event that the Contractor covers, conceals or obscures its Work in violation of this Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

15.2 Work in Conformity with Contract. If any of the Work is covered, concealed or obscured in a manner not covered by Paragraph 15.1 above, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

15.3 Defective or Nonconforming Work. The Contractor shall, at no cost in time or money to the Owner, timely correct Work rejected by the Owner or by the Architect as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

15.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial Work including needed maintenance instructions to Owner's personnel.

Nothing contained in this Article 15 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article 15.4 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the 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 the Contractor's obligations other than specifically to correct the Work.

15.5 Owner's Option. The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable costs of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 16

TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of sixty (60) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Architect. If the Owner suspends Contractor's performance for a period of more than one hundred twenty (120) days, through no fault of the Contractor, then Contractor may, upon seven (7) days written notice to Owner, terminate this Contract. In either event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Paragraph 18.1 hereunder.

ARTICLE 17

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

17.1 Suspension. The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to one hundred twenty (120) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

17.2 Compensation. In the event the Owner directs a suspension of performance under this Article 17, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- 17.2.1 demobilization and remobilization, including such costs paid to subcontractors.
- 17.2.2 preserving and protecting Work in place.
- 17.2.3 storage of materials or equipment purchased for the Project, including insurance thereon.
- 17.2.4 performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 18

TERMINATION BY THE OWNER

18.1 Termination for Convenience. The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also, at the Owner's direction, either terminate or assign to Owner or Owner's designee outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

18.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph 18.1.3 below.

18.1.2 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

18.1.3 Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

18.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

18.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

18.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Paragraph 18.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.2 Termination for Cause. If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 18.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause; such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 18.1 shall apply.

18.3 Termination Not Subject to Article 12. Termination of this Contract by the Owner is not subject to the procedures set forth in Article 12.

ARTICLE 19

INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE 20

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in the exact form provided by the Owner and shall be executed by a surety, or sureties, licensed in the State of Georgia by the Office of Commissioner of Insurance, rated A+ or better by A.M. Best Company, listed on the United States Department of Treasury's Listing of Approved Sureties (Treasury Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation equal to or greater than the penal sum of the bonds as adjusted from time to time, and not otherwise reasonably objectionable to the Owner.

ARTICLE 21

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, photographs, estimates, invoices, bills, receipts, cancelled checks, vouchers or other writings or things which document or involve in any manner the Project, its design, its cost, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor and its Subcontractors. The Contractor shall maintain and protect these documents for no less than six (6) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

ARTICLE 22

APPLICABLE LAW / VENUE AND JURISDICTION

22.1 Applicable Law / No Waiver. The law applicable to this Contract shall be the law of the State of Georgia. Each and every provision required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained therein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof. The failure of owner to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in any other instance. The Contractor and all subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Contractor and all subcontractors shall provide the Owner with a completed and signed Immigration and Security Form and accompanying affidavits, as a condition precedent to Final Payment.

22.2 Jurisdiction and Venue. The Contractor and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of DeKalb County, Georgia, regarding any matter arising out of or relating to this Contract. The Contractor agrees that it shall file any lawsuit or other action, including any third-party practice lawsuit, against the Owner arising out of or related to this Contract or the Project only in the Superior Court of DeKalb County.

ARTICLE 23

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

[SIGNATURES APPEAR ON THE NEXT PAGE]

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijon DaCosta, Sr., Board Chair
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Vasanne S. Tinsley, Interim Superintendent
[TYPED NAME & TITLE]

DeKalb County Board of Education
1701 Mountain Industrial Boulevard
Stone Mountain, Georgia 30083

[DATE OF EXECUTION]

Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

[TYPED NAME]

By: _____
[SIGNATURE]

[TYPED NAME & TITLE]

[ADDRESS]

[DATE]

EXHIBIT "A"

REQUIRED INSURANCE

(1) The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' or workmen's compensation disability benefit or other similar employees benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(2) The insurance required by Paragraph 1 shall be written for not less than any limits of liability specified within this exhibit, or required by law, whichever is greater.

(3) The insurance required by Paragraph 1 shall include contractual liability insurance.

(4) The Contractor shall be responsible from the time of signing the Contract or from the time of the beginning of the first Work, whichever shall be earlier, for all bodily injury (including death) or damage to property of any kind resulting from the Work under this Contract to persons or property.

The Contractor assumes the obligation to save the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect harmless and to indemnify them from every expense, liability or payment arising out of or through bodily injury (including death) to any person or persons or damage to property of any person arising out of any act of the Contractor, any subcontractor or anyone either directly or indirectly employed by or under the supervision of any of them in the prosecution of the Work included in the Contract.

All liability policies shall name the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect as an additional insured. All liability policies shall be issued on a primary and non-contributory basis over any other liability insurance which may be available to the Owner, the DeKalb County School District, Owner's Program Manager, and Architect to fully insure the indemnity obligations made herein and in any other portion of this contract.

(5) The Contractor agrees to comply with the provisions of the Workman's Compensation laws of the State of Georgia and to require all Subcontractors likewise to comply. Contractor shall secure the following insurance at his own expense and prior to starting any Work shall file Certificates of Insurance with the Owner except that on the Owner's Protective Insurance, original policies shall be filed with the Owner.

(a) Workmen's Compensation - Statutory Limits, Employer's Liability -\$1,000,000.00

(b) Comprehensive General Liability (including Premises-Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage and Broad Form General Liability Endorsement; Explosion & Collapse).

1. Bodily Injury: \$1,000,000.00 Each Occurrence; \$2,000,000.00 Aggregate, Products and Completed Operations (Umbrella).
2. Property Damage: \$500,000.00 Each Occurrence; \$1,000,000.00 Aggregate.
3. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after completion of the work and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
4. Property Damage Liability Insurance shall include coverage for Explosion, Collapse, and Underground.
5. Contractual Liability (Hold Harmless Coverage): Bodily Injury: \$1,000,000.00 Each Occurrence; Property Damage: \$500,000.00 Each Occurrence, \$500,000.00 Aggregate.
6. Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Each Occurrence, \$1,000,000 Aggregate.
7. If the Comprehensive General Liability policy provides that the general aggregate limit for items (5)(b) 1-6 above apply separately to **each** project, then the Owners Protective Liability policy in item (8) (a)-(c) shall not be required.

(c) Comprehensive Automobile Liability (owned, non-owned, leased, hired):

1. Bodily Injury: \$1,000,000.00 Each Person, \$1,000,000.00 Each Accident;
2. Property Damage: \$1,000,000.00 Each Occurrence;
3. or \$1,000,000 Combined Single Limit.

(d) Commercial Umbrella

1. Umbrella limits shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below:

Contract Price	Required Umbrella Limit
Less than \$1,000,000	\$1,000,000
\$1,000,000 to \$10,000,000	\$5,000,000
Greater than \$10,000,000	\$10,000,000

2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
4. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the DeKalb County School District, Owner's Program Manager, and Architect.

(6) Certificates of Insurance (2 copies) shall be filed with Owner before commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, changed or allowed to expire until thirty (30) days after the Owner has received written notice evidenced by return receipt of registered letter.

(7) Insurance will not be acceptable unless written by a Company authorized by the State of Georgia Insurance Department to do business in Georgia at the time the policy is issued and the company must in addition be acceptable to the Owner.

(8) Contractor shall purchase and maintain Owner's Protective Liability Policy with minimum limits of:

- (a) Bodily Injury: \$1,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (b) Property Damage: \$2,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (c) Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Aggregate.

This policy shall be issued in the name of DeKalb County Board of Education and delivered to Owner along with Certificates of Insurance. Employees of the DeKalb County Board of Education shall be included as an additional insured. Policy shall also name the DeKalb County School District, Owner's Program Manager, and the Architect as an additional insured.

(9) Contractor shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Contractor and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the contract price and covering fire, theft, extended coverage, vandalism and malicious mischief. The coverage and protection afforded to the Owner under such policy shall not be diminished, changed, altered or otherwise affected by any of the following:

- (a) the delivery of furniture, fixtures and equipment to the insured premises and the installation in place thereof, and making the same ready for Owner's use;
- (b) the Owner's partial or total occupancy of the insured premises; and/or
- (c) the performance of other work or construction operations at the insured premises by the Owner and/or its employees, agents or other contractors.

For the avoidance of doubt, and to the extent required, Contractor shall obtain an endorsement to such policy to delete any partial occupancy exclusions and to ensure the policy's compliance with the foregoing requirements and provide a copy thereof to Owner.

(10) The Contractor may, at his option, purchase insurance policies having a "deductible" feature provided that:

- (a) Deductible amount does not exceed \$10,000.00.
- (b) Contractor agrees in written letter to the Owner (through the Architect) to be responsible for payment of any such deductibles, in the event that such payment should become necessary.

EXHIBIT "B"

LIQUIDATED DAMAGES

Liquidated damages applicable to Paragraph 5.2 of this Contract shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below.

If The Original Contract Price Is:

Up to \$49,999.99
\$50,000.00 to \$99,999.99
\$100,000.00 to \$299,999.99
\$300,000.00 to \$599,999.99
\$600,000.00 to \$999,999.99
\$1,000,000.00 to \$1,999,999.99
\$2,000,000.00 to \$4,999,999.99
\$5,000,000.00 to \$9,999,999.99
\$10,000,000.00 to \$14,999,999.99
\$15,000,000.00 to \$19,999,999.99
\$20,000,000.00 or above

Daily Liquidated Damages Shall Be:

\$50
\$100
\$200
\$300
\$400
\$500
\$750
\$1,500
\$2,500
\$3,500
The product of .0002 multiplied by
the Original Contract Price.

CONTRACTOR AFFIDAVIT AND AGREEMENT

EXHIBIT "C"

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the individual, firm, or corporation ("Contractor") which is contracting with the DeKalb County Board of Education has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91, as amended. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(2) Contractor's correct user identification number and date of authorization is set forth herein below.

(3) Contractor agrees that the Contractor will not employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the DeKalb County Board of Education, unless at the time of the contract said subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Contractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Contractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other applicable verification procured by subcontractor at the time of contract with the sub-subcontractor(s) within five (5) business days after receiving the said Affidavit or verification.

Contractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such subcontractor Affidavit or other permissible verification to the DeKalb County Board of Education at the time the subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

(4) Contractor further agrees to and shall provide DeKalb County Board of Education with copies of all other affidavits or other applicable verification received by Contractor (i.e.: sub-subcontractor affidavits and all other lower tiered affidavits) within five (5) days of receipt.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EV/Basic Pilot Program, please identify the program.

Company Name / Contractor Name

Date

BY: _____
Signature of Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 20____

Notary Public

My Commission Expires: _____

EXHIBIT "D"

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the undersigned individual, firm or corporation ("Subcontractor") is engaged in the physical performance of services under a contract with _____ (*name of Contractor*), which has a contract with the DeKalb County Board of Education.

(2) Subcontractor has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(3) Subcontractor's correct user identification number and date of authorization is set forth herein below.

(4) Subcontractor agrees that the Subcontractor will not employ or contract with any sub-subcontractor(s) in connection with the physical performance of services pursuant to this subcontract or the contract with the DeKalb County Board of Education, unless said sub-subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Subcontractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Subcontractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other permissible verification procured by sub-subcontractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

Subcontractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such sub-subcontractor Affidavit or other applicable verification to the Contractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EEV/Basic Pilot Program, please identify the program.

BY: Authorized Officer or Agent

Date

(Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20____

Notary Public

My Commission Expires:_____

EXHIBIT “E”

LIST OF PLANS AND SPECIFICATIONS FOR THE PROJECT

[Here insert or attach list of plans and specifications for the Project.]

EXHIBIT "F"

MINIMUM REQUIREMENTS FOR CONTRACTOR'S SCHEDULE OF CONSTRUCTION

PART 1 - GENERAL

- 1.1 **DEFINITIONS.** For purposes of this Exhibit, the following terms shall have the meanings set forth below.
- A. **Activity:** A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. **Critical activities** are activities on the critical path. They must start and finish on the planned early start and finish times.
 - 2. **Predecessor Activity:** An activity that precedes another activity in the network.
 - 3. **Successor Activity:** An activity that follows another activity in the network.
 - B. **Cost Loading:** The allocation of the Schedule of Values for the completion of an activity as scheduled. The sum of costs for all activities must equal the total Contract Price, unless otherwise approved by Architect and Owner.
 - C. **CPM:** Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of the project.
 - D. **Critical Path:** The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall project duration and contains no float.
 - E. **Event:** The starting or ending point of an activity.
 - F. **Float:** The measure of leeway in starting and completing an activity.
 - 1. Float time belongs to Owner.
 - 2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
 - G. **Fragnet:** A partial or fragmentary network that breaks down activities into smaller activities for greater detail.
 - H. **Major Area:** A story of construction, a separate building, or a similar significant construction element.
 - I. **Milestone:** A key or critical point in time for reference or measurement.
 - J. **Network Diagram:** A graphic diagram of a network schedule, showing activities and activity relationships.

- K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.2 SUBMITTALS

- A. Preliminary Schedule of Construction: Submit two opaque copies.
 - 1. No action or inaction by Architect or Owner in connection with cost-loaded preliminary schedule of construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- B. Preliminary Network Diagram: Submit two opaque copies, large enough to show entire network or entire construction period. Show logic ties for activities.
- C. Contractor's Schedule of Construction: Submit two opaque copies of initial schedule and each updated schedule, large enough to show entire schedule for entire construction period.
 - 1. Submit an electronic copy of schedule, using software indicated, on CD-R, and labeled to comply with requirements for submittals. Include type of schedule (Initial or Updated) and date on label.
 - 2. No action or inaction by Architect or Owner in connection with cost-loaded Contractor's Schedule of Construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- D. CPM Reports: Concurrent with CPM schedule, submit three copies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of total float.
 - 4. Earnings Report: Compilation of Contractor's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary schedule of construction, the initial Contractor's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Contractor's Schedule of Construction.

1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the Preliminary Schedule of Construction and Contractor's Schedule of Construction, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update schedule.

3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
4. Review delivery dates for Owner-furnished products, if any.
5. Review schedule for work of Owner's separate contracts, if any.
6. Review time required for review of submittals and resubmittals.
7. Review requirements for tests and inspections by independent testing and inspecting agencies.
8. Review time required for completion and startup procedures.
9. Review and finalize list of construction activities to be included in schedule.
10. Review submittal requirements and procedures.
11. Review procedures for updating schedule.

1.4 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors, if any.
- B. Coordinate Contractor's Schedule of Construction with the Schedule of Values, list of subcontracts, submittals schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from parties involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2 – PRODUCTS

2.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.

3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Contractor's Schedule of Construction with submittals schedule.
 4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
 2. Work under More Than One Contract: Include a separate activity for each contract.
 3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
 4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 6. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Subcontract awards.
 - b. Submittals.
 - c. Purchases.
 - d. Mockups.
 - e. Fabrication.
 - f. Sample testing.
 - g. Deliveries.
 - h. Installation.
 - i. Tests and inspections.
 - j. Adjusting.
 - k. Curing.
 - l. Startup and placement into final use and operation.
 8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:

- a. Structural completion.
- b. Permanent space enclosure.
- c. Completion of mechanical installation.
- d. Completion of electrical installation.
- e. Substantial Completion

9. Other Constraints: Show the effect of any additional constraints.

- E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Commencement Date, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.
- F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.
 - 1. Contractor shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.
 - 2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.
 - 3. Total cost assigned to activities shall equal the total Contract Price.
- G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using fragnets to demonstrate the effect of the proposed change on the overall project schedule.
- H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.
 - 1. Use software, version and operating system required by Owner.

2.2 CONTRACTOR'S SCHEDULE OF CONSTRUCTION (CPM SCHEDULE)

- A. General: Prepare network diagrams using AON (activity-on-node) format.
- B. Preliminary Network Diagram: Submit diagram within 7 days of date established for commencement of the Work. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.
- C. CPM Schedule: Prepare Contractor's Schedule of Construction using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.
 - 1. Submit CPM schedule within 15 days after date established for commencement of the Work.
 - a. Failure to include any Work item required for performance of this Contract shall not excuse Contractor from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.
 3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.
- D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.
1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. If applicable, work by Owner that may affect or be affected by Contractor's activities.
 - i. Testing and start up.
 2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the Contract Time.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or subcontractor and the Work or activity.
 2. Description of activity.
 3. Principal events of activity.
 4. Immediate preceding and succeeding activities.
 5. Early and late start dates.

6. Early and late finish dates.
 7. Activity duration in workdays.
 8. Total float or slack time.
 9. Average size of workforce.
 10. Dollar value of activity (coordinated with the Schedule of Values).
- F. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
 2. Changes in early and late start dates.
 3. Changes in early and late finish dates.
 4. Changes in activity durations in workdays.
 5. Changes in the critical path.
 6. Changes in total float or slack time.
 7. Changes in the Contract Time.
- G. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
 - a. In both value summary lists, tabulate "actual percent complete" and "cumulative value completed" with total at bottom.
 - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

PART 3 - EXECUTION

3.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
1. In-House Option: Owner may waive the requirement to retain a consultant if Contractor employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.

- B. Contractor's Schedule of Construction Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
 2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Contractor with a need-to-know.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

EXHIBIT G

SPECIAL TERMS AND CONDITIONS

Contractor agrees to comply with all requirements of the ESSER and GEER programs and all requirements of the laws establishing and governing the same including, but not limited to, the specific provisions expressly set forth in this Addendum below.

In the event of any conflict between the provisions of this Addendum and the other Contract Documents, the provisions of this Addendum shall take precedence. Except as otherwise specifically set forth in this Addendum, the terms and conditions of the Contract Documents shall remain unmodified.

Article A1 – Additional Contractor Duties and Responsibilities

In addition to the rights, duties and obligations set forth elsewhere in the Contract Documents, Contractor shall have the additional rights, duties, obligations and responsibilities set forth in this Article A1, as follows:

- A1.1** Contractor shall pay all laborers and mechanics employed or working upon the site of the Work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those established for each job classification by the United States Secretary of Labor for the “Building” category in DeKalb County, Georgia, as of the date of the Contract. This determination is currently known as the “GA20230305” rate, as the same may be amended or modified from time to time. (The rate schedules may be obtained by visiting the Department of Labor’s website at <http://www.wdol.gov/dba.aspx>.) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and is to be employed on the Work, shall be classified in conformance with the wage determination.
- A1.2** Owner shall, on its own or upon the written request of an authorized representative of the U.S. Department of Labor, be entitled to withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.
- A1.3** Contractor shall maintain all payrolls and basic records relating thereto during the course of the Work and for a period of three (3) years after Final Completion. Such records shall contain the name, address and social security number of each worker, his classification, the hourly rate of wages paid (and fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Contractor shall also maintain all records related to any fringe benefit plan or program during the course of the Work and for a period of three (3) years after Final Completion.
- A1.4** Contractor shall submit to Owner weekly a report containing a copy of all payrolls (including Subcontractor payrolls), which shall set forth the information required by Section A1.3. Each report shall be accompanied by a “Statement of Compliance” signed by Contractor or the Subcontractor (as the case may be) which certifies the following:
 - (a) that the payroll contains the information required by 29 C.F.R. § 5.5(a)(3)(ii), that the information is being maintained in accordance with 29 C.F.R. § 5.5(a)(3)(i) and that all such information is correct and complete;

- (b) that each laborer employed on the Work has been paid the full weekly wages earned, without rebate, and that no deductions have been made except as required by law; and
- (c) that each laborer has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed.

In complying with the reporting and certification requirements provided hereunder, Contractor is encouraged (but is not required) to use U.S. Department of Labor Form WH-347.

Falsification of such information, records or certifications may subject Contractor or Subcontractors to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

Contractor and all Subcontractors shall make all records required hereunder available for inspection, copying or transcription by Owner or the U.S. Department of Labor, and shall permit them to interview employees during working hours.

- A1.5** Contractor and Subcontractors shall be permitted to pay apprentices or trainees at less than the predetermined rate; provided, however, that such apprentices and trainees are employed pursuant to and individually registered in a bona fide apprenticeship or trainee program registered with the U.S. Department of Labor or with a state apprenticeship agency recognized by the U.S. Department of Labor.
- A1.6** Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated into this Contract by reference.
- A1.7** Contractor shall insert all clauses contained in this Article A1 in all subcontracts with Subcontractors.
- A1.8** Upon the breach of any of the clauses contained in this Article A1, Owner shall have the right to terminate the Contract "for cause".
- A1.9** Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.* and all regulations promulgated thereunder, which are incorporated into the Contract by reference.
- A1.10** Disputes arising out of the provisions of this Article A1 shall not be subject to the general dispute resolution procedures contained in the Contract Documents but shall be resolved in accordance with the procedures set forth in 29 C.F.R. parts 5-7.
- A1.11** By entering into the Contract, Contractor certifies that neither it nor any person or firm who has an interest in Contractor is ineligible to be awarded contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- A1.12** Contractor and Subcontractors shall keep posted on the Work site, in a prominent and accessible location where it can easily be seen at all times, U.S. Department of Labor poster WH-1321.
- A1.13** Contractor and Subcontractors shall not permit any laborers or mechanics to perform work on the Project in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty (40) hours per week.

