DeKalb County School District	DeKalb County Board of Education Operations Division Sam A. Moss Service Center 1780 Montreal Road Tucker, GA 30084-6705

Request for Qualifications (RFQu) No. 24-752-011
for
Construction Management at Risk
Livsey Elementary School and Toney Elementary School

Project: **Livsey ES and Toney ES HVAC Systems Replacement and Renovations**
DCSD Project Nos.: **359-35 and 352-35**

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

Solicitation Timeline Summary

EVENT	DATE(S)	TIME	LOCATION
Solicitation Opens	October 19, 2023		http://dekalbschoolsga.ionwave.net
Mandatory Pre-Submittal Conference	**November 2, 2023**	**10:00 AM**	**Via Teams**
Mandatory Site Visit	**November 3, 2023**	**9:00 AM**	**Livsey – 4137 Livsey Road, Tucker, GA 30084, Toney -Oakland Terrace, Decatur, GA 30058**
Final Questions Due	November 8, 2023	2:00 PM	dcsd-op-bidquestion@dekalbschoolsga.org
Final Addendum	November 15, 2023	2:00 PM	http://dekalbschoolsga.ionwave.net
Statement of Qualifications Due Date & Time	**November 30, 2023**	**2:00 PM**	**http://dekalbschoolsga.ionwave.net**
Public Acknowledgement	December 4, 2023		Public Acknowledgement of RFQu will be posted to the DCSD website by close of business.
Selection Committee Evaluation	December 4-8, 2023		
Shortlist Finalist Notified	N/A		
Interviews Conducted	N/A		
Anticipated Board Review and Approval	February 12, 2024		
Anticipated Notice of Award	February 26, 2024		
Anticipated Notice to Proceed	March 25, 2024		

Request for Qualifications and Evaluation Procedures

Construction Management at Risk Services
Negotiated Fee / Guaranteed Maximum Price

Qualifications will be received electronically on the DeKalb County School District website at https://dekalbschoolsga.ionwave.net for **CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR LIVSEY ELEMENTARY SCHOOL AND TONEY ELEMENTARY SCHOOL HVAC SYSTEMS REPLACEMENT AND RENOVATIONS**, until **2:00 p.m. EST, Thursday, November 30, 2023.** Qualifications received after the specified time will not be considered. All potential respondents must register as a vendor at **http://dekalbschoolsga.ionwave.net**. NOTE: A virtual mandatory pre-submittal conference will be held on **Thursday, November 2, 2023, 10:00 a.m., EST**, via TEAMS. Attendees must provide the following information by **5:00 p.m., EST** on **Wednesday, November 1, 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 registered attendees no later than **9:30 a.m., EST** on **Thursday, November 2, 2023.**

This document shall serve to provide interested parties with specific information as to the Procedures for Selection of Construction Management at Risk Services for the DeKalb County School District.

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<u>Attachments (separate file from RFQu)</u>

Attachment A	Construction Manager Checklist and Certification
Attachment B1	Corporate Certificate
Attachment B2	Partnership Certificate
Attachment B3	Entity Certificate
Attachment D	Offeror's and Individuals' Affidavit of Noncollusion
Attachment E	Conflict of Interest Disclosure Affidavit
Attachment F	Consent to Release Information
Attachment J	Immigration and Security Certification
Attachment L	No Submittal Response
Attachment M1	Standard Form of Construction Management Contract for Livsey ES
Attachment M2	Standard Form of Construction Management Contract for Toney ES

REQUEST FOR CONSTRUCTION MANAGER QUALIFICATIONS

PROJECT NAME: Livsey Elementary School and Toney Elementary School HVAC Systems Replacement and Renovations

PROJECT LOCATION: Livsey ES – 4137 Livsey Road, Tucker, GA 30084, and Toney ES – 2701 Oakland Terrace Decatur, GA 30032

RFQu NUMBER: 24-752-011

1.0 PROJECT DESCRIPTION

1.1 DeKalb County School District, Georgia is interested in entering into a contract with a qualified firm to perform Construction Management at Risk Services as outlined in the contract to be entered into, the form of said contract being attached hereto for Livsey Elementary School and Toney Elementary School HVAC Systems Replacement and Renovations, Project listed below in the Scope of Services. The CM is responsible for the successful, timely, and economical completion of the construction Project.

1.2 The Contract(s) shall be subject to the limitations and restrictions of Georgia Code.

1.3 DCSD has determined that the stipulated fee for the Pre-Construction Phase Services for this project will be a maximum fee of $100,000.00. This fee is all inclusive and incorporates all services provided during the pre-construction phase for this project.

2.0 SCOPE OF SERVICES

Livsey Elementary School

The project is known as Livsey Elementary School HVAC System Replacement and Renovations. The anticipated scope of this project is the replacement of major building systems and major renovations at Livsey Elementary School located at 4137 Livsey Road, Tucker, GA 30084.

A. Replacement of major building systems and site improvements including but not limited to:
- HVAC System(s)
- Site Improvements
- Fire Alarm Upgrades
- Security Vestibules
- Electrical Service
- Plumbing Fixture Replacement
- Site Utilities

B. Pre-Construction Phase Services shall include but are not limited to: attending any and all design and preconstruction conferences, assisting and cooperating with the Design Professional with respect to the design of the Project, reviewing and commenting on design documents, constructability review, advertising & conducting pre-bid conference, providing cost estimates & GMP development, preparing construction schedule and incorporating design schedule into a single project schedule, refining general requirements and general conditions, and documenting “as-is” conditions (including offsite utilities from which connections are to be made).

C. Construction Phase Services include, but are not limited to, furnishing, and paying for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment, and services of every kind and type necessary to diligently, timely and fully perform and complete the construction of the entire Project in a good and workmanlike manner in accordance with the Construction Documents.

D. Management of portable classroom installation on site for swing space to be included in CMaR scope and GMP.

A Guaranteed Maximum Price for the Livsey Elementary School HVAC Systems Replacement and Renovations will be agreed upon and approved by the Board of Education and may include early release packages. The estimated construction budget for this project will be **$10,000,000** and subject to change. The Construction Management Firm is to provide all construction management services to deliver to the owner a safe, finished, and fully functioning elementary school within the estimated construction budget.

Target Schedule:
Early Release Package Release for HVAC and
Electrical: Winter 2023 - 2024
Final GMP Approval: Spring 2024
Construction: Spring 2024 – Fall 2026

Toney Elementary School

The project is known as Toney Elementary School HVAC System Replacement and Renovations. The anticipated scope of this project is the replacement of major building systems and major renovations at Toney ES located at 2701 Oakland Terrace, Decatur, 30032.

A. Replacement of major building systems including but not limited to:
- HVAC System (s)

B. Pre-Construction Phase Services shall include but are not limited to: attending any and all design and preconstruction conferences, assisting and cooperating with the Design Professional with respect to the design of the Project, reviewing and commenting on design documents, constructability review, advertising & conducting pre-bid conference, providing cost estimates & GMP development, preparing construction schedule and incorporating design schedule into a single project schedule, refining general requirements and general conditions, and documenting "as-is" conditions (including offsite utilities from which connections are to be made).

C. Construction Phase Services include, but are not limited to, furnishing, and paying for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete the construction of the entire Project in a good and workmanlike manner in accordance with the Construction Documents.

D. Management of portable classroom installation on site for swing space to be included in CMaR scope and GMP.

A Guaranteed Maximum Price for the Toney Elementary School HVAC Systems Replacement and Renovations will be agreed upon and approved by the Board of Education and may include early release packages and preliminary GMP's. The estimated construction budget for this project will be **$6,000,000.00** and subject to change. The Construction Management Firm is to provide all professional services to deliver to the owner a safe, finished, and fully functioning elementary school within the estimated construction budget.

Target Schedule:
Final GMP Approval: Winter 2023 - 2024
Construction: Spring 2024 – Summer 2025

3.0 REQUIREMENTS OF CONSTRUCTION MANAGER (CM)

3.1 Firms must meet the following requirements:

3.1.1 Requirements of the Request for Qualifications (RFQu).

3.1.2 It is preferable that the CM has experience providing construction management at risk for K-12 public school programs.

3.1.3 CM's must be authorized to do business in the State of Georgia and must possess professional service registrations, and general construction licenses in accordance with applicable statutes, regulations, and rules.

3.1.4 CM's must be knowledgeable of the requirements of Georgia Code.

3.1.5 CM's must be able to demonstrate financial strength appropriate to the scale of Project to be managed.

3.1.6 Statements of Qualifications must be submitted to the School District on or before the time and date and at the place indicated in the RFQu.

3.1.7 Statements of Qualifications shall be submitted electronically in accordance with the requirements contained in the RFQu and should be limited to not more than 30 (8.5-inch x 11 inch) pages printed on one side, including covers and dividers, and excluding financial information. Oversize pages will be counted as two pages. Submissions in excess of 30 pages will not be disqualified; however, clarity, conciseness, and brevity of this document will be part of the evaluation criteria.

3.1.8 Statements of Qualification which have not been received by the DeKalb County School District on or before the scheduled receipt time as set forth in the RFQu will not be considered.

3.1.9 The selected Construction Manager will be required to meet the insurance requirements of DCSD.

3.1.10 A pre-negotiation meeting and negotiation meeting will be conducted on the date and at the place to be specified at a later date. If agreement is not reached on this date, DCSD will terminate negotiations and proceed to the next highest ranked firm. We will proceed with the number two ranked firm in the event that negotiations are being terminated with the number one ranked firm. At the school district's sole option, the negotiation cutoff date may be extended.

3.1.11 Costs of participating in the selection process, including presentations to the Selection Committee, are solely those of the CM; DCSD will assume no responsibility for any costs.

3.1.12 DCSD reserves the right to waive informalities and to terminate the selection process.

4.0 STATEMENT OF QUALIFICATIONS

Required Information and Format

Electronic statements of qualifications 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) Successful Related Building Experience – To be included with Technical Proposal under "Response Attachments".
5) Proposed Project Staff and their Functions - To be included with Technical Proposal under "Response Attachments".
6) Project Approach - To be included with Technical Proposal under "Response Attachments".
6) Current Workload - To be included with Technical Proposal under "Response Attachments".

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

4.2 Table of Contents

4.3 Compliance Information

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

4.3.1 The CM must be properly certified by the Georgia Secretary of State to do business in Georgia at the time of submission.

4.3.1.1 State the legal name of the entity submitting and if CM 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.

4.3.1.2 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.

4.3.2 The CM must be properly registered, licensed, and certified at the time of submission:

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

4.3.2.2 If CM 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.

4.3.3 The CM must have been in continuous business for a minimum of five years. Note: If CM is a joint venture, at least one of the companies comprising the joint venture or partnership must have been in continuous business for a minimum of five years.

4.3.3.1 State number of years in business. If the CM is a joint venture, state both the number of years that the joint venture has been in business, as well as the number of years that each joint venture partners has been in business.

4.3.3.2 State the location, address, and telephone number of CM's offices. If the CM is a joint venture or partnership, identify the location, address, and telephone number of the principal place of business of the joint venture or partnership designated with the Georgia Division of Corporations.

4.3.3.3 Submit the names of owners, officers, or principals in charge.

4.3.4 The CM must identify any existing or potential conflicts of interest and disclose any representation of parties or other relationships that might be considered a conflict of interest with regard to this selection. "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

4.3.4.1 If any conflicts of interest issues are identified, provide a detailed plan of action on how any existing or potential conflicts of interest will be mitigated in the case your firm is recommended for this project. DCSD at its sole discretion shall determine the adequacy of the plan and whether the conflict will disqualify the firm from consideration for the RFQu. If DCSD determines that the firm will be disqualified due to the conflict, the firm's proposal will not be evaluated or considered by the Selection Committee.

4.3.5 <u>Financial Capabilities and Cost Control Measures (Y/N):</u>
The CM must demonstrate they have the necessary financial resources to complete the project, their capabilities to control costs and their history of working proactively to avoid litigation with Owners.

4.3.5.1 <u>Financial Statement</u>: Include a copy of their most current audited financial statement. If the CM is a joint venture or partnership all firms comprising the submitting entity will be required to submit the previously requested documentation.

4.3.5.2 Bonding Capacity: Evidence of sufficient bonding capacity to bond **$16,000,000.00**. The CM must submit a letter from their insurer stating their current bonding capacity for a single job and their aggregate capacity. (The firm will be required to bond on the guaranteed maximum price for the Project).

4.3.6 Litigation/Insurance Claims/Convictions (Y/N)

4.3.6.1 Submit all litigation of any kind involving Construction Manager, its officers, or directors with a project owner where the total amount in controversy exceeds $100,000.00 within the last five years. If the CM is a joint venture or partnership submit litigation involving all firms comprising the submitting entity. State the court and location of the litigation.

4.3.6.2 Insurance Claims: State the number of claims, total worker's compensation dollars incurred for those claims, and loss cost per man hour for the last five projects your firm has completed. This information should include all claims including, but limited to, the firm's personnel, and sub-contractors and/or sub-consultants. In addition, firms shall include information about their safety programs.

4.3.6.3 Convictions: Include a statement as to whether or not the CM (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 statue concerning competitive bidding or competitive proposals or the restraint of trade.**

5.0 INITIAL SCREENING CRITERIA

5.1 Individual Review: Proposal Evaluation Committee ("PEC") members shall use the Proposal Evaluation Form (Exhibit A) for the RFQu to document their review and evaluation of each Proposal in accordance with the criteria listed below, within their respective areas of experience and knowledge.

5.1.1 Successful Related Building Experience (30 points):
Past experience, including examples of renovations, refurbishment, 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.

5.1.1.1 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. The nature of the firm's responsibility on the project.

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

5.1.2 Proposed Project Staff and their Functions (25 points):
The quality, experience and quantity of staff and their functions will be evaluated by the Committee.

5.1.2.1 The firm shall name the actual staff 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. The staff shall be present at the time of interview.

5.1.2.2 Organization Chart: Develop an organization chart as it relates to the Project indicating key personnel and their relationship.

5.1.2.3 Give brief resumes of key persons to be assigned to the Project including, but not limited to, the following:

a. Name and title.
b. How many years with this firm? For sub-consultants, list prior projects your firm has worked with sub-consultant.
c. How many years with other firms?
d. Experience including types of projects, size of projects (dollar value and square footage of project), and specific project involvement.
e. Education.
f. Active registrations (if any).
g. If submitting as a joint venture or partnership, include the assigned staff for the joint venture or partnership and indicate which of the joint ventures or partners employs the staff member.

5.1.3 Project Approach (20 points):

5.1.3.1 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.

5.1.3.2 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.

5.1.3.3 Schedule: The anticipated construction Notice to Proceed is January 2024 with a Substantial Completion of Date of June 2026. Use the dates shown and develop a Preliminary Schedule that you plan on using to construct this project.

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

5.1.4 Current Workload (10 points):

As part of the evaluation criteria, the Committee will review the firms and their sub-consultants' 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. A maximum of ten points will be awarded based on an evaluation of the firm's total workload and capacity to perform the work.

5.1.4.1 Firms and their sub-consultant(s) shall provide a list of outstanding projects, client names, status of completion, 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.

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.

5.1.5 Equitable Distribution (Maximum 15 points):

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 RFQu awarded to each firm. The projects taken into account in the calculation will be those awarded by DCSD within two years from this RFQu 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 RFQu 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.