In the event of any violation of this Section A1.13, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and subject to liquidated damages to be assessed by the U.S. Department of Labor as set forth in 29 C.F.R. § 5.5(b)(2).

- A1.14** Owner shall on its own or upon the written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract plus any liquidated damages which Contractor or any Subcontractor may be liable for pursuant to 29 C.F.R. § 5.5(b)(2). In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.

END OF EXHIBIT

APPENDIX E2

**STANDARD FORM OF
FIXED PRICE CONSTRUCTION CONTRACT
BETWEEN
THE DEKALB COUNTY BOARD OF EDUCATION
AND**

[Contractor]

PROJECT: Early Learning Center, HVAC and Controls
Replacement

Project Address: 797 Fayetteville Road SE
Atlanta, GA 30316

ARCHITECT: Epstein Group, Inc.

Architect's Address: 101 Marietta Street NW Suite 2600
Atlanta, Georgia 30033

Cost Code: 448.5068.30521.GENCONTR.R_HV

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This FIXED PRICE CONSTRUCTION CONTRACT (the "Contract") is made and entered into by and between THE DEKALB COUNTY BOARD OF EDUCATION (the "Owner") and _____ (the "Contractor"). This Contract shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Early Learning Center School, HVAC and Controls Replacement (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes this instrument, all exhibits hereto, the plans and specifications for the Project identified thereon as such, the Contractor's Proposal, Supplemental Conditions, if any, Special Conditions, if any, and all Addenda issued prior to execution of the Contract, if any, plus the following (if any):

all of which are hereby incorporated herein by reference and made a part hereof. Attached hereto as Exhibit "E" is a list of the plans and specifications for the Project. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract. The Contract, of which this instrument is a part, may sometimes be referred to as the "Contract Documents."

ARTICLE 2

REPRESENTATIONS OF THE CONTRACTOR

2.1 General. In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, and without limiting or restricting any other representation or warranty set forth elsewhere or implied by law, the Contractor, by executing this Contract, makes the following express representations and warranties to the Owner:

2.1.1 The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project.

2.1.2 The Contractor has visited, inspected and become familiar with the Project site and the local conditions under which the Project is to be constructed and operated.

2.1.3 The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and believes them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

2.2 Qualification Information. The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Contractor's Prequalification Statement and/or proposal documents, if any, and in any other communication from the Contractor

regarding the Contractor's qualifications or responsibility to perform the obligations of the Contractor under this Contract (all such information being referred to herein as "Qualification Information"). The Contractor further represents, warrants and affirms that in the event that any Qualification Information changed in any material way after it was communicated from Contractor and before this Contract is signed by all parties, Contractor has immediately notified the Owner, in writing, of such change or changes and Contractor agrees that Owner may take such action thereon as Owner deems appropriate. The Contractor acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Qualification Information. The Contractor acknowledges and agrees that all Qualification Information is material and important to the Owner's evaluation of the Contractor's qualifications and responsibility to undertake the Contractor's obligations under this Contract. Contractor acknowledges and agrees that if the Contractor knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Qualification Information, or failed to advise the Owner in writing of any material change in such information as set forth in this Paragraph, this Contract shall be deemed to be materially breached by Contractor and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

ARTICLE 3

CONTRACT CONSTRUCTION

3.1 **Intent and Interpretation.** With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1.1 This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents, but only to the extent that it is inconsistent therewith.

3.1.2 Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

3.1.3 Nothing contained in this Contract shall create, nor be interpreted to create privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor.

3.1.4 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Contractor observe any conflicts, ambiguity, errors or omissions within the documents, he shall, by written notice, bring them to the Owner's and Architect's attention for decision and revision as soon as possible after originally observed and before proceeding with the affected Work. In the event of duplication or conflicts between the documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no

representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor again hereby acknowledges and represents that it has received, reviewed, and carefully examined such documents, believes them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

3.1.6 Plans are not intended to be scaled or to act as shop drawings.

3.1.7 In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, interpretation will be based on the following priority:

3.1.7.1 Addenda (if any), with those of later date having precedence over those of earlier date.

3.1.7.2 This Agreement.

3.1.7.3 Supplemental or Special Conditions (if any).

3.1.7.4 Specifications.

3.1.7.5 Plans, with the following priority:

(a) As between figures given on plans and scaled measurements, the figures shall govern.

(b) As between large scale plans and small-scale plans, the large scale plans shall govern.

3.1.8 Whenever an item is specified or shown on the plans by detail or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function in the building.

3.1.9 Any material specified by reference to the number, symbol, or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such references. The standards referred to, except as modified in the Contract, shall have full force and effect as though printed in the Contract. The Contractor shall make itself aware of the contents of such standards and shall furnish the field office with one (1) full set of each.

3.1.10 If Owner elects to accept any items proposed by the Contractor as a substitution, the Contractor shall assume full responsibility for the proper performance of any substitution to the criteria set forth in the Contract and assume the costs of any changes in the Work which may be due to such substitution.

3.1.11 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.1.12 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

3.1.13 Wherever the terms "necessary", "suitable", "as directed", "when directed", "satisfactory", "good and sufficient", "approved", or other general qualifying terms are used on the plans, they are deemed to be followed by the words "in the opinion of the Architect", or "by the Architect", as the case may be.

3.1.14 Unless otherwise stated, the terms “approval”, “approved”, “approved equal”, “or equal”, or “other approved”, are deemed to be followed by the words “in the opinion of the Architect”, or “by the Architect”, as the case may be.

3.1.15 If the Owner’s design professional for the Project is an engineer rather than an architect, then the term “Architect” as used throughout this Contract shall mean “Engineer”.

3.1.16 Unless otherwise stated, the term “day” means “calendar day” and the term “days” means “calendar days”.

3.1.17 “Work” means any and all labor, supervision, coordination, work, supplies, fixtures, appliances, furnishings, vehicles, equipment, services, facilities, tools, materials, computers, transportation, storage, power, fuel, heat, light, cooling, utilities, insurance, bonds, items, documents and things required by the Contract Documents to be performed, obtained, furnished, provided, or supplied by Contractor, including without limitation all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purposes.

3.2 Ownership. The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner’s prior written authorization.

ARTICLE 4

CONTRACTOR’S PERFORMANCE

4.1 Generally. The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

4.1.1 Construction of the Project.

4.1.2 The furnishing of required surety bonds and insurance.

4.1.3 The provision, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits, licenses, fees and governmental inspections required for the construction of the Project.

4.1.4 The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon Final Completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

4.1.5 The Contractor shall develop a written site safety plan incorporating the most recent site evacuation plan submitted by the Architect and shall submit such safety plan to the Owner for review and comment. The Contractor shall be solely responsible for site safety.

4.1.6 The Contractor shall develop a written site security plan incorporating the most recent information obtained from the District’s police force and the school principal and shall submit such security plan to the Owner for review and comment. The Contractor shall be solely responsible for site security.

ARTICLE 5

TIME FOR CONTRACTOR'S PERFORMANCE

5.1 Time for Performance. The Contractor shall commence the performance of this Contract on the day identified in the Master Schedule issued with the RFP and will be completed no later than the Substantial and Final Completion dates identified in the same Master Schedule. The Substantial and Final Completion dates will not be extended because the Contractor is delinquent in providing the DCSD BOE with the properly executed contract, payment and performance bonds, and required certificates of insurance, including, but not limited to, builder risk riders. These documents are required to be submitted to the DeKalb County Board of Education per the timeframe identified in the Notice of Award. The Contractor shall accomplish Substantial Completion of the Project on or before: _____.

Final Completion of each phase shall occur on or before thirty (30) calendar days from the substantial completion date of each phase. The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time."

5.2 Liquidated Damages for Delay of Substantial Completion. The Contractor shall pay the Owner for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion the sum indicated at Exhibit "B" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.3 Substantial Completion. The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

5.4 Time Is Of The Essence. All limitations of time set forth herein are material and are of the essence of this Contract.

ARTICLE 6

FIXED PRICE AND CONTRACT PAYMENTS

6.1 Contract Price. The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of _____ Dollars (\$_____). The price set forth in this Paragraph 6.1 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. The Contract Price includes the following Alternate(s), if any: _____.

6.2 Schedule of Values. Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not front-end load its Schedule of Values by imbalancing it or by increasing any element thereof in excess of the

actual cost, and any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.

6.3 Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both including, without limitation, supporting pay applications submitted by all Subcontractors and an itemization and/or invoices of all direct costs incurred by Contractor for labor, materials, equipment and/or any third-party services which are being included in such Payment Request. Therein, the Contractor may request payment for ninety-five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.

Prior to or concurrent with Contractor's second Payment Request, Contractor shall submit to Owner a draft proposed closeout submittal for review and comment by the Owner and the Architect. If the Owner or Architect provide comments, Contractor shall make any required changes to the draft proposed closeout submittal and resubmit to the Owner with Contractor's next Payment Request.

When fifty percent (50%) of the Contract Price, as it may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the Architect, the Owner, at its sole discretion, may reduce retainage withheld. If, after discontinuing the retention, the Architect determines that the Work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality and digital copies on cd depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require. With each payment request, Contractor will provide a fully updated, detailed construction schedule for use by the Architect and Owner in determining the actual progress of the project with respect to the payment application.

Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other

encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien, in a form acceptable to the Owner, from Contractor and from all subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

6.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, material man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

6.5 No Acceptance of Work. Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

6.6 Refusal to Make Payment. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

6.6.1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract.

6.6.2 The quantity of the Contractor's Work not being as represented in the Contractor's Payment Request, or otherwise.

6.6.3 The Contractor's rate of progress being such that, in the opinion of the Owner or the Architect, or both, Substantial Completion or Final Completion, or both, may be inexcusably delayed.

6.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.

6.6.5 The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers.

6.6.6 Claims made, or likely to be made, against the Owner or its property.

6.6.7 Loss or damage caused by the Contractor.

6.6.8 The Contractor's failure or refusal to perform any of its obligations relating to safety and/or security, including without limitation the safety related obligations set forth in the Specifications Division 1 – General Requirements.

6.6.9 The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph 6.6 the Contractor shall promptly comply with such demand.

6.7 Untimely Payments. If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease Work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease Work to the Owner.

6.7.1 Payments due from the Owner to the Contractor under the terms of this Contract which remain unpaid for thirty (30) days after the date when due will thereafter accrue interest at the rate of six percent (6%) per annum until payment of such amount as is due has been made in full provided that notice has been given as set forth in O.C.G.A. § 13-11-7. Acceptance of progress payments or final payments shall release all claims for interest on said payments. To the fullest extent allowed by law, the Contract Documents shall supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*

6.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a detailed and quantified punchlist of those matters yet to be finished and proposed cost estimates for each item on the punchlist. The Architect will thereupon conduct an inspection to confirm that the Work is in fact substantially complete and shall review the Contractor's punchlist for accuracy as to the items on the punchlist and the Contractor's cost estimate for completing each item on the punchlist. Upon its confirmation that the Contractor's Work is substantially complete and approval of the punchlist and cost estimates and upon delivery of the Contractor's punchlist to the Owner and the approval by Owner of the punchlist, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims.

6.9 Final Completion. "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract, including start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate the Project.

6.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder including completion of all items on the Contractor's punchlist to the satisfaction of the Architect, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in form and manner acceptable to Owner, consent(s) of surety to release retainage, together with an original power of attorney with current certificate attached thereto.

6.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion. If the Contractor fails to achieve Final Completion within 30 days of the date of Substantial Completion, the Contractor shall pay the Owner one-tenth (1/10) of the sum indicated at Exhibit "B" per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.12 Conditions Precedent to Final Payment. Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

6.12.1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.

6.12.2 If required by the Owner, separate releases of claims and liens and claim and lien waivers from Contractor and each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have, a claim against the Owner or the Owner's property and an affidavit that all such releases and waivers have been provided.

6.12.3 Consent(s) of Surety to final payment, together with an original current power of attorney with current certificate attached thereto.

6.12.4 All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.

6.13 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Paragraph 6.6 above, make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Approval for Payment.

ARTICLE 7

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

7.1 Generally. The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

7.2 Easements. The Owner shall obtain all required easements and the like, **but not the building permit and other permits or fees required of the Contractor by this Contract or permits and fees customarily the responsibility of the Contractor.**

7.3 Contract Copies. The Owner or Architect will provide the Contractor three (3) copies of the complete Contract Documents. The Contractor will be charged, and shall pay the Owner or Architect, actual cost of reproduction for each additional copy of the Contract Documents requested by the Contractor.

ARTICLE 8

CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect'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 shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 9

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

9.1 Generally. In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

9.1.1 The Contractor is again reminded of its continuing duties set forth in Subparagraph 3.1.5 which are by reference hereby incorporated in this Subparagraph 9.1.1. The Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.

9.1.2 All Work shall strictly conform to the requirements of this Contract.

9.1.3 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

9.1.4 A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers, and vendors (hereinafter jointly referred to as "Individuals") who provide services on DCSD premises, supervise services on DCSD premises, or has contact with students. These Individuals shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Individual at a cost of \$45.00 per individual. Additionally, any charges against the Individual, may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the Individual have no contact with DCSD students or parents or provide services to DCSD premises. Any failure of an Individual to obtain a criminal records

background check through DCSD, as stated herein, may result in termination of any resulting contract between such Individual and DCSD. **The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work.**

9.1.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent must be satisfactory to the Owner. The superintendent shall represent the Contractor and communications given to the superintendent shall be as binding as if given to the Contractor. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 9.1.5 as though such individuals had been listed above.

9.1.6 The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.

9.1.7 Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Architect shall develop the submittal log which shall include, at a minimum, specification number, submittal name, submittal number. The Contractor shall provide the planned submittal date for each item and then maintain the log with the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall carefully review, inspect and examine any and all submittals before submission of same to the Architect.

9.1.8 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

9.1.9 At all times relevant to this Contract, the Contractor shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the Work without formality or other procedure.

9.2 Warranty.

9.2.1 The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.

9.2.2 The Contractor shall provide any and all specific or special warranties or guarantees of materials, equipment, items, systems and other things as required elsewhere in this Contract.

9.3 Schedule for Completing Work. The Contractor, within fifteen (15) days of receipt of the N.T.P., shall provide to the Owner and the Architect, and comply with, the Contractor's Schedule of Construction for timely completing the Work. Such schedule shall be a detailed critical path (CPM) schedule in a form acceptable to the Owner. The Contractor's Schedule of Construction shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. In addition to, and not in limitation of, any other requirements of this Contract, the Contractor shall comply with the requirements of Exhibit "F," Minimum Requirements for Contractor's Schedule of Construction, attached hereto and incorporated herein by reference. Strict compliance with the requirements of this Paragraph 9.3 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

9.3.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's Schedule of Construction with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract, the Contractor shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six days a week until such time as Contractor shall have overcome the delinquency and brought the amount of critical path Work in place into compliance with the Contractor's Schedule of Construction, all at no additional cost to the Owner. Nothing herein shall relieve the Contractor from liability for failure to timely progress the Work or any other breach of the Contract Documents.

9.4 Storm Water Discharge Permits. Unless otherwise directed in writing by the Owner, the provisions of this Paragraph 9.4 shall apply and the Contractor shall have and perform the duties, obligations and responsibilities of the Contractor set forth herein. The Owner has contracted with the Architect to: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSWD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSWD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSWD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSWD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSWD Permit. Excepting only the foregoing items (i) through (iv) performed by the Architect, the Contractor shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSWD Permit, including, without limitation, obtaining the permit, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSWD Permit. The Contractor's duties and obligations shall not be relieved by any duties of the Architect. The Contractor shall timely notify the Architect of any rain or other precipitation requiring the inspections referred to in item (iii) above so as to facilitate the Architect's timely performance of such inspections. The Contractor shall timely notify the Owner and Architect of any failure by the Architect to timely perform the inspections referred to in item (iii) above.

ARTICLE 10

INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, liens, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses, arising out of or in connection with the Contractor's performance of this Contract and the Work, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, this indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11

THE PROJECT ARCHITECT

11.1 **Architect.** The architect for this Project is Epsten Group, Inc. (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

11.1.1 Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract.

11.1.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect.

11.1.3 When requested by the Contractor in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.

11.1.4 The Architect shall draft proposed Change Orders.

11.1.5 The Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

11.1.6 The Architect shall be authorized to refuse to accept Work which is defective or otherwise fails to comply with the requirements of this Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of this Contract.

11.1.7 The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in this Contract.

11.1.8 The Architect shall, upon written request from the Contractor, perform those inspections required in Article 6 hereinabove.

11.1.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract.

11.1.10 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 12

CLAIMS BY THE CONTRACTOR

12.1 Generally. Claims by the Contractor against the Owner are subject to the following terms and conditions, and strict compliance with this Article 12 shall be a condition precedent to any liability of Owner therefore.

12.1.1 All Contractor claims against the Owner, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to the Owner and the Architect. Such written notice of claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim, including the amount claimed. Contractor agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.2 Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Contractor shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

12.1.3 No later than ten (10) days after the date of the written notice of claim, Contractor shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Contractor discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Contractor's formal written claim shall also include Contractor's good faith estimate of the change in the Contract Price, the Contract Time, or both, determined in accordance with Article 14 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.4 Contractor shall provide, and continue to provide, to Owner and Architect all such documentation, including cost and time records, as and when Owner or Architect may request so that Owner and Architect may evaluate Contractor's claim.

12.1.5 The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor.

12.1.6 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical

location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 12.1.6 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

12.1.7 In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 12.1.1 above and such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.

12.1.8 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost reasonably incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following claims: loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; and, loss of future or anticipated profits from other work. Notwithstanding the foregoing first two sentences of this Subparagraph 12.1.8, the Owner's limitation of liability shall not apply to the Owner's liability to the Contractor, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

12.2 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the Substantial Completion Date, or as applicable, the date for Final Completion, shall be appropriately adjusted by the Owner upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as Owner may determine. The Contractor's sole remedy for delay caused by any of the bases listed in this paragraph 12.2 shall be a time extension. A task is critical within the meaning of this paragraph 12.2 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of paragraph 12.1.1 above and such notice shall be given by Contractor before proceeding to execute any additional or changed Work. If the Contractor fails to make such claim as required in this paragraph 12.2, any claim for an extension of time shall be waived. For the avoidance of doubt, the Contractor shall not be entitled to a time extension if the Contractor is delayed in performing any task as a sole result of the following: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of materials, equipment, or supplies unless solely caused by an act or omission by the Owner or someone acting in the Owner's behalf, (iv) local or direct strikes, or other similar labor actions, (v) unavailability of subcontractors, sub-subcontractors, or suppliers, or (vi) nonperformance or delay by the Contractor or its subcontractors, sub-subcontractors, or suppliers.

12.2.1 "Unusually severe weather" as used above in paragraph 12.2.1 includes abnormal and unexpected weather conditions including catastrophic storms or floods, lightning, tornadoes, hurricanes, and earthquakes. The Contractor shall not be entitled to any extension of time due to adverse weather conditions unless the number of adverse weather days in any given calendar month exceeds the historic averages as maintained by the national Oceanic and Atmospheric Administration. Adverse weather conditions is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within twenty-four (24) hours: (i) precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure, (ii) temperatures which do not rise above 32 degrees F

by 10:00 A.M., (iii) temperatures which do not rise above that specified for the day's construction activity by 10:00 A.M. if any is specified, (iv) sustained wind in excess of twenty-five (25) mph, or (v) standing snow in excess of one inch (1.00"). Weather conditions including precipitation (rain, snow, and hail) amounts and times at the jobsite, activities and durations affected, shall be recorded on a daily basis and submitted to the Owner on a weekly basis.

12.2.2 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure full completion thereof within the time required by the Contract Documents. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2, and after consideration of all such contingencies and factors, Contractor has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2.

12.2.3 The date for achieving Substantial Completion or, as applicable, Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes access to the Project site) after the Project is enclosed or due to normal severe weather. For the purpose of this Paragraph, the term "enclosed" is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. There shall be no extension of the time for completion due to any lost days that are not weekday working days (based on a Monday through Friday work week). No change in the Contract Price shall be due because of weather.

12.3 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Contractor shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or a court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Subject to the express approval of the DeKalb County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 13

SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below. The Architect will not enter into disputes between the Contractor and any subcontractor or supplier, nor shall

the Architect be called upon to settle same. Neither shall the Architect be called upon to enter into or to settle disputes between any subcontractors or suppliers.

ARTICLE 14

CHANGE ORDERS

14.1 **Generally.** One or more changes to the Work within the general scope of this Contract, or the time for the Contractor's performance, or any combination thereof, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

14.1.1 "Change Order" shall mean a written order to the Contractor executed by the Owner and the Architect after execution of this Contract and approved by the Georgia Department of Education if so required, directing a change in the Work, the time for the Contractor's performance, or any combination thereof.