5.1.5.1 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

5.2 Group Review. The PEC members shall meet and discuss the Proposals. The goal of this review is to allow each PEC member the opportunity to fully discuss the Proposals and to identify any information in the proposals deemed by the PEC member to be significant to the evaluation. At the conclusion of this meeting, each PEC member shall render his or her final scores for each proposal and submit his or her Proposal Evaluation Form to the Selection Process Facilitator.

5.2.1 The Selection Process Facilitator shall combine the evaluation scores submitted by all PEC members and shall determine the five (5) highest scoring firms (unless otherwise determined) based on the total evaluation scores received. In the event of a tied score for fifth place, all such tied firms shall be included in the short list.

5.2.2 Short List Recommendation. The Selection Process Facilitator shall forward the PEC's short list recommendation to the Chief Operations Officer ("the COO"). The COO, in his or her sole discretion, can either accept the short list recommendation or reject the short list recommendation. If the COO accepts the recommendation, the selection process proceeds as noted below. If the COO rejects the short list recommendation, he or she, in his or her sole discretion, can proceed in any of the following methods: directing the Selection Process Facilitator to recommence the selection process at whatever stage the COO deems appropriate (including the Individual Review stage or the Group Review stage); pursuing the project by any other alternative method permitted under Georgia law; or abandoning the project all together. If the COO elects to pursue the project by an alternative method or abandon the project, DCSD shall provide public notice of this decision.

5.2.3 Notice of Short List. Once the PEC's short list recommendation has been accepted by the COO, the Selection Process Facilitator will notify all submitting firms of whether or not they appear on the short list and shall provide public notice of the short-listed firms.

5.2.4 The short-listed firms shall then be invited for interviews before the PEC, which will be scheduled within three (3) business days of notification.

6.0 INTERVIEW AND PRESENTATION

6.1 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:

6.1.1. <u>References (10 points):</u>
The CM must demonstrate a positive relationship with prior clients on similar projects.

6.1.1.1 The CM 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 CM has demonstrated their cooperation with other Owners. DCSD reserves the option of contacting any of the references provided to confirm information provided.

6.1.1.2 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.

6.1.2 <u>Overall Approach, Methodology and Knowledge of the Site (35 points):</u>

6.1.2.1 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.

6.1.2.2 The firm shall demonstrate verbally and graphically its plan for performing the Project, documenting the services to be provided and showing the interrelationship of all parties. 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 an optimum value in meeting the design and budget requirements.

Note: The services to be provided on the Project will include, but they are not limited to, the Pre-construction, Construction, and Post Construction Phases.

6.1.3 Project Team (15 points):
The firm shall express the general and specific project related experience and capability of in-house staff and subconsultants and their functions as it relates to this project.

6.1.3.1 Organization Chart: 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 those key personnel indicated as the project team in this RFQU response actually executes the Project.

6.1.3.2 If a joint venture, or prime subcontractor arrangement of two (or more) firms, indicate how the work shall be distributed between the associated firms. Describe how the organizational structure will ensure orderly communications, distribution of information, effective coordination of activities and accountability.

6.1.4 Cost Control (20 points):

6.1.4.1 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. Describe your preconstruction bidding process and explain the benefits to the Owner.

6.1.4.2 The firm shall provide a comparison of any representative current projects demonstrating their ability to hold to original budgets.

6.1.4.3 Provide a list of onsite staff that you propose for this project and the number of hours that each staff member will work on the project during the construction phase.

6.1.5 Project Scheduling (20 points):

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

6.1.5.2 The firm shall describe any representative current projects and the projected versus the actual schedule for each.

6.2 Interview

6.2.1 The short-listed firms shall be invited for interviews before the PEC. 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 be identified in the RFQu.

6.2.2 The PEC shall schedule a separate interview for each short-listed firm. As part of its interview, and at the Selection Process Facilitator's discretion, each firm shall make a short oral presentation.

6.2.3 After the PEC has interviewed all the short-listed firms, the PEC shall reconvene for the PEC members to discuss the interviews and review each presentation. At the end of this discussion, PEC members shall use the Presentation Evaluation Forms to record their evaluation of each short-listed firm, and then submit the Presentation Evaluation Forms to the Selection Process Facilitator.

6.2.4 The Selection Process Facilitator shall combine the evaluation scores submitted by all PEC members and determine the PEC's ranking of the short-listed firms based upon the total scores assigned to each firm for the presentation stage. If the ranking results in a tied score for the number one or number two ranked firms, additional information shall be requested from the tied firms and presented to the committee. The committee will score the firms based on the responses to the additional information.

6.3 Submittal of recommended highest ranked firm. The Selection Process Facilitator shall submit the highest ranked firm recommended by the PEC to the COO for approval. The COO, in his or her sole discretion, shall either accept the results of the PEC's ranking recommendation and forward it to the Board of Education for approval or reject the results of the ranking recommendation. If the COO accepts the ranking recommendation, the approval and negotiation process continues as noted below. If the COO rejects the results of the ranking recommendation, he or she, in his or her sole discretion, shall proceed with any of the following methods: directing the PEC Selection Process Facilitator to recommence the selection and ranking process at whatever stage the COO deems appropriate (including the Individual Review stage, the Group Review stage, or the Interview process); pursuing the project by any other alternative method permitted under Georgia law; or abandoning the project all together. If the COO elects to pursue the project through an alternative method or abandon the project all together, DCSD shall provide public notice of that decision.

. Upon the COO's approval of the PEC's recommendation, an agenda item shall be prepared and put on the next available agenda for the Board of Education review and approval.

7.0 SELECTION PROCESS:

7.1 The Proposal Evaluation Committee ("PEC") shall be established by the COO. The COO, or his designee, shall approve the members of the PEC, to include the following:

7.1.1 At least three (3) DCSD staff persons with expertise in facilities design, construction, operation, and/or maintenance, property, surveying and environmental, as recommended by the Chief Operations Officer from their respective divisions, for the purpose of evaluating and scoring only those elements of the responses that relate to facilities design, construction, operation, and maintenance proposals, and on an as needed basis, those that include property, surveying and environmental.

7.1.2 At least one (1) member of the SPLOST CIP staff with expertise in facilities design, construction, operation, and/or maintenance, property, surveying and environmental, as recommended by the Chief Operations Officer, for the purpose of evaluating and scoring only those elements of the responses that relate to facilities design, construction, operation, and maintenance proposals.

7.1.3 Such other staff person(s) as deemed appropriate by the COO, or his designee, in order to ensure that the PEC includes persons with experience and knowledge in the contractual services being sought, for the purpose of evaluating and scoring only those elements of the responses that relate to the person(s)' area of experience and knowledge.

7.1.4 Membership of the PEC may include representation from other public or private entities or others deemed appropriate as recommended by the Chief Operations Officer. The recommendation may be based on project complexity, project cost and staff capacity.

7.2 All voting members of the PEC are required to comply with the provisions of Board Policy DJE and the provisions of the Code of Ethics for Public Officers and Employees. No member shall solicit or knowingly accept any gift, gratuity, loan, special discount, entertainment, transportation, lodging, meals, favor or promise of future employment, based upon any understanding that the vote, official action, or judgment of the member would be influenced thereby. The Chief Operations Officer, or his designee, shall select a Procurement representative who shall serve as the Selection Process Facilitator to monitor the selection process, ensure compliance with all applicable procedural requirements, limiting discussion which facilitates the procurement process, the facts of the procurement and documentation on file, and will maintain objectivity at all times.

7.3 The Selection Process Facilitator shall be responsible for ensuring that each member is provided information on the project, directs discussion as necessary and determines when the committee may need to vote on any compliance related issues.

7.4 The final rankings as approved by the Board of Education will rank all proposers from highest to lowest scores based on the selection criteria described in the RFQu.

8.0 SCHEDULE

8.1 **Pre-submittal conference attendance (mandatory).**
A virtual mandatory pre-submittal conference will be held on **Thursday November 2, 2023, 10:00 a.m., EST**, via TEAMS. Attendees must provide the following information by **5:00 p.m., EST** on **Wednesday, November 1, 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 registered attendees no later than **09:30 a.m., EST** on **Thursday November 2, 2023.** The RFQu will be reviewed and questions will be addressed.

8.2 **Site visit attendance (mandatory).**
A mandatory project site visit is scheduled for **Friday, November 3, 2023.** Details will be provided during the pre-submittal conference.

8.3 Statements of Qualifications will be received electronically on the DeKalb County School District website at https://dekalbschoolsga.ionwave.net for **CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR LIVSEY ES and TONEY ES HVAC SYSTEMS REPLACEMENT and RENOVATIONS**, until **2:00 p.m. EST, Thursday, November 30, 2023**. Qualifications received after the specified time will not be considered. All potential respondents must register as a vendor at **http://dekalbschoolsga.ionwave.net**. Based on evaluations of Statements of Qualifications, a maximum of five firms may be interviewed, at times and location to be determined at a later time. The order of presentation will be determined at DCSD's sole discretion, and the firms so notified.

8.4 The dates and times identified in this RFQu are subject to change. All changes will be posted to the DeKalb County School District solicitation website via addendum as it becomes available for all phases of this project.

9.0 GENERAL INSTRUCTIONS

9.1 Submit electronically in accordance with the requirements contained in the Request for Qualifications (RFQu).

9.2 The response shall contain manual signature of an authorized representative of the responding firm.

9.3 Submittals received after the specified date and time will not be considered.

9.4 Firms responding to the RFQu shall be available for presentations and interviews to the DCSD PEC Selection Committee.

9.5 The contents of the proposal of a successful firm may become part of its contractual obligations.

9.6 Excluding items 5.1.5 and 5.2, Proposals shall respond to each item noted in sections 4.0 and 5.0 in the order noted. Identify responses with the same paragraph notation as contained in this RFQu.

9.7 Proposals shall be typed. All corrections made by the proposer prior to the opening shall be initialed and dated by the proposer. No changes or corrections will be allowed after proposals have been opened.

9.8 Questions: Any questions concerning the RFQu should be submitted electronically via email to the Senior Procurement Manager at dcsd-op-bidquestion@dekalbschoolsga.org. **Questions submitted to any other email address will not be considered.** The deadline for receipt of vendor questions is **Wednesday, November 8, 2023** at **2:00 p.m. EST.** 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 DCSD solicitation website http://dekalbschoolsga.ionwave.net no later than **Wednesday, November 15, 2023** by **2:00 p.m. EST.** No response other than written by the Procurement Manager, will be binding upon DCSD. All supplemental instructions will be in the form of written Addenda to the RFQu.

9.9 Selection committee members, school board members and school board personnel are not to be contacted prior to the Board of Education's decision to approve or reject the final recommendation presented to it by the Chief Operations Officer. **At the discretion of DCSD, failure to comply with this requirement will be grounds for disqualification.**

9.10 Specifically, this **NO-CONTACT PERIOD** shall commence on the initial date of the advertisement for Request for Qualifications and continue through and include the date the DeKalb County Board of Education makes its determination to approve or reject the final recommendations.

9.11 The assigned contact persons for this RFQu are Belinda Quillet, Senior Procurement Manager and Tijauna Naylor-Simth, Procurement Manager. Mrs. Quillet can be reached at (678) 676-1373 or by email at dcsd-op-bidquestion@dekalbschoolsga.org. Dr. Naylor-Smith can be reached at (678) 676-1313 or by email at tijauna_naylor_smith@dekalbschoolsga.org. Prospective Respondents must limit their contact regarding this RFQu to the assigned contact persons.

9.12 Failure to meet any of these requirements may disqualify your firm from consideration.

10.0 TERMS AND CONDITIONS:

10.1. DCSD reserves the right to accept or reject any or all proposals in the best interest of DCSD. DeKalb County School District reserves the right to waive any formalities in the selection process.

10.2 It is mutually understood and agreed that the nature, amount, and frequency of the Services shall be determined solely by Owner and that Owner does not represent or guarantee unto firm that any specific amount of services will be requested or required of firm pursuant to this RFQu.

10.3 Proposals which do not comply with these instructions or that do not include the requested data may not be considered.

10.4 The successful firm shall not discriminate against any person in accordance with Federal, State or Local law.

10.5 It is the sole responsibility of the submitting firm to ensure proposals are received at the proper place on or before the time and date required, and in the format stated.

10.6 By responding to this RFQu, the offeror certifies that the proposing company and/or its principals have not been suspended, excluded, disqualified, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction by any Federal or State department or agency and that the bidder complies with all applicable orders, rules and regulations related thereto. Further, by responding to this RFQu, the offeror certifies that all lower tier participating individuals and/or company(s) and all respective principals of lower tier participants have not been suspended, excluded, disqualified, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction by any Federal or State department or agency and that the bidder complies with all applicable orders, rules and regulations related thereto.

10.7 DeKalb County School District, Georgia, does not discriminate in admission or access to, or treatment or employment in its programs and activities, on the basis of race, color, religion, age, sex, national origin, marital status, disability, genetic information, sexual orientation, gender identity or expression, or any other reason prohibited by law.

10.8 Any person who is adversely affected by a decision of the DeKalb County School District concerning this procurement, shall adhere to the following Protest Procedures:

10.8.1 **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.

10.8.2 **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.

10.8.3 **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.

10.8.4 **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

10.8.5 **Type of Protests.** A challenge to the competitive solicitation process must be filed within two (2) business days prior to the closing date and time of the solicitation as identified on the RFQu.

A challenge to an intended or actual contract award must be filed within ten (10) calendar days of the date the Notice of Intent to Award (NOIA) is posted by DCSD. 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 protest is not filed by the applicable deadline, such failure shall be deemed as a waiver with prejudice of any grounds the bidder may have for protest.

10.8.6 **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 Design and Construction 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.

10.8.7 **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:

10.8.7.1 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.

10.8.7.2 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.

10.8.8 **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.

10.9 By making a submission, it is understood and agreed that the submitting entity consents to DCSD contacting any parties referenced in the entities response including, but not limited to, all project owners and references herein.

10.10 Submitters acknowledge and agree that the contracting entity will be the CM name identified in the response to 4.3.1.1

10.11 Attachment M, is the most current version of DCSD' standard contract form for Construction Management Services. By submitting a response to this RFQu, submitters acknowledge and agree that they have reviewed this standard form and have no objection to it. Further, if selected by DCSD, Submitters acknowledge and agree that they will execute this standard form contract, subject to DCSD right to make revisions and modifications thereto prior to execution, where DCSD has determined, in its sole discretion that such revisions or modifications are in DCSD best interest.

NOTICE
CONSTRUCTION MANAGEMENT AT RISK
FOR LIVSEY ELEMENTARY SCHOOL AND TONEY ELEMENTARY
SCHOOL HVAC SYSTEMS REPLACEMENT AND RENOVATIONS
PROJECT

DeKalb County School District announces that Construction Management at Risk Services are required for the project listed below.

PROJECT AND NUMBER:	Construction Management at Risk Services for Livsey ES and Toney ES HVAC Systems Replacement and Renovations Project RFQu No. 24-752-011
SERVICES TO BE PROVIDED:	Construction Management at Risk Services for Livsey ES and Toney ES HVAC Systems Replacement and Renovations Project
PRE-SUBMITTAL MEETING:	A virtual mandatory pre-submittal conference will be held on **Thursday, November 2, 2023, 10:00 a.m., EST**, via TEAMS.
DCSD CONTACT:	Belinda Quillet, Senior Procurement Manager Dr.Tijauna Naylor Smith, Procurement Manager
SUBMISSION REQUIREMENTS:	Qualifications will be received electronically on the DeKalb County School district website at https://dekalbschoolsga.ionwave.net
PROPOSAL DUE DATE AND TIME:	**November 30, 2023, 2:00 pm EST**

Requirements: Interested firms are required to comply with all requirements of the Request for Qualification (RFQu). A copy of the RFQu and any and all clarifications issued shall be obtained from the DeKalb County School District web site http://dekalbschoolsga.ionwave.net. Furthermore, all Notices concerning this solicitation and award shall be posted to the aforementioned web site. These Notices shall include but are not limited to short list meeting dates and times, presentation meeting dates and times, intended decision and decision information.