14.1.2 A change in the Work (excepting only changes required by the Architect pursuant to Paragraph 11.1.9 of this Contract) or the time for the Contractor's performance may be made only by Change Order. The Owner will not be responsible for any change in the Work involving extra costs unless approval in writing is furnished by the Owner before such Work is begun. Note that the Architect does not have authority to order changes in the Work that involve changes in cost or time.

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

14.1.3.1 Any increase in the Contract Price must be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract, and any such request for an increase in the Contract Price shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner and Architect in accordance with Article 12 of this Contract of any request for an increase in the Contract Price shall constitute a waiver by Contractor of any entitlement to an increase in the Contract Price.

14.1.3.2 The change in the Contract Price, if any, shall be established by one of the following methods:

14.1.3.2.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

14.1.3.2.2 Unit prices stated in the Contract Documents or subsequently agreed upon; or

14.1.3.2.3 On the basis of, and shall be limited to, the reasonable actual costs incurred, or savings achieved, resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect costs or components. The Contractor shall keep and present, in such form as the Architect may require, an itemized accounting together with appropriate supporting data. Actual costs for the purposes of this Paragraph shall be limited to the following:

.1 Costs of labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, sales, use or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

14.1.3.2.4 The allowance for overhead and profit for any Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision, superintendence, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined, shall be determined as follows:

.1 If, and to the extent, the change involves Work of one or more subcontractors, the overhead and profit component for subcontractors shall be five percent (5%) and the overhead and profit component for the Contractor shall be five percent (5%) of the amount allocable for subcontracted Work; provided, however, that the foregoing five percent (5%) overhead and profit component for subcontractors is intended to cover all subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier subcontractors of the Contractor. For the avoidance of doubt, all Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

.2 If the change involves only Work of the Contractor, the component for overhead and profit shall be ten percent (10%).

14.1.3.2.5 Any other provision of the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Change Orders performed concurrently with the Work, unless the cost includes a claim for extension of time by the ordering of the change.

14.1.3.3 The Contractor shall continue to diligently perform the Work, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Subparagraph 14.1.3 above. Pending final determination of reasonable actual costs incurred or savings achieved, payments on account shall be made to Contractor in accordance with said Subparagraph 14.1.3 and Article 6 of this Contract.

14.1.3.4 If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Subparagraph 14.1.3.4 shall be made only with respect to the difference between

the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Subparagraph 14.1.3.4 shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

14.1.4 Any extension of the time for the Contractor's performance requested by Contractor for performance of any change in the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Contractor's performance shall be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract and any such request for extension of time shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner in accordance with Article 12 of this Contract of any request for extension of time, or the Contractor's execution of a Change Order, shall constitute a waiver by Contractor of any entitlement to an extension of time arising out of or relating to such Change Order.

14.1.5 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. The stated extension of time, if any, is equitable in nature, and includes all compensation to Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change Order, and that no further claims for any extension of time or adjustment in the Contract Price, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of time or adjustment in the Contract Price are waived in their entirety.

14.1.6 The Contractor shall notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's Surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the Surety has been notified of, and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

14.1.7 No Change Order shall contain any reservation of rights or have any qualifying language placed on it.

ARTICLE 15

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

15.1 Work in Violation of Contract. In the event that the Contractor covers, conceals or obscures its Work in violation of this Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

15.2 Work in Conformity with Contract. If any of the Work is covered, concealed or obscured in a manner not covered by Paragraph 15.1 above, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

15.3 Defective or Nonconforming Work. The Contractor shall, at no cost in time or money to the Owner, timely correct Work rejected by the Owner or by the Architect as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

15.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial Work including needed maintenance instructions to Owner's personnel.

Nothing contained in this Article 15 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article 15.4 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the 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 the Contractor's obligations other than specifically to correct the Work.

15.5 Owner's Option. The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable costs of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 16

TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of sixty (60) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Architect. If the Owner suspends Contractor's performance for a period of more than one hundred twenty (120) days, through no fault of the Contractor, then Contractor may, upon seven (7) days written notice to Owner, terminate this Contract. In either event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Paragraph 18.1 hereunder.

ARTICLE 17

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

17.1 Suspension. The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to one hundred twenty (120) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

17.2 Compensation. In the event the Owner directs a suspension of performance under this Article 17, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- 17.2.1 demobilization and remobilization, including such costs paid to subcontractors.
- 17.2.2 preserving and protecting Work in place.
- 17.2.3 storage of materials or equipment purchased for the Project, including insurance thereon.
- 17.2.4 performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 18

TERMINATION BY THE OWNER

18.1 Termination for Convenience. The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also, at the Owner's direction, either terminate or assign to Owner or Owner's designee outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

18.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph 18.1.3 below.

18.1.2 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

18.1.3 Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

18.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

18.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

18.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Paragraph 18.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.2 Termination for Cause. If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 18.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause; such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 18.1 shall apply.

18.3 Termination Not Subject to Article 12. Termination of this Contract by the Owner is not subject to the procedures set forth in Article 12.

ARTICLE 19

INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE 20

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in the exact form provided by the Owner and shall be executed by a surety, or sureties, licensed in the State of Georgia by the Office of Commissioner of Insurance, rated A+ or better by A.M. Best Company, listed on the United States Department of Treasury's Listing of Approved Sureties (Treasury Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation equal to or greater than the penal sum of the bonds as adjusted from time to time, and not otherwise reasonably objectionable to the Owner.

ARTICLE 21

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, photographs, estimates, invoices, bills, receipts, cancelled checks, vouchers or other writings or things which document or involve in any manner the Project, its design, its cost, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor and its Subcontractors. The Contractor shall maintain and protect these documents for no less than six (6) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

ARTICLE 22

APPLICABLE LAW / VENUE AND JURISDICTION

22.1 Applicable Law / No Waiver. The law applicable to this Contract shall be the law of the State of Georgia. Each and every provision required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained therein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof. The failure of owner to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in any other instance. The Contractor and all subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Contractor and all subcontractors shall provide the Owner with a completed and signed Immigration and Security Form and accompanying affidavits, as a condition precedent to Final Payment.

22.2 Jurisdiction and Venue. The Contractor and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of DeKalb County, Georgia, regarding any matter arising out of or relating to this Contract. The Contractor agrees that it shall file any lawsuit or other action, including any third-party practice lawsuit, against the Owner arising out of or related to this Contract or the Project only in the Superior Court of DeKalb County.

ARTICLE 23

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

[SIGNATURES APPEAR ON THE NEXT PAGE]

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijon DaCosta, Sr., Board Chair
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Vasanne S. Tinsley, Interim Superintendent
[TYPED NAME & TITLE]

DeKalb County Board of Education
1701 Mountain Industrial Boulevard
Stone Mountain, Georgia 30083

[DATE OF EXECUTION]

Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

[TYPED NAME]

By: _____
[SIGNATURE]

[TYPED NAME & TITLE]

[ADDRESS]

[DATE]

EXHIBIT "A"

REQUIRED INSURANCE

(1) The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' or workmen's compensation disability benefit or other similar employees benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(2) The insurance required by Paragraph 1 shall be written for not less than any limits of liability specified within this exhibit, or required by law, whichever is greater.

(3) The insurance required by Paragraph 1 shall include contractual liability insurance.

(4) The Contractor shall be responsible from the time of signing the Contract or from the time of the beginning of the first Work, whichever shall be earlier, for all bodily injury (including death) or damage to property of any kind resulting from the Work under this Contract to persons or property.

The Contractor assumes the obligation to save the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect harmless and to indemnify them from every expense, liability or payment arising out of or through bodily injury (including death) to any person or persons or damage to property of any person arising out of any act of the Contractor, any subcontractor or anyone either directly or indirectly employed by or under the supervision of any of them in the prosecution of the Work included in the Contract.

All liability policies shall name the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect as an additional insured. All liability policies shall be issued on a primary and non-contributory basis over any other liability insurance which may be available to the Owner, the DeKalb County School District, Owner's Program Manager, and Architect to fully insure the indemnity obligations made herein and in any other portion of this contract.

(5) The Contractor agrees to comply with the provisions of the Workman's Compensation laws of the State of Georgia and to require all Subcontractors likewise to comply. Contractor shall secure the following insurance at his own expense and prior to starting any Work shall file Certificates of Insurance with the Owner except that on the Owner's Protective Insurance, original policies shall be filed with the Owner.

(a) Workmen's Compensation - Statutory Limits, Employer's Liability -\$1,000,000.00

(b) Comprehensive General Liability (including Premises-Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage and Broad Form General Liability Endorsement; Explosion & Collapse).

1. Bodily Injury: \$1,000,000.00 Each Occurrence; \$2,000,000.00 Aggregate, Products and Completed Operations (Umbrella).
2. Property Damage: \$500,000.00 Each Occurrence; \$1,000,000.00 Aggregate.
3. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after completion of the work and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
4. Property Damage Liability Insurance shall include coverage for Explosion, Collapse, and Underground.
5. Contractual Liability (Hold Harmless Coverage): Bodily Injury: \$1,000,000.00 Each Occurrence; Property Damage: \$500,000.00 Each Occurrence, \$500,000.00 Aggregate.
6. Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Each Occurrence, \$1,000,000 Aggregate.
7. If the Comprehensive General Liability policy provides that the general aggregate limit for items (5)(b) 1-6 above apply separately to **each** project, then the Owners Protective Liability policy in item (8) (a)-(c) shall not be required.

(c) Comprehensive Automobile Liability (owned, non-owned, leased, hired):

1. Bodily Injury: \$1,000,000.00 Each Person, \$1,000,000.00 Each Accident;
2. Property Damage: \$1,000,000.00 Each Occurrence;
3. or \$1,000,000 Combined Single Limit.

(d) Commercial Umbrella

1. Umbrella limits shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below:

Contract Price	Required Umbrella Limit
Less than \$1,000,000	\$1,000,000
\$1,000,000 to \$10,000,000	\$5,000,000
Greater than \$10,000,000	\$10,000,000

2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
4. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the DeKalb County School District, Owner's Program Manager, and Architect.

(6) Certificates of Insurance (2 copies) shall be filed with Owner before commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, changed or allowed to expire until thirty (30) days after the Owner has received written notice evidenced by return receipt of registered letter.

(7) Insurance will not be acceptable unless written by a Company authorized by the State of Georgia Insurance Department to do business in Georgia at the time the policy is issued and the company must in addition be acceptable to the Owner.

(8) Contractor shall purchase and maintain Owner's Protective Liability Policy with minimum limits of:

- (a) Bodily Injury: \$1,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (b) Property Damage: \$2,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (c) Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Aggregate.

This policy shall be issued in the name of DeKalb County Board of Education and delivered to Owner along with Certificates of Insurance. Employees of the DeKalb County Board of Education shall be included as an additional insured. Policy shall also name the DeKalb County School District, Owner's Program Manager, and the Architect as an additional insured.

(9) Contractor shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Contractor and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the contract price and covering fire, theft, extended coverage, vandalism and malicious mischief. The coverage and protection afforded to the Owner under such policy shall not be diminished, changed, altered or otherwise affected by any of the following:

- (a) the delivery of furniture, fixtures and equipment to the insured premises and the installation in place thereof, and making the same ready for Owner's use;
- (b) the Owner's partial or total occupancy of the insured premises; and/or
- (c) the performance of other work or construction operations at the insured premises by the Owner and/or its employees, agents or other contractors.

For the avoidance of doubt, and to the extent required, Contractor shall obtain an endorsement to such policy to delete any partial occupancy exclusions and to ensure the policy's compliance with the foregoing requirements and provide a copy thereof to Owner.

(10) The Contractor may, at his option, purchase insurance policies having a "deductible" feature provided that:

- (a) Deductible amount does not exceed \$10,000.00.
- (b) Contractor agrees in written letter to the Owner (through the Architect) to be responsible for payment of any such deductibles, in the event that such payment should become necessary.

EXHIBIT "B"

LIQUIDATED DAMAGES

Liquidated damages applicable to Paragraph 5.2 of this Contract shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below.

If The Original Contract Price Is:

Up to \$49,999.99
\$50,000.00 to \$99,999.99
\$100,000.00 to \$299,999.99
\$300,000.00 to \$599,999.99
\$600,000.00 to \$999,999.99
\$1,000,000.00 to \$1,999,999.99
\$2,000,000.00 to \$4,999,999.99
\$5,000,000.00 to \$9,999,999.99
\$10,000,000.00 to \$14,999,999.99
\$15,000,000.00 to \$19,999,999.99
\$20,000,000.00 or above

Daily Liquidated Damages Shall Be:

\$50
\$100
\$200
\$300
\$400
\$500
\$750
\$1,500
\$2,500
\$3,500
The product of .0002 multiplied by
the Original Contract Price.

CONTRACTOR AFFIDAVIT AND AGREEMENT

EXHIBIT "C"

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the individual, firm, or corporation ("Contractor") which is contracting with the DeKalb County Board of Education has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91, as amended. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(2) Contractor's correct user identification number and date of authorization is set forth herein below.

(3) Contractor agrees that the Contractor will not employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the DeKalb County Board of Education, unless at the time of the contract said subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Contractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Contractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other applicable verification procured by subcontractor at the time of contract with the sub-subcontractor(s) within five (5) business days after receiving the said Affidavit or verification.

Contractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such subcontractor Affidavit or other permissible verification to the DeKalb County Board of Education at the time the subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

(4) Contractor further agrees to and shall provide DeKalb County Board of Education with copies of all other affidavits or other applicable verification received by Contractor (i.e.: sub-subcontractor affidavits and all other lower tiered affidavits) within five (5) days of receipt.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EV/Basic Pilot Program, please identify the program.

Company Name / Contractor Name

Date

BY: _____
Signature of Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 20____

Notary Public

My Commission Expires: _____

EXHIBIT "D"

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the undersigned individual, firm or corporation ("Subcontractor") is engaged in the physical performance of services under a contract with _____ (*name of Contractor*), which has a contract with the DeKalb County Board of Education.

(2) Subcontractor has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(3) Subcontractor's correct user identification number and date of authorization is set forth herein below.

(4) Subcontractor agrees that the Subcontractor will not employ or contract with any sub-subcontractor(s) in connection with the physical performance of services pursuant to this subcontract or the contract with the DeKalb County Board of Education, unless said sub-subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Subcontractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Subcontractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other permissible verification procured by sub-subcontractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

Subcontractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such sub-subcontractor Affidavit or other applicable verification to the Contractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EEV/Basic Pilot Program, please identify the program.

BY: Authorized Officer or Agent

Date

(Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20____

Notary Public

My Commission Expires:_____

EXHIBIT “E”

LIST OF PLANS AND SPECIFICATIONS FOR THE PROJECT

[Here insert or attach list of plans and specifications for the Project.]

EXHIBIT "F"

MINIMUM REQUIREMENTS FOR CONTRACTOR'S SCHEDULE OF CONSTRUCTION

PART 1 - GENERAL

- 1.1 **DEFINITIONS.** For purposes of this Exhibit, the following terms shall have the meanings set forth below.
- A. **Activity:** A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. **Critical activities** are activities on the critical path. They must start and finish on the planned early start and finish times.
 - 2. **Predecessor Activity:** An activity that precedes another activity in the network.
 - 3. **Successor Activity:** An activity that follows another activity in the network.
 - B. **Cost Loading:** The allocation of the Schedule of Values for the completion of an activity as scheduled. The sum of costs for all activities must equal the total Contract Price, unless otherwise approved by Architect and Owner.
 - C. **CPM:** Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of the project.
 - D. **Critical Path:** The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall project duration and contains no float.
 - E. **Event:** The starting or ending point of an activity.
 - F. **Float:** The measure of leeway in starting and completing an activity.
 - 1. Float time belongs to Owner.
 - 2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
 - G. **Fragnet:** A partial or fragmentary network that breaks down activities into smaller activities for greater detail.
 - H. **Major Area:** A story of construction, a separate building, or a similar significant construction element.
 - I. **Milestone:** A key or critical point in time for reference or measurement.
 - J. **Network Diagram:** A graphic diagram of a network schedule, showing activities and activity relationships.

- K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.2 SUBMITTALS

- A. Preliminary Schedule of Construction: Submit two opaque copies.
 - 1. No action or inaction by Architect or Owner in connection with cost-loaded preliminary schedule of construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- B. Preliminary Network Diagram: Submit two opaque copies, large enough to show entire network or entire construction period. Show logic ties for activities.
- C. Contractor's Schedule of Construction: Submit two opaque copies of initial schedule and each updated schedule, large enough to show entire schedule for entire construction period.
 - 1. Submit an electronic copy of schedule, using software indicated, on CD-R, and labeled to comply with requirements for submittals. Include type of schedule (Initial or Updated) and date on label.
 - 2. No action or inaction by Architect or Owner in connection with cost-loaded Contractor's Schedule of Construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- D. CPM Reports: Concurrent with CPM schedule, submit three copies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of total float.
 - 4. Earnings Report: Compilation of Contractor's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary schedule of construction, the initial Contractor's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Contractor's Schedule of Construction.

1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the Preliminary Schedule of Construction and Contractor's Schedule of Construction, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update schedule.

3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
4. Review delivery dates for Owner-furnished products, if any.
5. Review schedule for work of Owner's separate contracts, if any.
6. Review time required for review of submittals and resubmittals.
7. Review requirements for tests and inspections by independent testing and inspecting agencies.
8. Review time required for completion and startup procedures.
9. Review and finalize list of construction activities to be included in schedule.
10. Review submittal requirements and procedures.
11. Review procedures for updating schedule.

1.4 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors, if any.
- B. Coordinate Contractor's Schedule of Construction with the Schedule of Values, list of subcontracts, submittals schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from parties involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2 – PRODUCTS

2.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.

3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Contractor's Schedule of Construction with submittals schedule.
 4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
 2. Work under More Than One Contract: Include a separate activity for each contract.
 3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
 4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 6. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Subcontract awards.
 - b. Submittals.
 - c. Purchases.
 - d. Mockups.
 - e. Fabrication.
 - f. Sample testing.
 - g. Deliveries.
 - h. Installation.
 - i. Tests and inspections.
 - j. Adjusting.
 - k. Curing.
 - l. Startup and placement into final use and operation.
 8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:

- a. Structural completion.
- b. Permanent space enclosure.
- c. Completion of mechanical installation.
- d. Completion of electrical installation.
- e. Substantial Completion

9. Other Constraints: Show the effect of any additional constraints.

- E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Commencement Date, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.
- F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.
 - 1. Contractor shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.
 - 2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.
 - 3. Total cost assigned to activities shall equal the total Contract Price.
- G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using fragnets to demonstrate the effect of the proposed change on the overall project schedule.
- H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.
 - 1. Use software, version and operating system required by Owner.

2.2 CONTRACTOR'S SCHEDULE OF CONSTRUCTION (CPM SCHEDULE)

- A. General: Prepare network diagrams using AON (activity-on-node) format.
- B. Preliminary Network Diagram: Submit diagram within 7 days of date established for commencement of the Work. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.
- C. CPM Schedule: Prepare Contractor's Schedule of Construction using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.
 - 1. Submit CPM schedule within 15 days after date established for commencement of the Work.
 - a. Failure to include any Work item required for performance of this Contract shall not excuse Contractor from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.
 3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.
- D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.
1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. If applicable, work by Owner that may affect or be affected by Contractor's activities.
 - i. Testing and start up.
 2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the Contract Time.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or subcontractor and the Work or activity.
 2. Description of activity.
 3. Principal events of activity.
 4. Immediate preceding and succeeding activities.
 5. Early and late start dates.

6. Early and late finish dates.
 7. Activity duration in workdays.
 8. Total float or slack time.
 9. Average size of workforce.
 10. Dollar value of activity (coordinated with the Schedule of Values).
- F. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
 2. Changes in early and late start dates.
 3. Changes in early and late finish dates.
 4. Changes in activity durations in workdays.
 5. Changes in the critical path.
 6. Changes in total float or slack time.
 7. Changes in the Contract Time.
- G. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
 - a. In both value summary lists, tabulate "actual percent complete" and "cumulative value completed" with total at bottom.
 - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

PART 3 - EXECUTION

3.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
1. In-House Option: Owner may waive the requirement to retain a consultant if Contractor employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.

- B. Contractor's Schedule of Construction Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
 2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Contractor with a need-to-know.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

EXHIBIT G

SPECIAL TERMS AND CONDITIONS

Contractor agrees to comply with all requirements of the ESSER and GEER programs and all requirements of the laws establishing and governing the same including, but not limited to, the specific provisions expressly set forth in this Addendum below.

In the event of any conflict between the provisions of this Addendum and the other Contract Documents, the provisions of this Addendum shall take precedence. Except as otherwise specifically set forth in this Addendum, the terms and conditions of the Contract Documents shall remain unmodified.