End of RFQu Document Consisting of 22 Pages

(See Attachments Package)

ATTACHMENT A: CONSTRUCTION MANAGER CHECKLIST AND CERTIFICATION

The undersigned, hereby acknowledges having received **Request for Qualifications (RFQu) No. 24-752-011** for **Construction Manager at Risk Livsey Elementary School and Toney Elementary School HVAC Systems Replacement and Renovations** containing a full set of documents:

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	Construction Manager Checklist and Certification (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 D	Offeror's and Individuals' Affidavit of Noncollusion (2 pages)	YES	☐
Attachment E	Conflict of Interest Disclosure Affidavit (2 pages)	YES	☐
Attachment F	Consent to Release Information (1 page)	YES	☐
Attachment J	Immigration and Security Certification (2 pages)	YES	☐
Attachment L	No Submittal Response Form (1 page)	N/A	N/A
Attachment M1	Standard Form of Construction Management Contract (Livsey Elementary School)	No	
Attachment M2	Standard Form of Construction Management Contract (Toney Elementary School)	No	

Other Requirements:	**Include with Proposal**	**Check Box to Confirm**
Copy of Business License, Valid GC License, and Insurance Certificates	YES	☐
Bonding Capacity Letter from Insurer or Surety	YES	☐

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

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 Construction Manager and its officers and employees have not entered into any agreement with any other Construction Manager or prospective Construction Manager or with any other person, firm or corporation relating to any prices or other terms named in this RFQu or any other RFQu, nor has it entered into any agreement or arrangement under which a person, firm or corporation is to refrain from responding to this RFQu.

Name of Construction Manager: _____

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

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

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

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:
___/___/___

ATTACHMENT D: OFFEROR'S and INDIVIDUALS' AFFIDAVIT OF NONCOLLUSION

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

STATE OF _____

COUNTY OF _____

COMES NOW,
_____("Offeror"),
[name of 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 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.

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 represented or acted for them in bidding or proposing for or procuring the contract for the DeKalb County Board of Education CM at Risk Livsey ES and Toney ES HVAC Systems 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

1. 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:

2. 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:

Firm Representative	Owner Representative	Relation
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. 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 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 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 insure 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/Bidder 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/Bidders who initial (b) must attach and return a signed, notarized Affidavit of Exception with the Contract if awarded]**;

or

(c) _____ ***(Initial here)*** Offeror/Bidder 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/Bidder 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/Bidder 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/Bidder agrees that, if Offeror/Bidder employs or contracts with any sub-contractor in connection with the covered contract under the Act and DOL Rules 300-10-1-.01,

et seq that Offeror/Bidder 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/Bidder 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 L: NO SUBMITTAL RESPONSE FORM

RFQu Number: **24-752-011** DCSD Project Nos.: **359-35 and 352-35**
Title: **CM at Risk for Livsey Elementary School and Toney Elementary School**

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

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

This information will assist Procurement Services in the preparation of future RFQu's.

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.

ATTACHMENT M1

STANDARD FORM OF

CONSTRUCTION MANAGEMENTCONTRACT

BETWEEN

THE DEKALB COUNTY BOARD OF EDUCATION

AND

_____

[Contractor]

PROJECT: **Livsey Elementary HVAC Systems Replacement and Renovations**

Project Address: **4137 Livsey Road, Tucker GA 30084**

ARCHITECT: **Croft & Associates, Inc.**

Architect's Address: **3380 Blue Springs Road**
Kennesaw, GA. 20144

Cost Code: **SP5FACCON.35935.GENCONTR**

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CONSTRUCTION MANAGEMENT AGREEMENT

THE DEKALB COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of Georgia ("**Owner**"), hereby contracts with _____, ("**Construction Contractor**"), authorized to do business in the State of Georgia, whose business address is _____, to perform all work ("**Work**") in connection with the management and construction of _____ (hereafter referred to as the "Project") located at _____, said Work being set forth in the plans and specifications being prepared_____, the Architect and/or Engineer of Record ("**Design Professional**") and all other Contract Documents hereafter specified.

Owner and Construction Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, and amendments signed by Owner relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project ("**Construction Documents**") being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. Upon Owner's acceptance of Construction Contractor's guaranteed maximum price proposal, the Contract Documents will also include the GMP Amendment and all Attachments thereto. All of the foregoing Contract Documents are sometimes referred to herein as the "**Contract**".

B. Owner shall furnish Construction Contractor with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Contractor for execution of the Work, shall be made by Construction Contractor from its reproducible set at Construction Contractor's sole cost and expense. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work by Owner or termination of the Contract, whichever occurs first; provided, however, Owner is furnishing Construction Contractor a reproducible set of Construction Documents for Construction Contractor's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

Section 2. Scope of Work

The Work to be provided by Construction Contractor pursuant to the Contract shall be performed essentially in two phases; those phases being Pre-Construction Phase Services and Construction

Phase Services, both of which are hereinafter defined. At the discretion of Owner, those two phases may overlap.

A. **Pre-Construction Phase Services.** Construction Contractor shall review and comment upon the Construction Documents being developed by Design Professional. The scope of that review shall include reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Agreement between Design Professional and Owner ("**Design Agreement**"), Construction Contractor shall provide Owner with detailed construction cost estimates with respect to those documents. Construction Contractor agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project. Construction Contractor shall provide all other services during the conducted during the Pre-Construction Phase of the Project as set forth in the Contract Documents (collectively, the "**Pre-Construction Phase Services**"). The duration of the "Pre-Construction Phase" shall be defined in Section 7 of this Agreement.

B. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Contractor have agreed in writing upon the guaranteed maximum price to be paid Construction Contractor and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Contractor shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents (collectively, the "**Construction Phase Services**"). For the avoidance of doubt, Construction Contractor shall have the responsibility to perform the Work and build the entire Project in accordance with the Construction Documents, except any work as may specifically be stated in the Contract Documents to be the responsibility of others. Construction Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, as defined in Section 5 hereof, prior to the commencement of the Construction Phase, unless Owner provides prior written authorization for such costs. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Contractor shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid Construction Contractor and the performance time for such portion of the Work.

Section 3. Relationship of Parties

A. Construction Contractor accepts the relationship of trust and confidence established by this Agreement. Construction Contractor covenants with Owner to cooperate with Design Professional; to utilize Construction Contractor's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times

an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Contractor acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management, and construction of school facilities, and
(ii) that such representation is a material inducement to Owner to enter into the Contract.

Notwithstanding anything to the contrary in the Contract Documents, Construction Contractor is fully responsible to Owner for all duties of Construction Contractor under the Contract Documents, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract despite Construction Contractor's delegation of the responsibility therefor to any of its subcontractors. In addition, if the Work required under the Contract Documents requires Construction Contractor to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Construction Contractor shall be directly responsible to Owner for any portion of the Work so required. In no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents. Upon issuance of Construction Notice to Proceed, Construction Contractor further agrees to attend the first available training session provided by DeKalb County School District, Building Code Compliance Office at no cost and is obligated to ensure that representatives from each of the various trades who are involved in the inspection process attend the training session as well.