Article A1 – Additional Contractor Duties and Responsibilities

In addition to the rights, duties and obligations set forth elsewhere in the Contract Documents, Contractor shall have the additional rights, duties, obligations and responsibilities set forth in this Article A1, as follows:

- A1.1** Contractor shall pay all laborers and mechanics employed or working upon the site of the Work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those established for each job classification by the United States Secretary of Labor for the “Building” category in DeKalb County, Georgia, as of the date of the Contract. This determination is currently known as the “GA20230305” rate, as the same may be amended or modified from time to time. (The rate schedules may be obtained by visiting the Department of Labor’s website at <http://www.wdol.gov/dba.aspx>.) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and is to be employed on the Work, shall be classified in conformance with the wage determination.
- A1.2** Owner shall, on its own or upon the written request of an authorized representative of the U.S. Department of Labor, be entitled to withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.
- A1.3** Contractor shall maintain all payrolls and basic records relating thereto during the course of the Work and for a period of three (3) years after Final Completion. Such records shall contain the name, address and social security number of each worker, his classification, the hourly rate of wages paid (and fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Contractor shall also maintain all records related to any fringe benefit plan or program during the course of the Work and for a period of three (3) years after Final Completion.
- A1.4** Contractor shall submit to Owner weekly a report containing a copy of all payrolls (including Subcontractor payrolls), which shall set forth the information required by Section A1.3. Each report shall be accompanied by a “Statement of Compliance” signed by Contractor or the Subcontractor (as the case may be) which certifies the following:
 - (a) that the payroll contains the information required by 29 C.F.R. § 5.5(a)(3)(ii), that the information is being maintained in accordance with 29 C.F.R. § 5.5(a)(3)(i) and that all such information is correct and complete;

- (b) that each laborer employed on the Work has been paid the full weekly wages earned, without rebate, and that no deductions have been made except as required by law; and
- (c) that each laborer has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed.

In complying with the reporting and certification requirements provided hereunder, Contractor is encouraged (but is not required) to use U.S. Department of Labor Form WH-347.

Falsification of such information, records or certifications may subject Contractor or Subcontractors to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

Contractor and all Subcontractors shall make all records required hereunder available for inspection, copying or transcription by Owner or the U.S. Department of Labor, and shall permit them to interview employees during working hours.

- A1.5** Contractor and Subcontractors shall be permitted to pay apprentices or trainees at less than the predetermined rate; provided, however, that such apprentices and trainees are employed pursuant to and individually registered in a bona fide apprenticeship or trainee program registered with the U.S. Department of Labor or with a state apprenticeship agency recognized by the U.S. Department of Labor.
- A1.6** Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated into this Contract by reference.
- A1.7** Contractor shall insert all clauses contained in this Article A1 in all subcontracts with Subcontractors.
- A1.8** Upon the breach of any of the clauses contained in this Article A1, Owner shall have the right to terminate the Contract "for cause".
- A1.9** Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.* and all regulations promulgated thereunder, which are incorporated into the Contract by reference.
- A1.10** Disputes arising out of the provisions of this Article A1 shall not be subject to the general dispute resolution procedures contained in the Contract Documents but shall be resolved in accordance with the procedures set forth in 29 C.F.R. parts 5-7.
- A1.11** By entering into the Contract, Contractor certifies that neither it nor any person or firm who has an interest in Contractor is ineligible to be awarded contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- A1.12** Contractor and Subcontractors shall keep posted on the Work site, in a prominent and accessible location where it can easily be seen at all times, U.S. Department of Labor poster WH-1321.
- A1.13** Contractor and Subcontractors shall not permit any laborers or mechanics to perform work on the Project in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty (40) hours per week.

In the event of any violation of this Section A1.13, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and subject to liquidated damages to be assessed by the U.S. Department of Labor as set forth in 29 C.F.R. § 5.5(b)(2).

- A1.14** Owner shall on its own or upon the written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract plus any liquidated damages which Contractor or any Subcontractor may be liable for pursuant to 29 C.F.R. § 5.5(b)(2). In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.

END OF EXHIBIT

APPENDIX E3

**STANDARD FORM OF
FIXED PRICE CONSTRUCTION CONTRACT
BETWEEN
THE DEKALB COUNTY BOARD OF EDUCATION
AND**

[Contractor]

PROJECT: Montclair Elementary School, HVAC and Controls Replacement

Project Address: 1680 Clairmont Place NE
Atlanta, GA 30329

ARCHITECT: Epstein Group, Inc.

Architect's Address: 101 Marietta Street NW Suite 2600
Atlanta, Georgia 30033

Cost Code: 420.4062.31121.GENCONTR.PLAY

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This FIXED PRICE CONSTRUCTION CONTRACT (the "Contract") is made and entered into by and between THE DEKALB COUNTY BOARD OF EDUCATION (the "Owner") and _____ (the "Contractor"). This Contract shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Montclair Elementary School, HVAC and Controls Replacement (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes this instrument, all exhibits hereto, the plans and specifications for the Project identified thereon as such, the Contractor's Proposal, Supplemental Conditions, if any, Special Conditions, if any, and all Addenda issued prior to execution of the Contract, if any, plus the following (if any):

all of which are hereby incorporated herein by reference and made a part hereof. Attached hereto as Exhibit "E" is a list of the plans and specifications for the Project. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract. The Contract, of which this instrument is a part, may sometimes be referred to as the "Contract Documents."

ARTICLE 2

REPRESENTATIONS OF THE CONTRACTOR

2.1 General. In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, and without limiting or restricting any other representation or warranty set forth elsewhere or implied by law, the Contractor, by executing this Contract, makes the following express representations and warranties to the Owner:

2.1.1 The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project.

2.1.2 The Contractor has visited, inspected and become familiar with the Project site and the local conditions under which the Project is to be constructed and operated.

2.1.3 The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and believes them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

2.2 Qualification Information. The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Contractor's Prequalification Statement and/or proposal documents, if any, and in any other communication from the Contractor

regarding the Contractor's qualifications or responsibility to perform the obligations of the Contractor under this Contract (all such information being referred to herein as "Qualification Information"). The Contractor further represents, warrants and affirms that in the event that any Qualification Information changed in any material way after it was communicated from Contractor and before this Contract is signed by all parties, Contractor has immediately notified the Owner, in writing, of such change or changes and Contractor agrees that Owner may take such action thereon as Owner deems appropriate. The Contractor acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Qualification Information. The Contractor acknowledges and agrees that all Qualification Information is material and important to the Owner's evaluation of the Contractor's qualifications and responsibility to undertake the Contractor's obligations under this Contract. Contractor acknowledges and agrees that if the Contractor knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Qualification Information, or failed to advise the Owner in writing of any material change in such information as set forth in this Paragraph, this Contract shall be deemed to be materially breached by Contractor and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

ARTICLE 3

CONTRACT CONSTRUCTION

3.1 **Intent and Interpretation.** With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1.1 This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents, but only to the extent that it is inconsistent therewith.

3.1.2 Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

3.1.3 Nothing contained in this Contract shall create, nor be interpreted to create privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor.

3.1.4 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Contractor observe any conflicts, ambiguity, errors or omissions within the documents, he shall, by written notice, bring them to the Owner's and Architect's attention for decision and revision as soon as possible after originally observed and before proceeding with the affected Work. In the event of duplication or conflicts between the documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no

representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor again hereby acknowledges and represents that it has received, reviewed, and carefully examined such documents, believes them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

3.1.6 Plans are not intended to be scaled or to act as shop drawings.

3.1.7 In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, interpretation will be based on the following priority:

3.1.7.1 Addenda (if any), with those of later date having precedence over those of earlier date.

3.1.7.2 This Agreement.

3.1.7.3 Supplemental or Special Conditions (if any).

3.1.7.4 Specifications.

3.1.7.5 Plans, with the following priority:

(a) As between figures given on plans and scaled measurements, the figures shall govern.

(b) As between large scale plans and small-scale plans, the large scale plans shall govern.

3.1.8 Whenever an item is specified or shown on the plans by detail or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function in the building.

3.1.9 Any material specified by reference to the number, symbol, or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such references. The standards referred to, except as modified in the Contract, shall have full force and effect as though printed in the Contract. The Contractor shall make itself aware of the contents of such standards and shall furnish the field office with one (1) full set of each.

3.1.10 If Owner elects to accept any items proposed by the Contractor as a substitution, the Contractor shall assume full responsibility for the proper performance of any substitution to the criteria set forth in the Contract and assume the costs of any changes in the Work which may be due to such substitution.

3.1.11 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.1.12 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

3.1.13 Wherever the terms "necessary", "suitable", "as directed", "when directed", "satisfactory", "good and sufficient", "approved", or other general qualifying terms are used on the plans, they are deemed to be followed by the words "in the opinion of the Architect", or "by the Architect", as the case may be.

3.1.14 Unless otherwise stated, the terms “approval”, “approved”, “approved equal”, “or equal”, or “other approved”, are deemed to be followed by the words “in the opinion of the Architect”, or “by the Architect”, as the case may be.

3.1.15 If the Owner’s design professional for the Project is an engineer rather than an architect, then the term “Architect” as used throughout this Contract shall mean “Engineer”.

3.1.16 Unless otherwise stated, the term “day” means “calendar day” and the term “days” means “calendar days”.

3.1.17 “Work” means any and all labor, supervision, coordination, work, supplies, fixtures, appliances, furnishings, vehicles, equipment, services, facilities, tools, materials, computers, transportation, storage, power, fuel, heat, light, cooling, utilities, insurance, bonds, items, documents and things required by the Contract Documents to be performed, obtained, furnished, provided, or supplied by Contractor, including without limitation all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purposes.

3.2 Ownership. The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner’s prior written authorization.

ARTICLE 4

CONTRACTOR’S PERFORMANCE

4.1 Generally. The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

4.1.1 Construction of the Project.

4.1.2 The furnishing of required surety bonds and insurance.

4.1.3 The provision, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits, licenses, fees and governmental inspections required for the construction of the Project.

4.1.4 The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon Final Completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

4.1.5 The Contractor shall develop a written site safety plan incorporating the most recent site evacuation plan submitted by the Architect and shall submit such safety plan to the Owner for review and comment. The Contractor shall be solely responsible for site safety.

4.1.6 The Contractor shall develop a written site security plan incorporating the most recent information obtained from the District’s police force and the school principal and shall submit such security plan to the Owner for review and comment. The Contractor shall be solely responsible for site security.

ARTICLE 5

TIME FOR CONTRACTOR'S PERFORMANCE

5.1 Time for Performance. The Contractor shall commence the performance of this Contract on the day identified in the Master Schedule issued with the RFP and will be completed no later than the Substantial and Final Completion dates identified in the same Master Schedule. The Substantial and Final Completion dates will not be extended because the Contractor is delinquent in providing the DCSD BOE with the properly executed contract, payment and performance bonds, and required certificates of insurance, including, but not limited to, builder risk riders. These documents are required to be submitted to the DeKalb County Board of Education per the timeframe identified in the Notice of Award. The Contractor shall accomplish Substantial Completion of the Project on or before: _____.

Final Completion of each phase shall occur on or before thirty (30) calendar days from the substantial completion date of each phase. The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time."

5.2 Liquidated Damages for Delay of Substantial Completion. The Contractor shall pay the Owner for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion the sum indicated at Exhibit "B" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.3 Substantial Completion. The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

5.4 Time Is Of The Essence. All limitations of time set forth herein are material and are of the essence of this Contract.

ARTICLE 6

FIXED PRICE AND CONTRACT PAYMENTS

6.1 Contract Price. The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of _____ Dollars (\$_____). The price set forth in this Paragraph 6.1 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. The Contract Price includes the following Alternate(s), if any: _____.

6.2 Schedule of Values. Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not front-end load its Schedule of Values by imbalancing it or by increasing any element thereof in excess of the

actual cost, and any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.

6.3 Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both including, without limitation, supporting pay applications submitted by all Subcontractors and an itemization and/or invoices of all direct costs incurred by Contractor for labor, materials, equipment and/or any third-party services which are being included in such Payment Request. Therein, the Contractor may request payment for ninety-five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.

Prior to or concurrent with Contractor's second Payment Request, Contractor shall submit to Owner a draft proposed closeout submittal for review and comment by the Owner and the Architect. If the Owner or Architect provide comments, Contractor shall make any required changes to the draft proposed closeout submittal and resubmit to the Owner with Contractor's next Payment Request.

When fifty percent (50%) of the Contract Price, as it may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the Architect, the Owner, at its sole discretion, may reduce retainage withheld. If, after discontinuing the retention, the Architect determines that the Work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality and digital copies on cd depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require. With each payment request, Contractor will provide a fully updated, detailed construction schedule for use by the Architect and Owner in determining the actual progress of the project with respect to the payment application.

Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other

encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien, in a form acceptable to the Owner, from Contractor and from all subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

6.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, material man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

6.5 No Acceptance of Work. Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

6.6 Refusal to Make Payment. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

6.6.1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract.

6.6.2 The quantity of the Contractor's Work not being as represented in the Contractor's Payment Request, or otherwise.

6.6.3 The Contractor's rate of progress being such that, in the opinion of the Owner or the Architect, or both, Substantial Completion or Final Completion, or both, may be inexcusably delayed.

6.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.

6.6.5 The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers.

6.6.6 Claims made, or likely to be made, against the Owner or its property.

6.6.7 Loss or damage caused by the Contractor.

6.6.8 The Contractor's failure or refusal to perform any of its obligations relating to safety and/or security, including without limitation the safety related obligations set forth in the Specifications Division 1 – General Requirements.

6.6.9 The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph 6.6 the Contractor shall promptly comply with such demand.

6.7 Untimely Payments. If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease Work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease Work to the Owner.

6.7.1 Payments due from the Owner to the Contractor under the terms of this Contract which remain unpaid for thirty (30) days after the date when due will thereafter accrue interest at the rate of six percent (6%) per annum until payment of such amount as is due has been made in full provided that notice has been given as set forth in O.C.G.A. § 13-11-7. Acceptance of progress payments or final payments shall release all claims for interest on said payments. To the fullest extent allowed by law, the Contract Documents shall supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*

6.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a detailed and quantified punchlist of those matters yet to be finished and proposed cost estimates for each item on the punchlist. The Architect will thereupon conduct an inspection to confirm that the Work is in fact substantially complete and shall review the Contractor's punchlist for accuracy as to the items on the punchlist and the Contractor's cost estimate for completing each item on the punchlist. Upon its confirmation that the Contractor's Work is substantially complete and approval of the punchlist and cost estimates and upon delivery of the Contractor's punchlist to the Owner and the approval by Owner of the punchlist, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims.

6.9 Final Completion. "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract, including start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate the Project.

6.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder including completion of all items on the Contractor's punchlist to the satisfaction of the Architect, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in form and manner acceptable to Owner, consent(s) of surety to release retainage, together with an original power of attorney with current certificate attached thereto.

6.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion. If the Contractor fails to achieve Final Completion within 30 days of the date of Substantial Completion, the Contractor shall pay the Owner one-tenth (1/10) of the sum indicated at Exhibit "B" per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.12 Conditions Precedent to Final Payment. Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

6.12.1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.

6.12.2 If required by the Owner, separate releases of claims and liens and claim and lien waivers from Contractor and each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have, a claim against the Owner or the Owner's property and an affidavit that all such releases and waivers have been provided.

6.12.3 Consent(s) of Surety to final payment, together with an original current power of attorney with current certificate attached thereto.

6.12.4 All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.

6.13 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Paragraph 6.6 above, make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Approval for Payment.

ARTICLE 7

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

7.1 Generally. The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

7.2 Easements. The Owner shall obtain all required easements and the like, **but not the building permit and other permits or fees required of the Contractor by this Contract or permits and fees customarily the responsibility of the Contractor.**

7.3 Contract Copies. The Owner or Architect will provide the Contractor three (3) copies of the complete Contract Documents. The Contractor will be charged, and shall pay the Owner or Architect, actual cost of reproduction for each additional copy of the Contract Documents requested by the Contractor.

ARTICLE 8

CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect'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 shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 9

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

9.1 Generally. In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

9.1.1 The Contractor is again reminded of its continuing duties set forth in Subparagraph 3.1.5 which are by reference hereby incorporated in this Subparagraph 9.1.1. The Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.

9.1.2 All Work shall strictly conform to the requirements of this Contract.

9.1.3 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

9.1.4 A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers, and vendors (hereinafter jointly referred to as "Individuals") who provide services on DCSD premises, supervise services on DCSD premises, or has contact with students. These Individuals shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Individual at a cost of \$45.00 per individual. Additionally, any charges against the Individual, may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the Individual have no contact with DCSD students or parents or provide services to DCSD premises. Any failure of an Individual to obtain a criminal records

background check through DCSD, as stated herein, may result in termination of any resulting contract between such Individual and DCSD. **The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work.**

9.1.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent must be satisfactory to the Owner. The superintendent shall represent the Contractor and communications given to the superintendent shall be as binding as if given to the Contractor. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 9.1.5 as though such individuals had been listed above.

9.1.6 The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.

9.1.7 Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Architect shall develop the submittal log which shall include, at a minimum, specification number, submittal name, submittal number. The Contractor shall provide the planned submittal date for each item and then maintain the log with the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall carefully review, inspect and examine any and all submittals before submission of same to the Architect.

9.1.8 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

9.1.9 At all times relevant to this Contract, the Contractor shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the Work without formality or other procedure.

9.2 Warranty.

9.2.1 The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.

9.2.2 The Contractor shall provide any and all specific or special warranties or guarantees of materials, equipment, items, systems and other things as required elsewhere in this Contract.

9.3 Schedule for Completing Work. The Contractor, within fifteen (15) days of receipt of the N.T.P., shall provide to the Owner and the Architect, and comply with, the Contractor's Schedule of Construction for timely completing the Work. Such schedule shall be a detailed critical path (CPM) schedule in a form acceptable to the Owner. The Contractor's Schedule of Construction shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. In addition to, and not in limitation of, any other requirements of this Contract, the Contractor shall comply with the requirements of Exhibit "F," Minimum Requirements for Contractor's Schedule of Construction, attached hereto and incorporated herein by reference. Strict compliance with the requirements of this Paragraph 9.3 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

9.3.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's Schedule of Construction with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract, the Contractor shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six days a week until such time as Contractor shall have overcome the delinquency and brought the amount of critical path Work in place into compliance with the Contractor's Schedule of Construction, all at no additional cost to the Owner. Nothing herein shall relieve the Contractor from liability for failure to timely progress the Work or any other breach of the Contract Documents.

9.4 Storm Water Discharge Permits. Unless otherwise directed in writing by the Owner, the provisions of this Paragraph 9.4 shall apply and the Contractor shall have and perform the duties, obligations and responsibilities of the Contractor set forth herein. The Owner has contracted with the Architect to: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSWD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSWD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSWD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSWD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSWD Permit. Excepting only the foregoing items (i) through (iv) performed by the Architect, the Contractor shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSWD Permit, including, without limitation, obtaining the permit, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSWD Permit. The Contractor's duties and obligations shall not be relieved by any duties of the Architect. The Contractor shall timely notify the Architect of any rain or other precipitation requiring the inspections referred to in item (iii) above so as to facilitate the Architect's timely performance of such inspections. The Contractor shall timely notify the Owner and Architect of any failure by the Architect to timely perform the inspections referred to in item (iii) above.

ARTICLE 10

INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, liens, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses, arising out of or in connection with the Contractor's performance of this Contract and the Work, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, this indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11

THE PROJECT ARCHITECT

11.1 **Architect.** The architect for this Project is Epsten Group, Inc. (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

11.1.1 Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract.

11.1.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect.

11.1.3 When requested by the Contractor in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.

11.1.4 The Architect shall draft proposed Change Orders.

11.1.5 The Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

11.1.6 The Architect shall be authorized to refuse to accept Work which is defective or otherwise fails to comply with the requirements of this Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of this Contract.

11.1.7 The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in this Contract.

11.1.8 The Architect shall, upon written request from the Contractor, perform those inspections required in Article 6 hereinabove.

11.1.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract.

11.1.10 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 12

CLAIMS BY THE CONTRACTOR

12.1 Generally. Claims by the Contractor against the Owner are subject to the following terms and conditions, and strict compliance with this Article 12 shall be a condition precedent to any liability of Owner therefore.

12.1.1 All Contractor claims against the Owner, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to the Owner and the Architect. Such written notice of claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim, including the amount claimed. Contractor agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.2 Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Contractor shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

12.1.3 No later than ten (10) days after the date of the written notice of claim, Contractor shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Contractor discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Contractor's formal written claim shall also include Contractor's good faith estimate of the change in the Contract Price, the Contract Time, or both, determined in accordance with Article 14 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.4 Contractor shall provide, and continue to provide, to Owner and Architect all such documentation, including cost and time records, as and when Owner or Architect may request so that Owner and Architect may evaluate Contractor's claim.

12.1.5 The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor.

12.1.6 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical

location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 12.1.6 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

12.1.7 In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 12.1.1 above and such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.

12.1.8 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost reasonably incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following claims: loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; and, loss of future or anticipated profits from other work. Notwithstanding the foregoing first two sentences of this Subparagraph 12.1.8, the Owner's limitation of liability shall not apply to the Owner's liability to the Contractor, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

12.2 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the Substantial Completion Date, or as applicable, the date for Final Completion, shall be appropriately adjusted by the Owner upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as Owner may determine. The Contractor's sole remedy for delay caused by any of the bases listed in this paragraph 12.2 shall be a time extension. A task is critical within the meaning of this paragraph 12.2 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of paragraph 12.1.1 above and such notice shall be given by Contractor before proceeding to execute any additional or changed Work. If the Contractor fails to make such claim as required in this paragraph 12.2, any claim for an extension of time shall be waived. For the avoidance of doubt, the Contractor shall not be entitled to a time extension if the Contractor is delayed in performing any task as a sole result of the following: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of materials, equipment, or supplies unless solely caused by an act or omission by the Owner or someone acting in the Owner's behalf, (iv) local or direct strikes, or other similar labor actions, (v) unavailability of subcontractors, sub-subcontractors, or suppliers, or (vi) nonperformance or delay by the Contractor or its subcontractors, sub-subcontractors, or suppliers.

12.2.1 "Unusually severe weather" as used above in paragraph 12.2.1 includes abnormal and unexpected weather conditions including catastrophic storms or floods, lightning, tornadoes, hurricanes, and earthquakes. The Contractor shall not be entitled to any extension of time due to adverse weather conditions unless the number of adverse weather days in any given calendar month exceeds the historic averages as maintained by the national Oceanic and Atmospheric Administration. Adverse weather conditions is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within twenty-four (24) hours: (i) precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure, (ii) temperatures which do not rise above 32 degrees F

by 10:00 A.M., (iii) temperatures which do not rise above that specified for the day's construction activity by 10:00 A.M. if any is specified, (iv) sustained wind in excess of twenty-five (25) mph, or (v) standing snow in excess of one inch (1.00"). Weather conditions including precipitation (rain, snow, and hail) amounts and times at the jobsite, activities and durations affected, shall be recorded on a daily basis and submitted to the Owner on a weekly basis.

12.2.2 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure full completion thereof within the time required by the Contract Documents. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2, and after consideration of all such contingencies and factors, Contractor has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2.

12.2.3 The date for achieving Substantial Completion or, as applicable, Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes access to the Project site) after the Project is enclosed or due to normal severe weather. For the purpose of this Paragraph, the term "enclosed" is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. There shall be no extension of the time for completion due to any lost days that are not weekday working days (based on a Monday through Friday work week). No change in the Contract Price shall be due because of weather.

12.3 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Contractor shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or a court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Subject to the express approval of the DeKalb County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 13

SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below. The Architect will not enter into disputes between the Contractor and any subcontractor or supplier, nor shall

the Architect be called upon to settle same. Neither shall the Architect be called upon to enter into or to settle disputes between any subcontractors or suppliers.

ARTICLE 14

CHANGE ORDERS

14.1 **Generally.** One or more changes to the Work within the general scope of this Contract, or the time for the Contractor's performance, or any combination thereof, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

14.1.1 "Change Order" shall mean a written order to the Contractor executed by the Owner and the Architect after execution of this Contract and approved by the Georgia Department of Education if so required, directing a change in the Work, the time for the Contractor's performance, or any combination thereof.

14.1.2 A change in the Work (excepting only changes required by the Architect pursuant to Paragraph 11.1.9 of this Contract) or the time for the Contractor's performance may be made only by Change Order. The Owner will not be responsible for any change in the Work involving extra costs unless approval in writing is furnished by the Owner before such Work is begun. Note that the Architect does not have authority to order changes in the Work that involve changes in cost or time.

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

14.1.3.1 Any increase in the Contract Price must be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract, and any such request for an increase in the Contract Price shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner and Architect in accordance with Article 12 of this Contract of any request for an increase in the Contract Price shall constitute a waiver by Contractor of any entitlement to an increase in the Contract Price.

14.1.3.2 The change in the Contract Price, if any, shall be established by one of the following methods:

14.1.3.2.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

14.1.3.2.2 Unit prices stated in the Contract Documents or subsequently agreed upon; or

14.1.3.2.3 On the basis of, and shall be limited to, the reasonable actual costs incurred, or savings achieved, resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect costs or components. The Contractor shall keep and present, in such form as the Architect may require, an itemized accounting together with appropriate supporting data. Actual costs for the purposes of this Paragraph shall be limited to the following:

.1 Costs of labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, sales, use or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

14.1.3.2.4 The allowance for overhead and profit for any Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision, superintendence, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined, shall be determined as follows:

.1 If, and to the extent, the change involves Work of one or more subcontractors, the overhead and profit component for subcontractors shall be five percent (5%) and the overhead and profit component for the Contractor shall be five percent (5%) of the amount allocable for subcontracted Work; provided, however, that the foregoing five percent (5%) overhead and profit component for subcontractors is intended to cover all subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier subcontractors of the Contractor. For the avoidance of doubt, all Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

.2 If the change involves only Work of the Contractor, the component for overhead and profit shall be ten percent (10%).

14.1.3.2.5 Any other provision of the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Change Orders performed concurrently with the Work, unless the cost includes a claim for extension of time by the ordering of the change.

14.1.3.3 The Contractor shall continue to diligently perform the Work, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Subparagraph 14.1.3 above. Pending final determination of reasonable actual costs incurred or savings achieved, payments on account shall be made to Contractor in accordance with said Subparagraph 14.1.3 and Article 6 of this Contract.

14.1.3.4 If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Subparagraph 14.1.3.4 shall be made only with respect to the difference between

the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Subparagraph 14.1.3.4 shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

14.1.4 Any extension of the time for the Contractor's performance requested by Contractor for performance of any change in the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Contractor's performance shall be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract and any such request for extension of time shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner in accordance with Article 12 of this Contract of any request for extension of time, or the Contractor's execution of a Change Order, shall constitute a waiver by Contractor of any entitlement to an extension of time arising out of or relating to such Change Order.

14.1.5 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. The stated extension of time, if any, is equitable in nature, and includes all compensation to Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change Order, and that no further claims for any extension of time or adjustment in the Contract Price, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of time or adjustment in the Contract Price are waived in their entirety.

14.1.6 The Contractor shall notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's Surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the Surety has been notified of, and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

14.1.7 No Change Order shall contain any reservation of rights or have any qualifying language placed on it.

ARTICLE 15

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

15.1 Work in Violation of Contract. In the event that the Contractor covers, conceals or obscures its Work in violation of this Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

15.2 Work in Conformity with Contract. If any of the Work is covered, concealed or obscured in a manner not covered by Paragraph 15.1 above, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

15.3 Defective or Nonconforming Work. The Contractor shall, at no cost in time or money to the Owner, timely correct Work rejected by the Owner or by the Architect as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

15.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial Work including needed maintenance instructions to Owner's personnel.

Nothing contained in this Article 15 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article 15.4 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the 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 the Contractor's obligations other than specifically to correct the Work.

15.5 Owner's Option. The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable costs of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 16

TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of sixty (60) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Architect. If the Owner suspends Contractor's performance for a period of more than one hundred twenty (120) days, through no fault of the Contractor, then Contractor may, upon seven (7) days written notice to Owner, terminate this Contract. In either event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Paragraph 18.1 hereunder.

ARTICLE 17

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

17.1 Suspension. The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to one hundred twenty (120) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

17.2 Compensation. In the event the Owner directs a suspension of performance under this Article 17, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- 17.2.1 demobilization and remobilization, including such costs paid to subcontractors.
- 17.2.2 preserving and protecting Work in place.
- 17.2.3 storage of materials or equipment purchased for the Project, including insurance thereon.
- 17.2.4 performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 18

TERMINATION BY THE OWNER

18.1 Termination for Convenience. The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also, at the Owner's direction, either terminate or assign to Owner or Owner's designee outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

18.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph 18.1.3 below.

18.1.2 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

18.1.3 Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

18.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

18.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

18.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Paragraph 18.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.2 Termination for Cause. If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 18.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause; such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 18.1 shall apply.

18.3 Termination Not Subject to Article 12. Termination of this Contract by the Owner is not subject to the procedures set forth in Article 12.

ARTICLE 19

INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE 20

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in the exact form provided by the Owner and shall be executed by a surety, or sureties, licensed in the State of Georgia by the Office of Commissioner of Insurance, rated A+ or better by A.M. Best Company, listed on the United States Department of Treasury's Listing of Approved Sureties (Treasury Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation equal to or greater than the penal sum of the bonds as adjusted from time to time, and not otherwise reasonably objectionable to the Owner.

ARTICLE 21

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, photographs, estimates, invoices, bills, receipts, cancelled checks, vouchers or other writings or things which document or involve in any manner the Project, its design, its cost, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor and its Subcontractors. The Contractor shall maintain and protect these documents for no less than six (6) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

ARTICLE 22

APPLICABLE LAW / VENUE AND JURISDICTION

22.1 Applicable Law / No Waiver. The law applicable to this Contract shall be the law of the State of Georgia. Each and every provision required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained therein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof. The failure of owner to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in any other instance. The Contractor and all subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Contractor and all subcontractors shall provide the Owner with a completed and signed Immigration and Security Form and accompanying affidavits, as a condition precedent to Final Payment.

22.2 Jurisdiction and Venue. The Contractor and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of DeKalb County, Georgia, regarding any matter arising out of or relating to this Contract. The Contractor agrees that it shall file any lawsuit or other action, including any third-party practice lawsuit, against the Owner arising out of or related to this Contract or the Project only in the Superior Court of DeKalb County.

ARTICLE 23

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

[SIGNATURES APPEAR ON THE NEXT PAGE]

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijon DaCosta, Sr., Board Chair
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Vasanne S. Tinsley, Interim Superintendent
[TYPED NAME & TITLE]

DeKalb County Board of Education
1701 Mountain Industrial Boulevard
Stone Mountain, Georgia 30083

[DATE OF EXECUTION]

Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

[TYPED NAME]

By: _____
[SIGNATURE]

[TYPED NAME & TITLE]

[ADDRESS]

[DATE]

EXHIBIT "A"

REQUIRED INSURANCE

(1) The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' or workmen's compensation disability benefit or other similar employees benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(2) The insurance required by Paragraph 1 shall be written for not less than any limits of liability specified within this exhibit, or required by law, whichever is greater.

(3) The insurance required by Paragraph 1 shall include contractual liability insurance.

(4) The Contractor shall be responsible from the time of signing the Contract or from the time of the beginning of the first Work, whichever shall be earlier, for all bodily injury (including death) or damage to property of any kind resulting from the Work under this Contract to persons or property.

The Contractor assumes the obligation to save the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect harmless and to indemnify them from every expense, liability or payment arising out of or through bodily injury (including death) to any person or persons or damage to property of any person arising out of any act of the Contractor, any subcontractor or anyone either directly or indirectly employed by or under the supervision of any of them in the prosecution of the Work included in the Contract.

All liability policies shall name the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect as an additional insured. All liability policies shall be issued on a primary and non-contributory basis over any other liability insurance which may be available to the Owner, the DeKalb County School District, Owner's Program Manager, and Architect to fully insure the indemnity obligations made herein and in any other portion of this contract.

(5) The Contractor agrees to comply with the provisions of the Workman's Compensation laws of the State of Georgia and to require all Subcontractors likewise to comply. Contractor shall secure the following insurance at his own expense and prior to starting any Work shall file Certificates of Insurance with the Owner except that on the Owner's Protective Insurance, original policies shall be filed with the Owner.

(a) Workmen's Compensation - Statutory Limits, Employer's Liability -\$1,000,000.00

(b) Comprehensive General Liability (including Premises-Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage and Broad Form General Liability Endorsement; Explosion & Collapse).

1. Bodily Injury: \$1,000,000.00 Each Occurrence; \$2,000,000.00 Aggregate, Products and Completed Operations (Umbrella).
2. Property Damage: \$500,000.00 Each Occurrence; \$1,000,000.00 Aggregate.
3. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after completion of the work and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
4. Property Damage Liability Insurance shall include coverage for Explosion, Collapse, and Underground.
5. Contractual Liability (Hold Harmless Coverage): Bodily Injury: \$1,000,000.00 Each Occurrence; Property Damage: \$500,000.00 Each Occurrence, \$500,000.00 Aggregate.
6. Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Each Occurrence, \$1,000,000 Aggregate.
7. If the Comprehensive General Liability policy provides that the general aggregate limit for items (5)(b) 1-6 above apply separately to **each** project, then the Owners Protective Liability policy in item (8) (a)-(c) shall not be required.

(c) Comprehensive Automobile Liability (owned, non-owned, leased, hired):

1. Bodily Injury: \$1,000,000.00 Each Person, \$1,000,000.00 Each Accident;
2. Property Damage: \$1,000,000.00 Each Occurrence;
3. or \$1,000,000 Combined Single Limit.

(d) Commercial Umbrella

1. Umbrella limits shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below:

Contract Price	Required Umbrella Limit
Less than \$1,000,000	\$1,000,000
\$1,000,000 to \$10,000,000	\$5,000,000
Greater than \$10,000,000	\$10,000,000

2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
4. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the DeKalb County School District, Owner's Program Manager, and Architect.

(6) Certificates of Insurance (2 copies) shall be filed with Owner before commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, changed or allowed to expire until thirty (30) days after the Owner has received written notice evidenced by return receipt of registered letter.

(7) Insurance will not be acceptable unless written by a Company authorized by the State of Georgia Insurance Department to do business in Georgia at the time the policy is issued and the company must in addition be acceptable to the Owner.

(8) Contractor shall purchase and maintain Owner's Protective Liability Policy with minimum limits of:

- (a) Bodily Injury: \$1,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (b) Property Damage: \$2,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (c) Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Aggregate.

This policy shall be issued in the name of DeKalb County Board of Education and delivered to Owner along with Certificates of Insurance. Employees of the DeKalb County Board of Education shall be included as an additional insured. Policy shall also name the DeKalb County School District, Owner's Program Manager, and the Architect as an additional insured.

(9) Contractor shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Contractor and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the contract price and covering fire, theft, extended coverage, vandalism and malicious mischief. The coverage and protection afforded to the Owner under such policy shall not be diminished, changed, altered or otherwise affected by any of the following:

- (a) the delivery of furniture, fixtures and equipment to the insured premises and the installation in place thereof, and making the same ready for Owner's use;
- (b) the Owner's partial or total occupancy of the insured premises; and/or
- (c) the performance of other work or construction operations at the insured premises by the Owner and/or its employees, agents or other contractors.

For the avoidance of doubt, and to the extent required, Contractor shall obtain an endorsement to such policy to delete any partial occupancy exclusions and to ensure the policy's compliance with the foregoing requirements and provide a copy thereof to Owner.

(10) The Contractor may, at his option, purchase insurance policies having a "deductible" feature provided that:

- (a) Deductible amount does not exceed \$10,000.00.
- (b) Contractor agrees in written letter to the Owner (through the Architect) to be responsible for payment of any such deductibles, in the event that such payment should become necessary.

EXHIBIT "B"

LIQUIDATED DAMAGES

Liquidated damages applicable to Paragraph 5.2 of this Contract shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below.

If The Original Contract Price Is:

Up to \$49,999.99
\$50,000.00 to \$99,999.99
\$100,000.00 to \$299,999.99
\$300,000.00 to \$599,999.99
\$600,000.00 to \$999,999.99
\$1,000,000.00 to \$1,999,999.99
\$2,000,000.00 to \$4,999,999.99
\$5,000,000.00 to \$9,999,999.99
\$10,000,000.00 to \$14,999,999.99
\$15,000,000.00 to \$19,999,999.99
\$20,000,000.00 or above

Daily Liquidated Damages Shall Be:

\$50
\$100
\$200
\$300
\$400
\$500
\$750
\$1,500
\$2,500
\$3,500
The product of .0002 multiplied by
the Original Contract Price.

CONTRACTOR AFFIDAVIT AND AGREEMENT

EXHIBIT "C"

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the individual, firm, or corporation ("Contractor") which is contracting with the DeKalb County Board of Education has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91, as amended. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(2) Contractor's correct user identification number and date of authorization is set forth herein below.

(3) Contractor agrees that the Contractor will not employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the DeKalb County Board of Education, unless at the time of the contract said subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Contractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Contractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other applicable verification procured by subcontractor at the time of contract with the sub-subcontractor(s) within five (5) business days after receiving the said Affidavit or verification.

Contractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such subcontractor Affidavit or other permissible verification to the DeKalb County Board of Education at the time the subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

(4) Contractor further agrees to and shall provide DeKalb County Board of Education with copies of all other affidavits or other applicable verification received by Contractor (i.e.: sub-subcontractor affidavits and all other lower tiered affidavits) within five (5) days of receipt.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EV/Basic Pilot Program, please identify the program.

Company Name / Contractor Name

Date

BY: _____
Signature of Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 20____

Notary Public

My Commission Expires: _____

EXHIBIT "D"

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the undersigned individual, firm or corporation ("Subcontractor") is engaged in the physical performance of services under a contract with _____ (*name of Contractor*), which has a contract with the DeKalb County Board of Education.

(2) Subcontractor has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(3) Subcontractor's correct user identification number and date of authorization is set forth herein below.

(4) Subcontractor agrees that the Subcontractor will not employ or contract with any sub-subcontractor(s) in connection with the physical performance of services pursuant to this subcontract or the contract with the DeKalb County Board of Education, unless said sub-subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Subcontractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Subcontractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other permissible verification procured by sub-subcontractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

Subcontractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such sub-subcontractor Affidavit or other applicable verification to the Contractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EEV/Basic Pilot Program, please identify the program.

BY: Authorized Officer or Agent

Date

(Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20____

Notary Public

My Commission Expires:_____

EXHIBIT “E”

LIST OF PLANS AND SPECIFICATIONS FOR THE PROJECT

[Here insert or attach list of plans and specifications for the Project.]

EXHIBIT "F"

MINIMUM REQUIREMENTS FOR CONTRACTOR'S SCHEDULE OF CONSTRUCTION

PART 1 - GENERAL

- 1.1 **DEFINITIONS.** For purposes of this Exhibit, the following terms shall have the meanings set forth below.
- A. **Activity:** A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. **Critical activities** are activities on the critical path. They must start and finish on the planned early start and finish times.
 - 2. **Predecessor Activity:** An activity that precedes another activity in the network.
 - 3. **Successor Activity:** An activity that follows another activity in the network.
 - B. **Cost Loading:** The allocation of the Schedule of Values for the completion of an activity as scheduled. The sum of costs for all activities must equal the total Contract Price, unless otherwise approved by Architect and Owner.
 - C. **CPM:** Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of the project.
 - D. **Critical Path:** The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall project duration and contains no float.
 - E. **Event:** The starting or ending point of an activity.
 - F. **Float:** The measure of leeway in starting and completing an activity.
 - 1. Float time belongs to Owner.
 - 2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
 - G. **Fragnet:** A partial or fragmentary network that breaks down activities into smaller activities for greater detail.
 - H. **Major Area:** A story of construction, a separate building, or a similar significant construction element.
 - I. **Milestone:** A key or critical point in time for reference or measurement.
 - J. **Network Diagram:** A graphic diagram of a network schedule, showing activities and activity relationships.

- K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.2 SUBMITTALS

- A. Preliminary Schedule of Construction: Submit two opaque copies.
 - 1. No action or inaction by Architect or Owner in connection with cost-loaded preliminary schedule of construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- B. Preliminary Network Diagram: Submit two opaque copies, large enough to show entire network or entire construction period. Show logic ties for activities.
- C. Contractor's Schedule of Construction: Submit two opaque copies of initial schedule and each updated schedule, large enough to show entire schedule for entire construction period.
 - 1. Submit an electronic copy of schedule, using software indicated, on CD-R, and labeled to comply with requirements for submittals. Include type of schedule (Initial or Updated) and date on label.
 - 2. No action or inaction by Architect or Owner in connection with cost-loaded Contractor's Schedule of Construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- D. CPM Reports: Concurrent with CPM schedule, submit three copies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of total float.
 - 4. Earnings Report: Compilation of Contractor's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary schedule of construction, the initial Contractor's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Contractor's Schedule of Construction.

1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the Preliminary Schedule of Construction and Contractor's Schedule of Construction, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update schedule.

3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
4. Review delivery dates for Owner-furnished products, if any.
5. Review schedule for work of Owner's separate contracts, if any.
6. Review time required for review of submittals and resubmittals.
7. Review requirements for tests and inspections by independent testing and inspecting agencies.
8. Review time required for completion and startup procedures.
9. Review and finalize list of construction activities to be included in schedule.
10. Review submittal requirements and procedures.
11. Review procedures for updating schedule.

1.4 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors, if any.
- B. Coordinate Contractor's Schedule of Construction with the Schedule of Values, list of subcontracts, submittals schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from parties involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2 – PRODUCTS

2.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.