B. Wherever the terms of the Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

C. Owner may utilize the services of a Program Manager to assist it with the management of the design and construction of the Project. In the event Owner does utilize the services of a Program Manager with respect to this Project, Owner shall notify Construction Contractor in writing of such decision and the Program Manager shall be deemed to be an Owner designee as referenced in Subsection 3.B. above. Further, to the extent Construction Contractor is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Contractor pursuant to the terms of the Contract Documents, Construction Contractor shall cause the Program Manager to also be named as an additional insured party under all such policies. The Program Manager shall be Owner's representative with respect to the Project, with authority to transmit instructions, receive information, and interpret and define Owner's policies and decisions with respect to the Work. However, except as may be otherwise expressly authorized in writing by Owner, the Program Manager is not authorized on behalf of Owner to issue any verbal or written orders or instructions to Construction Contractor that would have the effect, or be interpreted to have the effect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the: (1) scope or quality of Work to be performed and provided by Construction Contractor as set forth in the Contract Documents; (2)

the time within which Construction Contractor is obligated to complete the Work; or (3) the amount of compensation Owner is obligated or committed to pay Construction Contractor as set forth in the Contract Documents. Construction Contractor hereby designates _____ as its Project Manager, with full authority to bind and obligate Construction Contractor on all matters arising out of or relating to the Work or the Contract Documents. Construction Contractor shall ensure that the Project Manager devotes whatever time is required to satisfactorily manage the Work and Construction Contractor will provide for such required amount of time in the Itemized General Conditions Expenses Attachment to be attached to the GMP Amendment. The Project Manager shall not be removed or replaced by Construction Contractor without Owner's prior written approval, which approval shall not be unreasonably withheld.

D. Construction Contractor shall be acting as an independent contractor at all times during the performance of the Work and no provision in the Contract shall create an employment or agent relationship between the parties.

E. Construction Contractor represents and warrants the following to Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (i) that it and, to the best of its knowledge, its subcontractors are financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (ii) that it is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (iii) that its execution of this Agreement and all of the Contract Documents, and its performance thereof is within its duly authorized power; (iv) that its duly authorized representative has visited, or prior to the submission of Construction Contractor's guaranteed maximum price proposal, will have visited the site of the Project and is, or prior to the submission of the guaranteed maximum price proposal will be, familiar with the local and special conditions under which the Work is to be performed and has, or prior to the submission of the guaranteed maximum price proposal will have, correlated onsite observations with the requirements of the Contract Documents; and (v) that it possesses a high level of experience and expertise in the construction of projects of the size, complexity and nature of this particular Project and that it will perform the Work with the care, skill and diligence of such a contractor/construction manager.

Section 4. Contract Amount

In consideration of the full and faithful performance by Construction Contractor of the covenants in the Contract, Owner agrees to pay, or cause to be paid, to Construction Contractor the following amounts (herein "**Contract Amount**"), in accordance with the terms of the Contract:

A. **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, including providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases,

and preparing cost estimates, Construction Contractor shall receive the fixed amount of _____ ($_____) as the total lump sum compensation for its services. Additionally, Construction Contractor shall receive reimbursement, without mark-up, for actual amounts incurred by Construction Contractor for the reimbursable expense items specified in the Pre-Construction Phase Services Reimbursable Expense Proposal attached hereto and incorporated herein as **Exhibit____**, , up to the "not to exceed amounts" specified for such items in **Exhibit____**.. Monthly installment payments of the total lump sum compensation and reimbursement for reimbursable expense items specified on **Exhibit___**(subject, however, to the "not to exceed" caps on such items) shall be based upon the percent completion of the designated portion of the Pre-Construction Phase Services for each particular month as determined by Owner and an itemized statement of reimbursable expenses incurred for such month, respectively, and Owner's receipt of Construction Contractor's written invoice for such payment. Construction Contractor's invoices shall be in a form reasonably acceptable to Owner and be accompanied by such other information, documentation, and materials as Owner may reasonably require. The final invoice shall not be submitted until either (i) the GMP Amendment is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate the Contract as provided in Section 4.B hereafter, whichever occurs first.

K. **Construction Phase Services.** With respect to the Construction Phase Services to be provided by Construction Contractor hereunder, Owner shall reimburse Construction Contractor for the Cost of the Work (hereinafter defined) and pay Construction Contractor a fixed Construction Management Fee calculated as a percentage based on the estimated Cost of the Work. The Construction Management Fee and Cost of Work shall be estimated at the time the GMP (hereinafter defined) is initially adopted by the parties. The "Construction Management Fee" shall be Construction Contractor's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Contractor's total profit for Construction Phase Services. Within forty-five (45) days after the Owner's deems the Construction Documents sufficiently completed by the Design Professional and approved in writing by Owner, Construction Contractor agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work. To the extent that the Construction Documents are anticipated to require further development by Design Professional, Construction Contractor shall provide in the guaranteed maximum price proposal for such further development consistent with the Contract Documents and reasonably inferable therefrom such that the guaranteed maximum price shall not be adjusted as a result of such further development of the Construction Documents. Such further development to be included in the guaranteed maximum price proposal does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order, Construction Change Directive, or other method of adjustment available to Owner under the Contract Documents. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Contractor in its response to a request for qualifications issued by the Owner. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Contractor agrees that all of its books, records, and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price ("**GMP**") mutually agreed upon by Owner and Construction Contractor shall be set forth in the GMP Amendment. The form for GMP Amendment is attached hereto as Exhibit M. Construction

Contractor shall provide a detailed breakdown in a format acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. For each line item in the GMP, Construction Contractor shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line-item price incorporated into the GMP. Construction Contractor guarantees that, in no event, shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. To the extent the Construction Management Fee and Cost of the Work exceed the GMP, Construction Contractor shall bear such costs in excess of the GMP without reimbursement or additional compensation from Owner. In the event Construction Contractor and Owner fail to reach an agreement on the GMP, Owner may elect to terminate the Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by Owner. Notwithstanding the foregoing, Construction Contractor shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed.

Section 5. Cost of Work

A. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Contractor in the proper performance of the Construction Phase Services portion of the Work. Cost of the Work shall not include any costs ore expenses incurred by the Construction Contractor related to or incurred during the performance of the Pre-Construction Phase Services. Such costs shall be incurred at rates not higher than the standard industry rates paid at the place of the Project except with the prior written consent of Owner only after Construction Contractor has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. Items of Work not included in this Subsection 5.A. are compensable only as part of the Construction Management Fee and are otherwise not reimbursable. The Cost of the Work shall include only those items set forth below in this Subsection 5.A:

1. **Labor Costs**.

   a. Wages of construction workers directly employed by Construction Contractor to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.

   b. Wages or salaries of Construction Contractor's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement.

c. Wages and salaries of Construction Contractor's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as in Subsection 5.A.1.b above.

d. The parties hereby establish the fixed markup rate of _____ percent (%) for all labor burden, including all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining.

agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under Subsections 5.A.1.a through A.1.c, above. Further, such labor burden shall not include amounts for items specified in Subsection 5.B.3 that are to be excluded from the Cost of the Work.

Construction Contractor's "General Conditions" expenses, that are to be more particularly itemized in an Attachment to the GMP Amendment and incorporated therein by reference, are a lump sum to be paid as the Work progresses with each Application for Payment based on the percentage of completion. Many of the labor costs itemized in this Subsection 5.A.1 are included in General Conditions' expenses, whether or not specifically noted as such, and are not to be billed separately. Construction Contractor shall promptly report to Owner any occasion in which the labor/payroll rates paid to personnel is lower than the estimated price included in the GMP Attachment for the General Conditions expense. Further, Owner reserves the right to audit Contractor's payroll. And Construction Contractor shall promptly make available to Owner all records necessary for such purpose.

2. **Subcontract Costs.** Payments made by Construction Contractor to subcontractors in accordance with the requirements of the applicable written subcontracts.