3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Contractor's Schedule of Construction with submittals schedule.
 4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
 2. Work under More Than One Contract: Include a separate activity for each contract.
 3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
 4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 6. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Subcontract awards.
 - b. Submittals.
 - c. Purchases.
 - d. Mockups.
 - e. Fabrication.
 - f. Sample testing.
 - g. Deliveries.
 - h. Installation.
 - i. Tests and inspections.
 - j. Adjusting.
 - k. Curing.
 - l. Startup and placement into final use and operation.
 8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:

- a. Structural completion.
- b. Permanent space enclosure.
- c. Completion of mechanical installation.
- d. Completion of electrical installation.
- e. Substantial Completion

9. Other Constraints: Show the effect of any additional constraints.

- E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Commencement Date, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.
- F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.
 - 1. Contractor shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.
 - 2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.
 - 3. Total cost assigned to activities shall equal the total Contract Price.
- G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using fragnets to demonstrate the effect of the proposed change on the overall project schedule.
- H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.
 - 1. Use software, version and operating system required by Owner.

2.2 CONTRACTOR'S SCHEDULE OF CONSTRUCTION (CPM SCHEDULE)

- A. General: Prepare network diagrams using AON (activity-on-node) format.
- B. Preliminary Network Diagram: Submit diagram within 7 days of date established for commencement of the Work. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.
- C. CPM Schedule: Prepare Contractor's Schedule of Construction using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.
 - 1. Submit CPM schedule within 15 days after date established for commencement of the Work.
 - a. Failure to include any Work item required for performance of this Contract shall not excuse Contractor from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.
 3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.
- D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.
1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. If applicable, work by Owner that may affect or be affected by Contractor's activities.
 - i. Testing and start up.
 2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the Contract Time.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or subcontractor and the Work or activity.
 2. Description of activity.
 3. Principal events of activity.
 4. Immediate preceding and succeeding activities.
 5. Early and late start dates.

6. Early and late finish dates.
 7. Activity duration in workdays.
 8. Total float or slack time.
 9. Average size of workforce.
 10. Dollar value of activity (coordinated with the Schedule of Values).
- F. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
 2. Changes in early and late start dates.
 3. Changes in early and late finish dates.
 4. Changes in activity durations in workdays.
 5. Changes in the critical path.
 6. Changes in total float or slack time.
 7. Changes in the Contract Time.
- G. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
 - a. In both value summary lists, tabulate "actual percent complete" and "cumulative value completed" with total at bottom.
 - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

PART 3 - EXECUTION

3.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
1. In-House Option: Owner may waive the requirement to retain a consultant if Contractor employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.

- B. Contractor's Schedule of Construction Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
 2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Contractor with a need-to-know.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

EXHIBIT G

SPECIAL TERMS AND CONDITIONS

Contractor agrees to comply with all requirements of the ESSER and GEER programs and all requirements of the laws establishing and governing the same including, but not limited to, the specific provisions expressly set forth in this Addendum below.

In the event of any conflict between the provisions of this Addendum and the other Contract Documents, the provisions of this Addendum shall take precedence. Except as otherwise specifically set forth in this Addendum, the terms and conditions of the Contract Documents shall remain unmodified.

Article A1 – Additional Contractor Duties and Responsibilities

In addition to the rights, duties and obligations set forth elsewhere in the Contract Documents, Contractor shall have the additional rights, duties, obligations and responsibilities set forth in this Article A1, as follows:

- A1.1** Contractor shall pay all laborers and mechanics employed or working upon the site of the Work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those established for each job classification by the United States Secretary of Labor for the “Building” category in DeKalb County, Georgia, as of the date of the Contract. This determination is currently known as the “GA20230305” rate, as the same may be amended or modified from time to time. (The rate schedules may be obtained by visiting the Department of Labor’s website at <http://www.wdol.gov/dba.aspx>.) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and is to be employed on the Work, shall be classified in conformance with the wage determination.
- A1.2** Owner shall, on its own or upon the written request of an authorized representative of the U.S. Department of Labor, be entitled to withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.
- A1.3** Contractor shall maintain all payrolls and basic records relating thereto during the course of the Work and for a period of three (3) years after Final Completion. Such records shall contain the name, address and social security number of each worker, his classification, the hourly rate of wages paid (and fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Contractor shall also maintain all records related to any fringe benefit plan or program during the course of the Work and for a period of three (3) years after Final Completion.
- A1.4** Contractor shall submit to Owner weekly a report containing a copy of all payrolls (including Subcontractor payrolls), which shall set forth the information required by Section A1.3. Each report shall be accompanied by a “Statement of Compliance” signed by Contractor or the Subcontractor (as the case may be) which certifies the following:
 - (a) that the payroll contains the information required by 29 C.F.R. § 5.5(a)(3)(ii), that the information is being maintained in accordance with 29 C.F.R. § 5.5(a)(3)(i) and that all such information is correct and complete;

- (b) that each laborer employed on the Work has been paid the full weekly wages earned, without rebate, and that no deductions have been made except as required by law; and
- (c) that each laborer has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed.

In complying with the reporting and certification requirements provided hereunder, Contractor is encouraged (but is not required) to use U.S. Department of Labor Form WH-347.

Falsification of such information, records or certifications may subject Contractor or Subcontractors to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

Contractor and all Subcontractors shall make all records required hereunder available for inspection, copying or transcription by Owner or the U.S. Department of Labor, and shall permit them to interview employees during working hours.

- A1.5** Contractor and Subcontractors shall be permitted to pay apprentices or trainees at less than the predetermined rate; provided, however, that such apprentices and trainees are employed pursuant to and individually registered in a bona fide apprenticeship or trainee program registered with the U.S. Department of Labor or with a state apprenticeship agency recognized by the U.S. Department of Labor.
- A1.6** Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated into this Contract by reference.
- A1.7** Contractor shall insert all clauses contained in this Article A1 in all subcontracts with Subcontractors.
- A1.8** Upon the breach of any of the clauses contained in this Article A1, Owner shall have the right to terminate the Contract "for cause".
- A1.9** Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.* and all regulations promulgated thereunder, which are incorporated into the Contract by reference.
- A1.10** Disputes arising out of the provisions of this Article A1 shall not be subject to the general dispute resolution procedures contained in the Contract Documents but shall be resolved in accordance with the procedures set forth in 29 C.F.R. parts 5-7.
- A1.11** By entering into the Contract, Contractor certifies that neither it nor any person or firm who has an interest in Contractor is ineligible to be awarded contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- A1.12** Contractor and Subcontractors shall keep posted on the Work site, in a prominent and accessible location where it can easily be seen at all times, U.S. Department of Labor poster WH-1321.
- A1.13** Contractor and Subcontractors shall not permit any laborers or mechanics to perform work on the Project in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty (40) hours per week.

In the event of any violation of this Section A1.13, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and subject to liquidated damages to be assessed by the U.S. Department of Labor as set forth in 29 C.F.R. § 5.5(b)(2).

- A1.14** Owner shall on its own or upon the written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract plus any liquidated damages which Contractor or any Subcontractor may be liable for pursuant to 29 C.F.R. § 5.5(b)(2). In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.

END OF EXHIBIT

APPENDIX E4

**STANDARD FORM OF
FIXED PRICE CONSTRUCTION CONTRACT
BETWEEN
THE DEKALB COUNTY BOARD OF EDUCATION
AND**

[Contractor]

PROJECT: Tucker Middle School, HVAC and Controls
Replacement

Project Address: 2160 Idlewood Road
Tucker, GA 30084

ARCHITECT: Epstein Group, Inc.

Architect's Address: 101 Marietta Street NW Suite 2600
Atlanta, Georgia 30033

Cost Code: 448.0605.30521.GENCONTR.R_HV

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This FIXED PRICE CONSTRUCTION CONTRACT (the "Contract") is made and entered into by and between THE DEKALB COUNTY BOARD OF EDUCATION (the "Owner") and _____ (the "Contractor"). This Contract shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Tucker Middle School, HVAC and Controls Replacement (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes this instrument, all exhibits hereto, the plans and specifications for the Project identified thereon as such, the Contractor's Proposal, Supplemental Conditions, if any, Special Conditions, if any, and all Addenda issued prior to execution of the Contract, if any, plus the following (if any):

all of which are hereby incorporated herein by reference and made a part hereof. Attached hereto as Exhibit "E" is a list of the plans and specifications for the Project. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract. The Contract, of which this instrument is a part, may sometimes be referred to as the "Contract Documents."

ARTICLE 2

REPRESENTATIONS OF THE CONTRACTOR

2.1 General. In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, and without limiting or restricting any other representation or warranty set forth elsewhere or implied by law, the Contractor, by executing this Contract, makes the following express representations and warranties to the Owner:

2.1.1 The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project.

2.1.2 The Contractor has visited, inspected and become familiar with the Project site and the local conditions under which the Project is to be constructed and operated.

2.1.3 The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and believes them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

2.2 Qualification Information. The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Contractor's Prequalification Statement and/or proposal documents, if any, and in any other communication from the Contractor

regarding the Contractor's qualifications or responsibility to perform the obligations of the Contractor under this Contract (all such information being referred to herein as "Qualification Information"). The Contractor further represents, warrants and affirms that in the event that any Qualification Information changed in any material way after it was communicated from Contractor and before this Contract is signed by all parties, Contractor has immediately notified the Owner, in writing, of such change or changes and Contractor agrees that Owner may take such action thereon as Owner deems appropriate. The Contractor acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Qualification Information. The Contractor acknowledges and agrees that all Qualification Information is material and important to the Owner's evaluation of the Contractor's qualifications and responsibility to undertake the Contractor's obligations under this Contract. Contractor acknowledges and agrees that if the Contractor knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Qualification Information, or failed to advise the Owner in writing of any material change in such information as set forth in this Paragraph, this Contract shall be deemed to be materially breached by Contractor and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

ARTICLE 3

CONTRACT CONSTRUCTION

3.1 **Intent and Interpretation.** With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1.1 This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents, but only to the extent that it is inconsistent therewith.

3.1.2 Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

3.1.3 Nothing contained in this Contract shall create, nor be interpreted to create privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor.

3.1.4 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Contractor observe any conflicts, ambiguity, errors or omissions within the documents, he shall, by written notice, bring them to the Owner's and Architect's attention for decision and revision as soon as possible after originally observed and before proceeding with the affected Work. In the event of duplication or conflicts between the documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no

representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor again hereby acknowledges and represents that it has received, reviewed, and carefully examined such documents, believes them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

3.1.6 Plans are not intended to be scaled or to act as shop drawings.

3.1.7 In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, interpretation will be based on the following priority:

3.1.7.1 Addenda (if any), with those of later date having precedence over those of earlier date.

3.1.7.2 This Agreement.

3.1.7.3 Supplemental or Special Conditions (if any).

3.1.7.4 Specifications.

3.1.7.5 Plans, with the following priority:

(a) As between figures given on plans and scaled measurements, the figures shall govern.

(b) As between large scale plans and small-scale plans, the large scale plans shall govern.

3.1.8 Whenever an item is specified or shown on the plans by detail or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function in the building.

3.1.9 Any material specified by reference to the number, symbol, or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such references. The standards referred to, except as modified in the Contract, shall have full force and effect as though printed in the Contract. The Contractor shall make itself aware of the contents of such standards and shall furnish the field office with one (1) full set of each.

3.1.10 If Owner elects to accept any items proposed by the Contractor as a substitution, the Contractor shall assume full responsibility for the proper performance of any substitution to the criteria set forth in the Contract and assume the costs of any changes in the Work which may be due to such substitution.

3.1.11 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.1.12 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

3.1.13 Wherever the terms "necessary", "suitable", "as directed", "when directed", "satisfactory", "good and sufficient", "approved", or other general qualifying terms are used on the plans, they are deemed to be followed by the words "in the opinion of the Architect", or "by the Architect", as the case may be.

3.1.14 Unless otherwise stated, the terms “approval”, “approved”, “approved equal”, “or equal”, or “other approved”, are deemed to be followed by the words “in the opinion of the Architect”, or “by the Architect”, as the case may be.

3.1.15 If the Owner’s design professional for the Project is an engineer rather than an architect, then the term “Architect” as used throughout this Contract shall mean “Engineer”.

3.1.16 Unless otherwise stated, the term “day” means “calendar day” and the term “days” means “calendar days”.

3.1.17 “Work” means any and all labor, supervision, coordination, work, supplies, fixtures, appliances, furnishings, vehicles, equipment, services, facilities, tools, materials, computers, transportation, storage, power, fuel, heat, light, cooling, utilities, insurance, bonds, items, documents and things required by the Contract Documents to be performed, obtained, furnished, provided, or supplied by Contractor, including without limitation all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purposes.

3.2 Ownership. The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner’s prior written authorization.

ARTICLE 4

CONTRACTOR’S PERFORMANCE

4.1 Generally. The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

4.1.1 Construction of the Project.

4.1.2 The furnishing of required surety bonds and insurance.

4.1.3 The provision, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits, licenses, fees and governmental inspections required for the construction of the Project.

4.1.4 The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon Final Completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

4.1.5 The Contractor shall develop a written site safety plan incorporating the most recent site evacuation plan submitted by the Architect and shall submit such safety plan to the Owner for review and comment. The Contractor shall be solely responsible for site safety.

4.1.6 The Contractor shall develop a written site security plan incorporating the most recent information obtained from the District’s police force and the school principal and shall submit such security plan to the Owner for review and comment. The Contractor shall be solely responsible for site security.

ARTICLE 5

TIME FOR CONTRACTOR'S PERFORMANCE

5.1 Time for Performance. The Contractor shall commence the performance of this Contract on the day identified in the Master Schedule issued with the RFP and will be completed no later than the Substantial and Final Completion dates identified in the same Master Schedule. The Substantial and Final Completion dates will not be extended because the Contractor is delinquent in providing the DCSD BOE with the properly executed contract, payment and performance bonds, and required certificates of insurance, including, but not limited to, builder risk riders. These documents are required to be submitted to the DeKalb County Board of Education per the timeframe identified in the Notice of Award. The Contractor shall accomplish Substantial Completion of the Project on or before: _____.

Final Completion of each phase shall occur on or before thirty (30) calendar days from the substantial completion date of each phase. The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time."

5.2 Liquidated Damages for Delay of Substantial Completion. The Contractor shall pay the Owner for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion the sum indicated at Exhibit "B" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.3 Substantial Completion. The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

5.4 Time Is Of The Essence. All limitations of time set forth herein are material and are of the essence of this Contract.

ARTICLE 6

FIXED PRICE AND CONTRACT PAYMENTS

6.1 Contract Price. The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of _____ Dollars (\$_____). The price set forth in this Paragraph 6.1 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. The Contract Price includes the following Alternate(s), if any: _____.

6.2 Schedule of Values. Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not front-end load its Schedule of Values by imbalancing it or by increasing any element thereof in excess of the

actual cost, and any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.

6.3 Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both including, without limitation, supporting pay applications submitted by all Subcontractors and an itemization and/or invoices of all direct costs incurred by Contractor for labor, materials, equipment and/or any third-party services which are being included in such Payment Request. Therein, the Contractor may request payment for ninety-five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.

Prior to or concurrent with Contractor's second Payment Request, Contractor shall submit to Owner a draft proposed closeout submittal for review and comment by the Owner and the Architect. If the Owner or Architect provide comments, Contractor shall make any required changes to the draft proposed closeout submittal and resubmit to the Owner with Contractor's next Payment Request.

When fifty percent (50%) of the Contract Price, as it may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the Architect, the Owner, at its sole discretion, may reduce retainage withheld. If, after discontinuing the retention, the Architect determines that the Work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality and digital copies on cd depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require. With each payment request, Contractor will provide a fully updated, detailed construction schedule for use by the Architect and Owner in determining the actual progress of the project with respect to the payment application.

Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other

encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien, in a form acceptable to the Owner, from Contractor and from all subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

6.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, material man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

6.5 No Acceptance of Work. Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

6.6 Refusal to Make Payment. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

6.6.1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract.

6.6.2 The quantity of the Contractor's Work not being as represented in the Contractor's Payment Request, or otherwise.

6.6.3 The Contractor's rate of progress being such that, in the opinion of the Owner or the Architect, or both, Substantial Completion or Final Completion, or both, may be inexcusably delayed.

6.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.

6.6.5 The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers.

6.6.6 Claims made, or likely to be made, against the Owner or its property.

6.6.7 Loss or damage caused by the Contractor.

6.6.8 The Contractor's failure or refusal to perform any of its obligations relating to safety and/or security, including without limitation the safety related obligations set forth in the Specifications Division 1 – General Requirements.

6.6.9 The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph 6.6 the Contractor shall promptly comply with such demand.

6.7 Untimely Payments. If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease Work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease Work to the Owner.

6.7.1 Payments due from the Owner to the Contractor under the terms of this Contract which remain unpaid for thirty (30) days after the date when due will thereafter accrue interest at the rate of six percent (6%) per annum until payment of such amount as is due has been made in full provided that notice has been given as set forth in O.C.G.A. § 13-11-7. Acceptance of progress payments or final payments shall release all claims for interest on said payments. To the fullest extent allowed by law, the Contract Documents shall supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*

6.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a detailed and quantified punchlist of those matters yet to be finished and proposed cost estimates for each item on the punchlist. The Architect will thereupon conduct an inspection to confirm that the Work is in fact substantially complete and shall review the Contractor's punchlist for accuracy as to the items on the punchlist and the Contractor's cost estimate for completing each item on the punchlist. Upon its confirmation that the Contractor's Work is substantially complete and approval of the punchlist and cost estimates and upon delivery of the Contractor's punchlist to the Owner and the approval by Owner of the punchlist, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims.

6.9 Final Completion. "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract, including start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate the Project.

6.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder including completion of all items on the Contractor's punchlist to the satisfaction of the Architect, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in form and manner acceptable to Owner, consent(s) of surety to release retainage, together with an original power of attorney with current certificate attached thereto.

6.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion. If the Contractor fails to achieve Final Completion within 30 days of the date of Substantial Completion, the Contractor shall pay the Owner one-tenth (1/10) of the sum indicated at Exhibit "B" per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.12 Conditions Precedent to Final Payment. Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

6.12.1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.

6.12.2 If required by the Owner, separate releases of claims and liens and claim and lien waivers from Contractor and each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have, a claim against the Owner or the Owner's property and an affidavit that all such releases and waivers have been provided.

6.12.3 Consent(s) of Surety to final payment, together with an original current power of attorney with current certificate attached thereto.

6.12.4 All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.

6.13 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Paragraph 6.6 above, make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Approval for Payment.

ARTICLE 7

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

7.1 Generally. The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

7.2 Easements. The Owner shall obtain all required easements and the like, **but not the building permit and other permits or fees required of the Contractor by this Contract or permits and fees customarily the responsibility of the Contractor.**

7.3 Contract Copies. The Owner or Architect will provide the Contractor three (3) copies of the complete Contract Documents. The Contractor will be charged, and shall pay the Owner or Architect, actual cost of reproduction for each additional copy of the Contract Documents requested by the Contractor.

ARTICLE 8

CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect'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 shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 9

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

9.1 Generally. In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

9.1.1 The Contractor is again reminded of its continuing duties set forth in Subparagraph 3.1.5 which are by reference hereby incorporated in this Subparagraph 9.1.1. The Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.

9.1.2 All Work shall strictly conform to the requirements of this Contract.

9.1.3 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

9.1.4 A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers, and vendors (hereinafter jointly referred to as "Individuals") who provide services on DCSD premises, supervise services on DCSD premises, or has contact with students. These Individuals shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Individual at a cost of \$45.00 per individual. Additionally, any charges against the Individual, may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the Individual have no contact with DCSD students or parents or provide services to DCSD premises. Any failure of an Individual to obtain a criminal records

background check through DCSD, as stated herein, may result in termination of any resulting contract between such Individual and DCSD. **The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work.**

9.1.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent must be satisfactory to the Owner. The superintendent shall represent the Contractor and communications given to the superintendent shall be as binding as if given to the Contractor. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 9.1.5 as though such individuals had been listed above.

9.1.6 The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.

9.1.7 Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Architect shall develop the submittal log which shall include, at a minimum, specification number, submittal name, submittal number. The Contractor shall provide the planned submittal date for each item and then maintain the log with the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall carefully review, inspect and examine any and all submittals before submission of same to the Architect.

9.1.8 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

9.1.9 At all times relevant to this Contract, the Contractor shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the Work without formality or other procedure.

9.2 Warranty.

9.2.1 The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.

9.2.2 The Contractor shall provide any and all specific or special warranties or guarantees of materials, equipment, items, systems and other things as required elsewhere in this Contract.

9.3 Schedule for Completing Work. The Contractor, within fifteen (15) days of receipt of the N.T.P., shall provide to the Owner and the Architect, and comply with, the Contractor's Schedule of Construction for timely completing the Work. Such schedule shall be a detailed critical path (CPM) schedule in a form acceptable to the Owner. The Contractor's Schedule of Construction shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. In addition to, and not in limitation of, any other requirements of this Contract, the Contractor shall comply with the requirements of Exhibit "F," Minimum Requirements for Contractor's Schedule of Construction, attached hereto and incorporated herein by reference. Strict compliance with the requirements of this Paragraph 9.3 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

9.3.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's Schedule of Construction with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract, the Contractor shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six days a week until such time as Contractor shall have overcome the delinquency and brought the amount of critical path Work in place into compliance with the Contractor's Schedule of Construction, all at no additional cost to the Owner. Nothing herein shall relieve the Contractor from liability for failure to timely progress the Work or any other breach of the Contract Documents.

9.4 Storm Water Discharge Permits. Unless otherwise directed in writing by the Owner, the provisions of this Paragraph 9.4 shall apply and the Contractor shall have and perform the duties, obligations and responsibilities of the Contractor set forth herein. The Owner has contracted with the Architect to: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSWD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSWD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSWD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSWD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSWD Permit. Excepting only the foregoing items (i) through (iv) performed by the Architect, the Contractor shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSWD Permit, including, without limitation, obtaining the permit, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSWD Permit. The Contractor's duties and obligations shall not be relieved by any duties of the Architect. The Contractor shall timely notify the Architect of any rain or other precipitation requiring the inspections referred to in item (iii) above so as to facilitate the Architect's timely performance of such inspections. The Contractor shall timely notify the Owner and Architect of any failure by the Architect to timely perform the inspections referred to in item (iii) above.

ARTICLE 10

INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, liens, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses, arising out of or in connection with the Contractor's performance of this Contract and the Work, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, this indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11

THE PROJECT ARCHITECT

11.1 **Architect.** The architect for this Project is Epsten Group, Inc. (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

11.1.1 Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract.

11.1.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect.

11.1.3 When requested by the Contractor in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.

11.1.4 The Architect shall draft proposed Change Orders.

11.1.5 The Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

11.1.6 The Architect shall be authorized to refuse to accept Work which is defective or otherwise fails to comply with the requirements of this Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of this Contract.

11.1.7 The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in this Contract.

11.1.8 The Architect shall, upon written request from the Contractor, perform those inspections required in Article 6 hereinabove.

11.1.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract.

11.1.10 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 12

CLAIMS BY THE CONTRACTOR

12.1 Generally. Claims by the Contractor against the Owner are subject to the following terms and conditions, and strict compliance with this Article 12 shall be a condition precedent to any liability of Owner therefore.

12.1.1 All Contractor claims against the Owner, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to the Owner and the Architect. Such written notice of claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim, including the amount claimed. Contractor agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.2 Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Contractor shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

12.1.3 No later than ten (10) days after the date of the written notice of claim, Contractor shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Contractor discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Contractor's formal written claim shall also include Contractor's good faith estimate of the change in the Contract Price, the Contract Time, or both, determined in accordance with Article 14 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

12.1.4 Contractor shall provide, and continue to provide, to Owner and Architect all such documentation, including cost and time records, as and when Owner or Architect may request so that Owner and Architect may evaluate Contractor's claim.

12.1.5 The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor.

12.1.6 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical

location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 12.1.6 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

12.1.7 In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 12.1.1 above and such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.

12.1.8 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost reasonably incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following claims: loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; and, loss of future or anticipated profits from other work. Notwithstanding the foregoing first two sentences of this Subparagraph 12.1.8, the Owner's limitation of liability shall not apply to the Owner's liability to the Contractor, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

12.2 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the Substantial Completion Date, or as applicable, the date for Final Completion, shall be appropriately adjusted by the Owner upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as Owner may determine. The Contractor's sole remedy for delay caused by any of the bases listed in this paragraph 12.2 shall be a time extension. A task is critical within the meaning of this paragraph 12.2 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of paragraph 12.1.1 above and such notice shall be given by Contractor before proceeding to execute any additional or changed Work. If the Contractor fails to make such claim as required in this paragraph 12.2, any claim for an extension of time shall be waived. For the avoidance of doubt, the Contractor shall not be entitled to a time extension if the Contractor is delayed in performing any task as a sole result of the following: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of materials, equipment, or supplies unless solely caused by an act or omission by the Owner or someone acting in the Owner's behalf, (iv) local or direct strikes, or other similar labor actions, (v) unavailability of subcontractors, sub-subcontractors, or suppliers, or (vi) nonperformance or delay by the Contractor or its subcontractors, sub-subcontractors, or suppliers.

12.2.1 "Unusually severe weather" as used above in paragraph 12.2.1 includes abnormal and unexpected weather conditions including catastrophic storms or floods, lightning, tornadoes, hurricanes, and earthquakes. The Contractor shall not be entitled to any extension of time due to adverse weather conditions unless the number of adverse weather days in any given calendar month exceeds the historic averages as maintained by the national Oceanic and Atmospheric Administration. Adverse weather conditions is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within twenty-four (24) hours: (i) precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure, (ii) temperatures which do not rise above 32 degrees F

by 10:00 A.M., (iii) temperatures which do not rise above that specified for the day's construction activity by 10:00 A.M. if any is specified, (iv) sustained wind in excess of twenty-five (25) mph, or (v) standing snow in excess of one inch (1.00"). Weather conditions including precipitation (rain, snow, and hail) amounts and times at the jobsite, activities and durations affected, shall be recorded on a daily basis and submitted to the Owner on a weekly basis.

12.2.2 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure full completion thereof within the time required by the Contract Documents. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2, and after consideration of all such contingencies and factors, Contractor has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those expressly set forth in clauses (i) through (vii) of the foregoing Paragraph 12.2.

12.2.3 The date for achieving Substantial Completion or, as applicable, Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes access to the Project site) after the Project is enclosed or due to normal severe weather. For the purpose of this Paragraph, the term "enclosed" is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. There shall be no extension of the time for completion due to any lost days that are not weekday working days (based on a Monday through Friday work week). No change in the Contract Price shall be due because of weather.

12.3 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Contractor shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or a court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Subject to the express approval of the DeKalb County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 13

SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below. The Architect will not enter into disputes between the Contractor and any subcontractor or supplier, nor shall

the Architect be called upon to settle same. Neither shall the Architect be called upon to enter into or to settle disputes between any subcontractors or suppliers.

ARTICLE 14

CHANGE ORDERS

14.1 **Generally.** One or more changes to the Work within the general scope of this Contract, or the time for the Contractor's performance, or any combination thereof, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

14.1.1 "Change Order" shall mean a written order to the Contractor executed by the Owner and the Architect after execution of this Contract and approved by the Georgia Department of Education if so required, directing a change in the Work, the time for the Contractor's performance, or any combination thereof.

14.1.2 A change in the Work (excepting only changes required by the Architect pursuant to Paragraph 11.1.9 of this Contract) or the time for the Contractor's performance may be made only by Change Order. The Owner will not be responsible for any change in the Work involving extra costs unless approval in writing is furnished by the Owner before such Work is begun. Note that the Architect does not have authority to order changes in the Work that involve changes in cost or time.

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

14.1.3.1 Any increase in the Contract Price must be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract, and any such request for an increase in the Contract Price shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner and Architect in accordance with Article 12 of this Contract of any request for an increase in the Contract Price shall constitute a waiver by Contractor of any entitlement to an increase in the Contract Price.

14.1.3.2 The change in the Contract Price, if any, shall be established by one of the following methods:

14.1.3.2.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

14.1.3.2.2 Unit prices stated in the Contract Documents or subsequently agreed upon; or

14.1.3.2.3 On the basis of, and shall be limited to, the reasonable actual costs incurred, or savings achieved, resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect costs or components. The Contractor shall keep and present, in such form as the Architect may require, an itemized accounting together with appropriate supporting data. Actual costs for the purposes of this Paragraph shall be limited to the following:

.1 Costs of labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, sales, use or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

14.1.3.2.4 The allowance for overhead and profit for any Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision, superintendence, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined, shall be determined as follows:

.1 If, and to the extent, the change involves Work of one or more subcontractors, the overhead and profit component for subcontractors shall be five percent (5%) and the overhead and profit component for the Contractor shall be five percent (5%) of the amount allocable for subcontracted Work; provided, however, that the foregoing five percent (5%) overhead and profit component for subcontractors is intended to cover all subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier subcontractors of the Contractor. For the avoidance of doubt, all Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

.2 If the change involves only Work of the Contractor, the component for overhead and profit shall be ten percent (10%).

14.1.3.2.5 Any other provision of the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Change Orders performed concurrently with the Work, unless the cost includes a claim for extension of time by the ordering of the change.

14.1.3.3 The Contractor shall continue to diligently perform the Work, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Subparagraph 14.1.3 above. Pending final determination of reasonable actual costs incurred or savings achieved, payments on account shall be made to Contractor in accordance with said Subparagraph 14.1.3 and Article 6 of this Contract.

14.1.3.4 If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Subparagraph 14.1.3.4 shall be made only with respect to the difference between

the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Subparagraph 14.1.3.4 shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

14.1.4 Any extension of the time for the Contractor's performance requested by Contractor for performance of any change in the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Contractor's performance shall be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract and any such request for extension of time shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner in accordance with Article 12 of this Contract of any request for extension of time, or the Contractor's execution of a Change Order, shall constitute a waiver by Contractor of any entitlement to an extension of time arising out of or relating to such Change Order.

14.1.5 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. The stated extension of time, if any, is equitable in nature, and includes all compensation to Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change Order, and that no further claims for any extension of time or adjustment in the Contract Price, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of time or adjustment in the Contract Price are waived in their entirety.

14.1.6 The Contractor shall notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's Surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the Surety has been notified of, and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

14.1.7 No Change Order shall contain any reservation of rights or have any qualifying language placed on it.

ARTICLE 15

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

15.1 Work in Violation of Contract. In the event that the Contractor covers, conceals or obscures its Work in violation of this Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

15.2 Work in Conformity with Contract. If any of the Work is covered, concealed or obscured in a manner not covered by Paragraph 15.1 above, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

15.3 Defective or Nonconforming Work. The Contractor shall, at no cost in time or money to the Owner, timely correct Work rejected by the Owner or by the Architect as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

15.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial Work including needed maintenance instructions to Owner's personnel.

Nothing contained in this Article 15 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article 15.4 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the 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 the Contractor's obligations other than specifically to correct the Work.

15.5 Owner's Option. The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable costs of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 16

TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of sixty (60) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Architect. If the Owner suspends Contractor's performance for a period of more than one hundred twenty (120) days, through no fault of the Contractor, then Contractor may, upon seven (7) days written notice to Owner, terminate this Contract. In either event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Paragraph 18.1 hereunder.

ARTICLE 17

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

17.1 Suspension. The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to one hundred twenty (120) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

17.2 Compensation. In the event the Owner directs a suspension of performance under this Article 17, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- 17.2.1 demobilization and remobilization, including such costs paid to subcontractors.
- 17.2.2 preserving and protecting Work in place.
- 17.2.3 storage of materials or equipment purchased for the Project, including insurance thereon.
- 17.2.4 performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 18

TERMINATION BY THE OWNER

18.1 Termination for Convenience. The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also, at the Owner's direction, either terminate or assign to Owner or Owner's designee outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

18.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph 18.1.3 below.

18.1.2 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

18.1.3 Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

18.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

18.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

18.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Paragraph 18.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.2 Termination for Cause. If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 18.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause; such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 18.1 shall apply.

18.3 Termination Not Subject to Article 12. Termination of this Contract by the Owner is not subject to the procedures set forth in Article 12.

ARTICLE 19

INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE 20

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in the exact form provided by the Owner and shall be executed by a surety, or sureties, licensed in the State of Georgia by the Office of Commissioner of Insurance, rated A+ or better by A.M. Best Company, listed on the United States Department of Treasury's Listing of Approved Sureties (Treasury Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation equal to or greater than the penal sum of the bonds as adjusted from time to time, and not otherwise reasonably objectionable to the Owner.

ARTICLE 21

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, photographs, estimates, invoices, bills, receipts, cancelled checks, vouchers or other writings or things which document or involve in any manner the Project, its design, its cost, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor and its Subcontractors. The Contractor shall maintain and protect these documents for no less than six (6) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

ARTICLE 22

APPLICABLE LAW / VENUE AND JURISDICTION

22.1 Applicable Law / No Waiver. The law applicable to this Contract shall be the law of the State of Georgia. Each and every provision required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained therein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof. The failure of owner to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in any other instance. The Contractor and all subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Contractor and all subcontractors shall provide the Owner with a completed and signed Immigration and Security Form and accompanying affidavits, as a condition precedent to Final Payment.

22.2 Jurisdiction and Venue. The Contractor and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of DeKalb County, Georgia, regarding any matter arising out of or relating to this Contract. The Contractor agrees that it shall file any lawsuit or other action, including any third-party practice lawsuit, against the Owner arising out of or related to this Contract or the Project only in the Superior Court of DeKalb County.

ARTICLE 23

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

[SIGNATURES APPEAR ON THE NEXT PAGE]

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijon DaCosta, Sr., Board Chair
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Vasanne S. Tinsley, Interim Superintendent
[TYPED NAME & TITLE]

DeKalb County Board of Education
1701 Mountain Industrial Boulevard
Stone Mountain, Georgia 30083

[DATE OF EXECUTION]

Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

[TYPED NAME]

By: _____
[SIGNATURE]

[TYPED NAME & TITLE]

[ADDRESS]

[DATE]

EXHIBIT "A"

REQUIRED INSURANCE

(1) The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' or workmen's compensation disability benefit or other similar employees benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(2) The insurance required by Paragraph 1 shall be written for not less than any limits of liability specified within this exhibit, or required by law, whichever is greater.

(3) The insurance required by Paragraph 1 shall include contractual liability insurance.

(4) The Contractor shall be responsible from the time of signing the Contract or from the time of the beginning of the first Work, whichever shall be earlier, for all bodily injury (including death) or damage to property of any kind resulting from the Work under this Contract to persons or property.

The Contractor assumes the obligation to save the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect harmless and to indemnify them from every expense, liability or payment arising out of or through bodily injury (including death) to any person or persons or damage to property of any person arising out of any act of the Contractor, any subcontractor or anyone either directly or indirectly employed by or under the supervision of any of them in the prosecution of the Work included in the Contract.

All liability policies shall name the Owner, the DeKalb County School District, the Owner's Program Manager and the Architect as an additional insured. All liability policies shall be issued on a primary and non-contributory basis over any other liability insurance which may be available to the Owner, the DeKalb County School District, Owner's Program Manager, and Architect to fully insure the indemnity obligations made herein and in any other portion of this contract.

(5) The Contractor agrees to comply with the provisions of the Workman's Compensation laws of the State of Georgia and to require all Subcontractors likewise to comply. Contractor shall secure the following insurance at his own expense and prior to starting any Work shall file Certificates of Insurance with the Owner except that on the Owner's Protective Insurance, original policies shall be filed with the Owner.

(a) Workmen's Compensation - Statutory Limits, Employer's Liability -\$1,000,000.00

(b) Comprehensive General Liability (including Premises-Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage and Broad Form General Liability Endorsement; Explosion & Collapse).

1. Bodily Injury: \$1,000,000.00 Each Occurrence; \$2,000,000.00 Aggregate, Products and Completed Operations (Umbrella).
2. Property Damage: \$500,000.00 Each Occurrence; \$1,000,000.00 Aggregate.
3. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after completion of the work and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
4. Property Damage Liability Insurance shall include coverage for Explosion, Collapse, and Underground.
5. Contractual Liability (Hold Harmless Coverage): Bodily Injury: \$1,000,000.00 Each Occurrence; Property Damage: \$500,000.00 Each Occurrence, \$500,000.00 Aggregate.
6. Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Each Occurrence, \$1,000,000 Aggregate.
7. If the Comprehensive General Liability policy provides that the general aggregate limit for items (5)(b) 1-6 above apply separately to **each** project, then the Owners Protective Liability policy in item (8) (a)-(c) shall not be required.

(c) Comprehensive Automobile Liability (owned, non-owned, leased, hired):

1. Bodily Injury: \$1,000,000.00 Each Person, \$1,000,000.00 Each Accident;
2. Property Damage: \$1,000,000.00 Each Occurrence;
3. or \$1,000,000 Combined Single Limit.

(d) Commercial Umbrella

1. Umbrella limits shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below:

Contract Price	Required Umbrella Limit
Less than \$1,000,000	\$1,000,000
\$1,000,000 to \$10,000,000	\$5,000,000
Greater than \$10,000,000	\$10,000,000

2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
4. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the DeKalb County School District, Owner's Program Manager, and Architect.

(6) Certificates of Insurance (2 copies) shall be filed with Owner before commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, changed or allowed to expire until thirty (30) days after the Owner has received written notice evidenced by return receipt of registered letter.

(7) Insurance will not be acceptable unless written by a Company authorized by the State of Georgia Insurance Department to do business in Georgia at the time the policy is issued and the company must in addition be acceptable to the Owner.

(8) Contractor shall purchase and maintain Owner's Protective Liability Policy with minimum limits of:

- (a) Bodily Injury: \$1,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (b) Property Damage: \$2,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (c) Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Aggregate.

This policy shall be issued in the name of DeKalb County Board of Education and delivered to Owner along with Certificates of Insurance. Employees of the DeKalb County Board of Education shall be included as an additional insured. Policy shall also name the DeKalb County School District, Owner's Program Manager, and the Architect as an additional insured.

(9) Contractor shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Contractor and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the contract price and covering fire, theft, extended coverage, vandalism and malicious mischief. The coverage and protection afforded to the Owner under such policy shall not be diminished, changed, altered or otherwise affected by any of the following:

- (a) the delivery of furniture, fixtures and equipment to the insured premises and the installation in place thereof, and making the same ready for Owner's use;
- (b) the Owner's partial or total occupancy of the insured premises; and/or
- (c) the performance of other work or construction operations at the insured premises by the Owner and/or its employees, agents or other contractors.

For the avoidance of doubt, and to the extent required, Contractor shall obtain an endorsement to such policy to delete any partial occupancy exclusions and to ensure the policy's compliance with the foregoing requirements and provide a copy thereof to Owner.

(10) The Contractor may, at his option, purchase insurance policies having a "deductible" feature provided that:

- (a) Deductible amount does not exceed \$10,000.00.
- (b) Contractor agrees in written letter to the Owner (through the Architect) to be responsible for payment of any such deductibles, in the event that such payment should become necessary.

EXHIBIT "B"

LIQUIDATED DAMAGES

Liquidated damages applicable to Paragraph 5.2 of this Contract shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below.

If The Original Contract Price Is:

Up to \$49,999.99
\$50,000.00 to \$99,999.99
\$100,000.00 to \$299,999.99
\$300,000.00 to \$599,999.99
\$600,000.00 to \$999,999.99
\$1,000,000.00 to \$1,999,999.99
\$2,000,000.00 to \$4,999,999.99
\$5,000,000.00 to \$9,999,999.99
\$10,000,000.00 to \$14,999,999.99
\$15,000,000.00 to \$19,999,999.99
\$20,000,000.00 or above

Daily Liquidated Damages Shall Be:

\$50
\$100
\$200
\$300
\$400
\$500
\$750
\$1,500
\$2,500
\$3,500
The product of .0002 multiplied by
the Original Contract Price.

CONTRACTOR AFFIDAVIT AND AGREEMENT

EXHIBIT "C"

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the individual, firm, or corporation ("Contractor") which is contracting with the DeKalb County Board of Education has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91, as amended. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(2) Contractor's correct user identification number and date of authorization is set forth herein below.

(3) Contractor agrees that the Contractor will not employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the DeKalb County Board of Education, unless at the time of the contract said subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Contractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Contractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other applicable verification procured by subcontractor at the time of contract with the sub-subcontractor(s) within five (5) business days after receiving the said Affidavit or verification.

Contractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such subcontractor Affidavit or other permissible verification to the DeKalb County Board of Education at the time the subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

(4) Contractor further agrees to and shall provide DeKalb County Board of Education with copies of all other affidavits or other applicable verification received by Contractor (i.e.: sub-subcontractor affidavits and all other lower tiered affidavits) within five (5) days of receipt.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EV/Basic Pilot Program, please identify the program.

Company Name / Contractor Name

Date

BY: Signature of Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

____ DAY OF _____, 20____

Notary Public

My Commission Expires: _____

EXHIBIT "D"

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, and attests **under oath** that:

(1) the undersigned individual, firm or corporation ("Subcontractor") is engaged in the physical performance of services under a contract with _____ (*name of Contractor*), which has a contract with the DeKalb County Board of Education.

(2) Subcontractor has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(3) Subcontractor's correct user identification number and date of authorization is set forth herein below.

(4) Subcontractor agrees that the Subcontractor will not employ or contract with any sub-subcontractor(s) in connection with the physical performance of services pursuant to this subcontract or the contract with the DeKalb County Board of Education, unless said sub-subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Subcontractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Subcontractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other permissible verification procured by sub-subcontractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

Subcontractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such sub-subcontractor Affidavit or other applicable verification to the Contractor at the time the sub-subcontractor(s) is retained to perform such service or within five (5) days after receiving the said Affidavit or verification, whichever first occurs.

EEV/Basic Pilot Program User Identification Number

Date of Authorization

If an applicable Federal work authorization program as described above is used, other than the EEV/Basic Pilot Program, please identify the program.