3. **Cost of Materials and Equipment Incorporated into the Completed Construction**.

a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in Subsection 5.A.3.a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if

any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Contractor; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

4. **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**.

a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Contractor.

b. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site, whether rented from Construction Contractor or others, and costs of transportation, installation, minor repairs, and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Contractor or others, shall be subject to Owner's prior written approval.

c. Cost of removal and proper disposal of debris from the Project site.

d. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

e. That portion of the reasonable travel and subsistence expenses of Construction Contractor's personnel, assigned to the Project site, incurred while traveling outside of the Atlanta/DeKalb County metropolitan area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner.

5. **Miscellaneous Costs**.

a. That portion of any separate premiums for (i) bonds directly attributable

to the Contract, and (ii) any additional insurance coverages which are purchased by Construction Contractor, with Owner's prior written approval, beyond the level of coverage specified herein.

b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Contractor is liable.

c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Contractor is required by the Contract Documents to pay.

d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of the Contract.

e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

f. Deposits lost for causes other than Construction Contractor's fault or negligence.

g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Contractor, reasonably incurred by Construction Contractor in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.

h. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Contractor, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Contractor to Owner set forth in the Contract Documents, or (ii) Construction Contractor's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Contractor's personnel to supervise adequately those portions of the Work to be performed by Construction Contractor's subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by Construction Contractor from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.

6. **Other Costs.** Other costs necessarily and reasonably incurred in performance of the Work if and to the extent approved in advance in writing by Owner.

B. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

1. Salaries and other compensation of Construction Contractor's personnel stationed at Construction Contractor's principal office or offices other than the Project site office.

2. Expenses of Construction Contractor's principal office and offices other than the Project site office.

3. Discretionary bonuses, incentive compensation and other discretionary payments paid to anyone hired by Construction Contractor or paid to any subcontractor or supplier.

4. Overhead and general expenses, except as may be expressly included in Subsection 5.A. above.

5. Construction Contractor's capital expenses, including interest on Construction Contractor's capital employed for the Work.

6. Rental costs of machinery and equipment, except as specifically provided in Subsection 5.A.4.b. above.

7. Except as expressly provided in Subsection 5.A.5.h. above or otherwise expressly agreed to in writing by Owner, costs due to the fault or negligence of Construction Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing or remedying damage to property not otherwise included in the Work.

8. Any costs not specifically and expressly described in Subsection 5.A. above.

9. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

C. **Discounts, Rebates and Refunds**.

1. Cash discounts obtained on payments made by Construction Contractor shall accrue to Owner if (i) before making the payment, Construction Contractor included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Construction Contractor with which to make payments; otherwise, cash discounts shall accrue to Construction Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Contractor shall make provisions so that they can be secured. Construction Contractor shall use its best efforts to obtain for the benefit of Owner all available discounts, rebates, and refunds.

2. Amounts which accrued to Owner in accordance with the provisions of Subsection 5.C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

Section 6. Bonds

A. Within ten (10) business days after the GMP is agreed to by Owner and Construction Contractor and before any portion of the Construction Phase Work to be covered by such bonds is commenced, Construction Contractor shall provide Owner with a Performance Bond and a Payment Bond (together, the "**Bonds**"), in the form prescribed in Exhibits C and D, in the amount of one hundred percent (100%) of the total sum of the GMP, the costs of which are to be paid by Construction Contractor and reimbursed in accordance with Subsection 5.A.5.(a). The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner, in its sole discretion:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Georgia, Department of Insurance, authorizing it to write surety bonds in the State of Georgia.

2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Georgia Insurance Code.

4. The surety company shall have at least twice the minimum surplus and capital required by the Georgia Insurance Code at the time the invitation to bid is issued.

5. The Bonds must be fully performable in Georgia, with service and venue in DeKalb County, Georgia.

6. If the GMP exceeds Five Hundred Thousand and No/100 ($500,000.00), the surety company shall also comply with the following provisions:

a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:

(1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier, provided authorization or approval by the State of Georgia, Department of Insurance to do business in this State have been met.

(2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged, or held subject to the consent of the surety and for the protection of the surety shall be deducted.

B. If the surety for any bond furnished by Construction Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Georgia, or it ceases to meet the requirements imposed by the Contract Documents, Construction Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's prior written approval.

Section 7. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under the Contract. The "**Pre-Construction Commencement Date**" shall be established in a written "Notice to Proceed" to be issued by Owner. Construction Contractor shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Contractor prior to the Pre-Construction Phase Commencement Date shall be at the sole risk and expense of Construction Contractor. The "**Construction Phase Commencement Date**" shall be established in GMP Amendment. Construction Contractor shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion, hereinafter defined, of the Work is referred to hereafter as the "**Contract Time**". The Contract Time is set forth with more specificity in Subsection 7.B below.

B. Because the Work is to be completed in two phases, the timely completion of the Pre-Construction Phase Services is critical to the timely completion of the Construction Phase Services and, therefore, completion of the entire Project. Accordingly, Construction Contractor agrees to provide the Pre-Construction Phase Services in accordance with the design schedule approved by Owner in writing. With respect to the Construction Phase Services, the GMP Amendment shall include a schedule of dates outlining when each portion of the Work associated with the Construction Phase Services must be deemed substantially completed by Construction Contractor. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Contractor and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate the Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by Owner. Notwithstanding the foregoing, Construction Contractor shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed. "Substantial Completion" of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy or Conditional Certificate of Occupancy (with conditions acceptable to Owner in its sole discretion) or their equivalent. Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within One Hundred Twenty (120) calendar days after the Substantial Completion date, or within One Hundred Twenty

(120) calendar days after Construction Contractor's receipt of the punch list, whichever date occurs last ("**Final Completion Date**").

C. Owner and Construction Contractor recognize that, since time is of the essence for the Contract, Owner will suffer financial loss if the Construction Contractor fails to achieve Substantial Completion of the Work associated with the Construction Phase within the time specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable education to the public, in DeKalb County, Georgia. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Contractor if Construction Contractor fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, a daily rate described herein for each calendar day the Construction Manager fails to achieve Substantial Completion. Liquidated damages will be assessed at a daily rate of the sum indicated at Exhibit "F" attached hereto and by reference made a part hereof. Construction Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Owner may deduct liquidated damages prescribed in this subsection from any unpaid amounts then or thereafter due Construction Contractor under the Contract and any liquidated damages not so deducted shall be payable to Owner by Construction Contractor upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays is intended to compensate Owner solely if Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time and shall not release Construction Contractor from liability from any other breach of Contract requirements. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Construction Contractor's failure to achieve Substantial Completion of the Work.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Georgia, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday, or legal holiday. "**Days**" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word "days". The term "**business day**" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

E. Construction Contractor shall not be allowed to perform work at the Project site or any other school properties on dates designated on the School Calendars attached hereto and incorporated herein as composite **Exhibit O** as standardized assessment testing days or days when

the schools or Owner's district offices are closed. Construction Contractor must obtain prior written approval from Owner, which approval Construction Contractor acknowledges may not be provided by Owner depending upon the particular circumstances, before performing any Work on these designated dates.