BY: Authorized Officer or Agent

Date

(Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20____

Notary Public

My Commission Expires:_____

EXHIBIT “E”

LIST OF PLANS AND SPECIFICATIONS FOR THE PROJECT

[Here insert or attach list of plans and specifications for the Project.]

EXHIBIT "F"

MINIMUM REQUIREMENTS FOR CONTRACTOR'S SCHEDULE OF CONSTRUCTION

PART 1 - GENERAL

- 1.1 **DEFINITIONS.** For purposes of this Exhibit, the following terms shall have the meanings set forth below.
- A. **Activity:** A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. **Critical activities** are activities on the critical path. They must start and finish on the planned early start and finish times.
 - 2. **Predecessor Activity:** An activity that precedes another activity in the network.
 - 3. **Successor Activity:** An activity that follows another activity in the network.
 - B. **Cost Loading:** The allocation of the Schedule of Values for the completion of an activity as scheduled. The sum of costs for all activities must equal the total Contract Price, unless otherwise approved by Architect and Owner.
 - C. **CPM:** Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of the project.
 - D. **Critical Path:** The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall project duration and contains no float.
 - E. **Event:** The starting or ending point of an activity.
 - F. **Float:** The measure of leeway in starting and completing an activity.
 - 1. Float time belongs to Owner.
 - 2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
 - G. **Fragnet:** A partial or fragmentary network that breaks down activities into smaller activities for greater detail.
 - H. **Major Area:** A story of construction, a separate building, or a similar significant construction element.
 - I. **Milestone:** A key or critical point in time for reference or measurement.
 - J. **Network Diagram:** A graphic diagram of a network schedule, showing activities and activity relationships.

- K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.2 SUBMITTALS

- A. Preliminary Schedule of Construction: Submit two opaque copies.
 - 1. No action or inaction by Architect or Owner in connection with cost-loaded preliminary schedule of construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- B. Preliminary Network Diagram: Submit two opaque copies, large enough to show entire network or entire construction period. Show logic ties for activities.
- C. Contractor's Schedule of Construction: Submit two opaque copies of initial schedule and each updated schedule, large enough to show entire schedule for entire construction period.
 - 1. Submit an electronic copy of schedule, using software indicated, on CD-R, and labeled to comply with requirements for submittals. Include type of schedule (Initial or Updated) and date on label.
 - 2. No action or inaction by Architect or Owner in connection with cost-loaded Contractor's Schedule of Construction shall constitute or be deemed to constitute approval or acknowledgment of Schedule of Values for cost-loaded activities.
- D. CPM Reports: Concurrent with CPM schedule, submit three copies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of total float.
 - 4. Earnings Report: Compilation of Contractor's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary schedule of construction, the initial Contractor's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Contractor's Schedule of Construction.

1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the Preliminary Schedule of Construction and Contractor's Schedule of Construction, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update schedule.

3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
4. Review delivery dates for Owner-furnished products, if any.
5. Review schedule for work of Owner's separate contracts, if any.
6. Review time required for review of submittals and resubmittals.
7. Review requirements for tests and inspections by independent testing and inspecting agencies.
8. Review time required for completion and startup procedures.
9. Review and finalize list of construction activities to be included in schedule.
10. Review submittal requirements and procedures.
11. Review procedures for updating schedule.

1.4 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors, if any.
- B. Coordinate Contractor's Schedule of Construction with the Schedule of Values, list of subcontracts, submittals schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from parties involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2 – PRODUCTS

2.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.

3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Contractor's Schedule of Construction with submittals schedule.
 4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
 2. Work under More Than One Contract: Include a separate activity for each contract.
 3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
 4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 6. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Subcontract awards.
 - b. Submittals.
 - c. Purchases.
 - d. Mockups.
 - e. Fabrication.
 - f. Sample testing.
 - g. Deliveries.
 - h. Installation.
 - i. Tests and inspections.
 - j. Adjusting.
 - k. Curing.
 - l. Startup and placement into final use and operation.
 8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:

- a. Structural completion.
- b. Permanent space enclosure.
- c. Completion of mechanical installation.
- d. Completion of electrical installation.
- e. Substantial Completion

9. Other Constraints: Show the effect of any additional constraints.

- E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Commencement Date, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.
- F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.
 - 1. Contractor shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.
 - 2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.
 - 3. Total cost assigned to activities shall equal the total Contract Price.
- G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using fragnets to demonstrate the effect of the proposed change on the overall project schedule.
- H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.
 - 1. Use software, version and operating system required by Owner.

2.2 CONTRACTOR'S SCHEDULE OF CONSTRUCTION (CPM SCHEDULE)

- A. General: Prepare network diagrams using AON (activity-on-node) format.
- B. Preliminary Network Diagram: Submit diagram within 7 days of date established for commencement of the Work. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.
- C. CPM Schedule: Prepare Contractor's Schedule of Construction using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.
 - 1. Submit CPM schedule within 15 days after date established for commencement of the Work.
 - a. Failure to include any Work item required for performance of this Contract shall not excuse Contractor from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.
 3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.
- D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.
1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. If applicable, work by Owner that may affect or be affected by Contractor's activities.
 - i. Testing and start up.
 2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the Contract Time.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or subcontractor and the Work or activity.
 2. Description of activity.
 3. Principal events of activity.
 4. Immediate preceding and succeeding activities.
 5. Early and late start dates.

6. Early and late finish dates.
 7. Activity duration in workdays.
 8. Total float or slack time.
 9. Average size of workforce.
 10. Dollar value of activity (coordinated with the Schedule of Values).
- F. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
 2. Changes in early and late start dates.
 3. Changes in early and late finish dates.
 4. Changes in activity durations in workdays.
 5. Changes in the critical path.
 6. Changes in total float or slack time.
 7. Changes in the Contract Time.
- G. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
 - a. In both value summary lists, tabulate "actual percent complete" and "cumulative value completed" with total at bottom.
 - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

PART 3 - EXECUTION

3.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
1. In-House Option: Owner may waive the requirement to retain a consultant if Contractor employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.

- B. Contractor's Schedule of Construction Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
 2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Contractor with a need-to-know.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

EXHIBIT G

SPECIAL TERMS AND CONDITIONS

Contractor agrees to comply with all requirements of the ESSER and GEER programs and all requirements of the laws establishing and governing the same including, but not limited to, the specific provisions expressly set forth in this Addendum below.

In the event of any conflict between the provisions of this Addendum and the other Contract Documents, the provisions of this Addendum shall take precedence. Except as otherwise specifically set forth in this Addendum, the terms and conditions of the Contract Documents shall remain unmodified.

Article A1 – Additional Contractor Duties and Responsibilities

In addition to the rights, duties and obligations set forth elsewhere in the Contract Documents, Contractor shall have the additional rights, duties, obligations and responsibilities set forth in this Article A1, as follows:

- A1.1** Contractor shall pay all laborers and mechanics employed or working upon the site of the Work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those established for each job classification by the United States Secretary of Labor for the “Building” category in DeKalb County, Georgia, as of the date of the Contract. This determination is currently known as the “GA20230305” rate, as the same may be amended or modified from time to time. (The rate schedules may be obtained by visiting the Department of Labor’s website at <http://www.wdol.gov/dba.aspx>.) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and is to be employed on the Work, shall be classified in conformance with the wage determination.
- A1.2** Owner shall, on its own or upon the written request of an authorized representative of the U.S. Department of Labor, be entitled to withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.
- A1.3** Contractor shall maintain all payrolls and basic records relating thereto during the course of the Work and for a period of three (3) years after Final Completion. Such records shall contain the name, address and social security number of each worker, his classification, the hourly rate of wages paid (and fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Contractor shall also maintain all records related to any fringe benefit plan or program during the course of the Work and for a period of three (3) years after Final Completion.
- A1.4** Contractor shall submit to Owner weekly a report containing a copy of all payrolls (including Subcontractor payrolls), which shall set forth the information required by Section A1.3. Each report shall be accompanied by a “Statement of Compliance” signed by Contractor or the Subcontractor (as the case may be) which certifies the following:
 - (a) that the payroll contains the information required by 29 C.F.R. § 5.5(a)(3)(ii), that the information is being maintained in accordance with 29 C.F.R. § 5.5(a)(3)(i) and that all such information is correct and complete;

- (b) that each laborer employed on the Work has been paid the full weekly wages earned, without rebate, and that no deductions have been made except as required by law; and
- (c) that each laborer has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed.

In complying with the reporting and certification requirements provided hereunder, Contractor is encouraged (but is not required) to use U.S. Department of Labor Form WH-347.

Falsification of such information, records or certifications may subject Contractor or Subcontractors to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

Contractor and all Subcontractors shall make all records required hereunder available for inspection, copying or transcription by Owner or the U.S. Department of Labor, and shall permit them to interview employees during working hours.

- A1.5** Contractor and Subcontractors shall be permitted to pay apprentices or trainees at less than the predetermined rate; provided, however, that such apprentices and trainees are employed pursuant to and individually registered in a bona fide apprenticeship or trainee program registered with the U.S. Department of Labor or with a state apprenticeship agency recognized by the U.S. Department of Labor.
- A1.6** Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated into this Contract by reference.
- A1.7** Contractor shall insert all clauses contained in this Article A1 in all subcontracts with Subcontractors.
- A1.8** Upon the breach of any of the clauses contained in this Article A1, Owner shall have the right to terminate the Contract "for cause".
- A1.9** Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.* and all regulations promulgated thereunder, which are incorporated into the Contract by reference.
- A1.10** Disputes arising out of the provisions of this Article A1 shall not be subject to the general dispute resolution procedures contained in the Contract Documents but shall be resolved in accordance with the procedures set forth in 29 C.F.R. parts 5-7.
- A1.11** By entering into the Contract, Contractor certifies that neither it nor any person or firm who has an interest in Contractor is ineligible to be awarded contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
- A1.12** Contractor and Subcontractors shall keep posted on the Work site, in a prominent and accessible location where it can easily be seen at all times, U.S. Department of Labor poster WH-1321.
- A1.13** Contractor and Subcontractors shall not permit any laborers or mechanics to perform work on the Project in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty (40) hours per week.

In the event of any violation of this Section A1.13, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and subject to liquidated damages to be assessed by the U.S. Department of Labor as set forth in 29 C.F.R. § 5.5(b)(2).

- A1.14** Owner shall on its own or upon the written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from payments to Contractor, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics employed by Contractor or any Subcontractor the full amount of wages required by the Contract plus any liquidated damages which Contractor or any Subcontractor may be liable for pursuant to 29 C.F.R. § 5.5(b)(2). In the event of a failure to pay any laborer or mechanic all or part of the wages required by the Contract, Owner may, after written notice to Contractor, suspend any further payments to Contractor until such violations have ceased.

END OF EXHIBIT



APPENDIX F: SUBCONTRACTOR'S AFFIDAVIT OF NONCOLLUSION

STATE OF _____

COUNTY OF _____

COMES NOW, _____ ("Subcontractor"),
[name of Subcontractor]

appearing by and through _____, it's _____
[insert name of individual with authority to bind Subcontractor] [title]

(averring both individually and in his or her representative capacity on behalf of Subcontractor), having submitted a bid or proposal to one or more offerors in respect of the DeKalb County Board of Education

DCSD Project: GC Services for HVAC and Controls Replacement at Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School

and after first being duly sworn, deposes and says that:

1. He, she or it, as applicable, has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated Section 36-91-21, which subsection provides as follows:

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

Further, the affiants sayeth not.

This _____ day of _____, 2_____

[insert name of Subcontractor]

and _____
[insert name of individual named above]

By: _____, both individually and on behalf of Subcontractor as its
[signature]

[insert title]

Sworn to and subscribed before me this ____ day of _____, 2_____.

Notary Public: _____ My commission expires: __/__/__.
(SEAL)

APPENDIX G PERFORMANCE BOND (Contractor)

_____, a corporation duly
[Insert Proper Name of Surety]

organized and existing under the laws of the State of _____, as surety ("Surety"), and

_____, as principal
[Insert Proper Name of Contractor]

("Contractor"), enter into, execute this bond ("Performance Bond"), and bind themselves in

favor of the DeKalb County Board of Education as obligee ("Owner"), in the penal sum of

_____ dollars (\$_____), as of _____.
[Insert Penal Sum in words and numerals] *[Insert Date of Construction Contract]*

WHEREAS, the Contractor has signed a contract with the Owner dated _____, 2____
("Construction Contract") for construction of:

DCSD Project: GC Services for HVAC and Controls Replacement at Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School _____ ("Project"); and

WHEREAS, the Owner has required the Contractor to furnish this Performance Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Construction Contract, including, without exception, all of its terms and conditions, both express and implied.

2.

The condition of this obligation is such that if the Contractor shall well and truly perform all the undertakings, covenants, terms, conditions, and agreements of said Construction Contract within the time provided therein and any extensions thereof that may be granted by the Owner, including specifically obligations that survive or extend past the completion of the Work as defined in said Construction

Contract, and shall stand behind and perform fully any guaranty or warranty required under said Construction Contract or by law, and shall, at all times, perform its Construction Contract obligation as provided by law, and shall also well and truly perform all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Construction Contract that may hereafter be made, and shall indemnify and save harmless said Owner of and from any and all loss, damage, and expense, including costs and attorneys' fees, which the said Owner may sustain by reason of failure so to do, including costs and attorneys' fees incurred in enforcing the Construction Contract or this Performance Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

3.

In no event shall the Surety be obligated to the Owner hereunder for any sum in excess of the Penal Sum. As used in this Performance Bond, the term "Penal Sum" means the amount stated as the penal sum in the preamble of this Performance Bond, as that amount may be adjusted from time to time pursuant to Paragraph 4 below.

4.

The Surety waives notice of any changes to the Construction Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed. If the total amount payable by the terms of the Construction Contract is increased to an amount in excess of the then current Penal Sum, then, automatically and without notice to or any action required of any party, the Penal Sum shall be increased as the total amount payable by the terms of the Construction Contract is increased.

5.

This Performance Bond is provided by the Surety for the sole and exclusive benefit of the Owner, together with its successors or assigns. No other party, person or entity shall have any rights against the Surety hereunder.

6.

Any and all notices to the Surety, the Contractor or the Owner shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety: _____

Attn: _____

Contractor: _____

Owner: DeKalb County Board of Education
1780 Montreal Road
Tucker, Georgia 30084
Attn: Eric Hofstetter, Chief Operating Officer

7.

Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Construction Contract has not run or expired.

CONTRACTOR:

SURETY:

[Typed Name] [Seal]

[Typed Name] [Seal]

By: _____
[Signature]

By: _____
[Signature]

[Printed Name, Title and Address]

[Printed Name, Title and Address]

APPENDIX H: PAYMENT BOND (Contractor)

_____, a corporation duly
[Insert Proper Name of Surety]
organized and existing under the laws of the State of _____, as surety ("Surety"), and
_____, as principal ("Contractor"), enter
[Insert Proper Name of Contractor]
into, execute this bond ("Payment Bond"), and bind themselves in favor of the DeKalb County Board of
Education, as obligee ("Owner") in the penal sum of
_____ dollars (\$ _____), as of _____.
[Insert Penal Sum in words and numerals] [Insert Date of Construction Contract]

WHEREAS, the Contractor has signed a contract with the Owner dated _____,
2_____ ("Construction Contract") for construction of:

DCSD Project: GC Services for HVAC and Controls Replacement at Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School ("Project"); and,

WHEREAS, the Owner has required the Contractor to furnish this Payment Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Construction Contract including without exception all of its terms and conditions, both express and implied, and, without limitation, specifically including Contractor's obligation to pay for labor, materials, machinery, and equipment provided in connection with the Construction Contract performance.

2.

For purposes of this Payment Bond, Beneficiary is defined as any subcontractor or other person supplying labor, materials, machinery, or equipment in the prosecution of the work provided for in the Construction Contract, or any other person entitled to the protection of this Payment Bond pursuant to the provisions of Title 36, Chapter 91, Official Code of Georgia Annotated.

3.

Every Beneficiary who has not been paid in full for labor or material furnished in the prosecution of the work on the Project before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or the material or equipment or machinery was furnished or supplied by such person for which such claim is made, or when he or she has completed his or her subcontract for which claim is made, shall have the right to bring an action on this Payment Bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person; provided, however, that:

(A) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the Contractor where the Contractor has not complied with the notice of commencement requirements in accordance with Code Section 36-91-92, Official Code of Georgia Annotated, shall have the right of action upon this Payment Bond upon giving written notice to the Contractor within ninety (90) days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done; provided, however, that: (i) the Contractor's failure to supply a copy of the notice of commencement within ten calendar days of receipt of a written request from a subcontractor, materialman or person shall render the provisions of this paragraph 3(A) inapplicable to such subcontractor, materialman or person, and (ii) the Contractor's failure to file a notice of commencement shall render the notice to contractor requirements of this paragraph 3(A) inapplicable.

(B) Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the Contractor where the Contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92, Official Code of Georgia Annotated, shall have the right of action on this Payment Bond provided such person shall, within thirty (30) days from the filing of the notice of commencement or thirty (30) days following the first delivery of labor, material, machinery or equipment, whichever is later, give to the Contractor a written notice setting forth:

(i) The name, address and telephone number of the person providing labor, material, machinery or equipment;

(ii) The name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;

(iii) The name and the location of the Project; and

(iv) A description of the labor, material, machinery or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery or equipment to be provided or the amount claimed to be due, if any; and

(C) Nothing contained in this Payment Bond shall limit the right of action of a Beneficiary to the ninety (90) day period referenced in paragraph 3(A) above.

The notice required under paragraph 3(A) of this Payment Bond may be served by registered or certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the Contractor, at any place at which the Contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of the State of Georgia are authorized by law to serve summons or process.

Every action instituted on this Payment Bond shall be brought in the name of the Beneficiary, without the Owner being made a party thereto.

4.

In no event shall the Surety be obligated hereunder for sums in excess of the Penal Sum. As used in this Payment Bond, the term "Penal Sum" means the amount stated as the penal sum in the preamble of this Payment Bond, as that amount may be adjusted from time to time pursuant to paragraph 5 below.

5.

The Surety waives notice of any changes to the Construction Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed. If the total amount payable by the terms of the Construction Contract is increased to an amount in excess of the then current Penal

Sum, then, automatically and without notice to or any action required of any party, the Penal Sum shall be increased as the total amount payable by the terms of the Construction Contract is increased. No agreement, modification, or change in the Construction Contract, change in the work covered by the Construction Contract, or extension of time for the completion of the Construction Contract shall release the Surety of this Payment Bond.

6.

No action can be instituted hereunder after one (1) year from the completion of the Construction Contract and the acceptance of the Project by the Owner and any other applicable public authorities.

7.

Unless otherwise provided herein, any and all notices to the Surety or the Contractor shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below, including a courtesy copy to the Owner:

Surety:

Attn: _____

Contractor:

Attn: _____

Owner:

DeKalb County Board of Education
1780 Montreal Road
Tucker, Georgia 30084
Attn: Erick Hofstetter, Chief Operating Officer

8.

Notwithstanding any provision herein that may be to the contrary, this Payment Bond is intended to be a statutory payment bond under applicable laws of the State of Georgia and shall be so construed.

CONTRACTOR:

SURETY:

_____[SEAL]
[Typed Name]

_____[SEAL]
[Typed Name]

By: _____
[Signature]

By: _____
[Signature]

[Printed Name, Title and Address]

[Printed Name, Title and Address]

APPENDIX I: AFFIDAVIT OF PAYMENT

State of Georgia
County of DeKalb

In person before the undersigned officer authorized to administer oaths came _____ of _____ (the “Contractor”), who was the Contractor in charge of the services of _____ and improving the property owned by DeKalb County School District (the “Owner”), said property being known as Briarlake Elementary School, Early Learning Center, Montclair Elementary School and Tucker Middle School _____.

Deponent says that Contractor has been in direct charge of the completion of services in connection to the above property, and Deponent states that said services have now been fully completed in accordance with the contract.

Deponent says further that Contractor has paid in full the agreed contractors, subcontractors, suppliers, materialmen, and laborers used in providing said services and that all contractors, subcontractors, suppliers, materialmen, and laborers have been paid in full the agreed price or reasonable value of all labor or supplies furnished or services rendered. Deponent says that there are no contracts pending and not yet terminated that no disputes exist regarding contracts made in the improvements of said property and that the contract price has been paid in full by Owner.

Deponent further says that there are no unpaid bills of any nature, for labor, material or services for any improvements made on said property, either in the construction or repair of any improvements thereon, and that there are no retention title contracts, bill of sale, or other encumbrances of record affecting title to any personal property installed on said premises. Deponent states that Contractor hereby acknowledges receipt of payment in full for all amounts

APPENDIX I: AFFIDAVIT OF PAYMENT

due and owing for making all of the improvements on said property aforementioned pursuant to the said contract.

Deponent further says that he has personal knowledge of the matters herein stated and is authorized and fully qualified to make this Affidavit.

Dated: _____

Name:
Title:
Company:

Sworn to and subscribed before me
This ____ day of _____, 20____.

Notary Public
My Commission Expires: _____