Section 8. Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

Exhibit A:	General Terms and Conditions
Exhibit B:	Supplemental Terms and Conditions
Exhibit C:	Form of Payment Bond
Exhibit D:	Form of Performance Bond
Exhibit E:	Insurance Requirements
Exhibit F:	Liquidated Damages
Exhibit G:	Contractor and Subcontractor Affidavit
Exhibit H:	Form of Release and Affidavit
Exhibit I:	Form of Construction Contractor Application for Payment
Exhibit J:	Form of Change Order
Exhibit J1:	Project Closeout Checklist
Exhibit K:	Master Project Schedule Milestones
Exhibit L:	Construction Contractor's Staffing Schedule
Exhibit L1:	Pre-construction Phase Services Reimbursable Expense Proposal
Exhibit M:	GMP Amendment to Agreement between Owner and Construction Contractor
Exhibit N:	Certificate of Insurance Form
Exhibit O:	School Calendars

Section 9. Notices

A. All notices, consents, or approvals required or permitted to be given under the terms of the Contract shall be in writing and shall be sent by: (a) FedEx or other nationally recognized overnight air courier service, postage prepaid, for next business day delivery, or (b) hand delivery, to the notice address of the respective parties set forth below in Subsection 9.B or 9.C, as applicable. Notice given in accordance with this Section 9 shall be effective on the earlier of the day actually received, if received on a business day (or, if not received on a business day, on the first business day after the day of receipt) or, regardless of whether or not received after the dates specified below, (i) on the date of delivery or refusal of delivery, if by hand delivery, or (ii) on the first business day after having been delivered to a nationally recognized overnight air courier service, such as FedEx, for "next business day" delivery in each case addressed to the respective party at the address for notice to the party specified in Subsection 9.B or 9.C, as applicable, below.

B. Notices, consents, or approvals required or permitted to be given to Owner shall be delivered to Owner at:

DeKalb County School District
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

C. Notices, consents, or approvals required or permitted to be given to Construction Contractor shall be delivered to Construction Contractor at:

_____

_____

ATTENTION: _____

Fax No.:_____

D. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 10. Modification

No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 11. Successors and Assigns

Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to the Contract.

Section 12. Governing Law

The Contract shall be interpreted under, and its performance governed by the laws of the State of Georgia, without regard to its choice of law provisions.

Section 13. No Waiver

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, 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 herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of the Contract shall not be

deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the Contract. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

Section 14. Entire Agreement

The Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated, and superseded by the Contract.

Section 15. Severability

Should any provision of the Contract be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 16. Construction

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. The headings of the Articles, Sections, Paragraphs, Schedules, Exhibits and Attachments as contained in the Contract are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions in such Articles, Sections, Paragraphs, Schedules, Exhibits and Attachments. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation. The remedies granted to Owner in the Contract are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

Section 17. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below:

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijjon DaCosta, Board Chairperson____
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Devon Q. Horton, Superintendent_____
[TYPED NAME & TITLE]

DeKalb County Board of Education_____

1701 Mountain Industrial Boulevard_____

Stone Mountain, GA 30083_____

_____
[DATE OF EXECUTION]

_____
Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

By: _____
[SIGNATURE]

_____
[TYPED NAME & TITLE]

_____

_____

_____
[ADDRESS]

_____
[DATE]

EXHIBIT A

GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS

1.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Construction Documents are permitted, except as may be otherwise specifically stated in the Contract Documents; provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties, Construction Contractor shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.

1.2 If during the performance of the Work, Construction Contractor discovers a conflict, error or discrepancy in the Contract Documents, Construction Contractor immediately shall report same to Design Professional and Program Manager in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Prior to commencing each portion of the Work, Construction Contractor shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Contractor shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Contractor, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Contractor shall be required to immediately notify Design Professional and Project Manager and, absent contrary instruction from Owner, comply with the provision which is the more restrictive or stringent requirement upon Construction Contractor, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

1.4 In the event of conflicts or discrepancies among the Contract Documents, Construction Contractor shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict will be based upon the following Contract Documents, which are set forth and ranked in order of precedence:

1.4.1 Duly executed amendments, Change Orders and Construction Change Directives, with those of a later date having precedence over those of an earlier date;

1.4.2 Supplemental Terms and Conditions attached to the Agreement as Exhibit B;

1.4.3 The Agreement, not including the Exhibits, which are addressed above and Below;

1.4.4 These General Terms and Conditions;

1.4.5 The other Exhibits to the Agreement; and

1.4.6 All other Contract Documents, if any.

1.5 The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Construction Contractor, with the exception of Owner's third-party beneficiary rights under Contractor's agreements with its subcontractors and suppliers.

2. INVESTIGATION AND UTILITIES

2.1 Construction Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; noise ordinances; work hours; surrounding building conditions and all other costs associated with such performance. If Construction Contractor fails to perform the foregoing obligations, Construction Contractor shall pay such costs and damages to Owner as would have been avoided if Construction Contractor had performed such obligations. The failure of Construction Contractor to acquaint itself with any applicable conditions shall not relieve Construction Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Construction Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "**Utilities**". Construction Contractor

shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Contractor shall be responsible for properly shoring, supporting, and protecting all Utilities at all times during the course of the Work. If Construction Contractor fails to perform the foregoing obligations of this Section 2.2, Construction Contractor shall pay such costs and damages to Owner as would have been avoided if Construction Contractor had performed such obligations.

2.3 If during the performance of the Work, Construction Contractor or any subcontractor, sub-subcontractor, agent, employee, or anyone else for whom Construction Contractor is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Contractor shall take all actions necessary and required to immediately restore such Utilities service. If Construction Contractor fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Contractor within five (5) business days of written demand for same from Owner.

3. SCHEDULE

3.1 Construction Contractor shall prepare and provide the various schedules set forth in Exhibit B to the Agreement. Said schedules shall include an overall progress schedule for the Project which not only includes the Pre-Construction Phase Services and Construction Phase Services to be provided by Construction Contractor hereunder, but also shall include Design Professional's performance schedules ("**Master Project Schedule**").

3.2 The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Contractor as often as is specified in Exhibit B to the Agreement. The Master Project Schedule and all updates to it shall be subject to Owner's and Design Professional's review and comment. Construction Contractor's submittal of a satisfactory Master Project Schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Contractor.

4. PROGRESS PAYMENTS

4.1 Construction Contractor's monthly Applications for Payment shall be in such form and contain such detail and backup and other information, documentation, and materials as Owner reasonably may require. Prior to submitting its first monthly Application for Payment, Construction Contractor shall submit to Owner and Design Professional, for their review and approval, a Schedule of Values based upon the lump sum compensation to be paid Construction Contractor for Pre-Construction Phase Services hereunder. After its approval by Owner, that Schedule of Values shall be used as the basis for Construction Contractor's monthly Applications for Payment with respect to Pre-Construction Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Pre-Construction Phase Commencement Date. The approved Schedule of Values shall be updated to reflect current Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and

notarized copy of the Application for Payment form attached to the Agreement as Exhibit I.

4.2 At the time it submits its guaranteed maximum price proposal to Owner, Construction Contractor also shall submit to Owner and Design Professional, for their review, a revised Schedule of Values based upon the guaranteed maximum price proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element and, if required by Owner, broken down further into the major elements of the Work to be completed during the various phases of the Work. That revised Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment, and shall be used as the basis for Construction Contractor's monthly Applications for Payment thereafter. This revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit I.

4.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

4.4 Construction Contractor shall submit two (2) notarized original copies of its monthly Application for Payment to Design Professional on or before the twenty-fifth (25th) day of each month for Work performed during the previous month. Invoices received after the twenty-fifth (25th) day of each month shall be considered for payment as part of the next month's application. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Contractor. Owner shall pay Construction Contractor that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Contractor within thirty (30) calendar days of Owner's receipt of the Certificate for Payment. General conditions and/or general requirements will be paid based on the percentage of Work complete on site, with the exception of Construction Contractor's initial Application for Payment which may include the reimbursement of costs for the Bonds.

4.5 Owner shall retain ten percent (10%) of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment, until fifty percent (50%) completion of the Work. Upon fifty percent (50%) completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to five percent (5%) of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment. Also, after fifty percent (50%) completion of the Work has been achieved, Construction Contractor may request in its next monthly Application for Payment release of up to one-half (1/2) of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment; provided, however, nothing in this Subsection 4.5 shall preclude or limit

Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law. Further, any reduction or release of retainage, or portion thereof shall not be a waiver of (i) any of Owner's rights to retainage in connection with other payments to Construction Contractor, or (ii) any other right or remedy that Owner has under the Contract Documents, at law or in equity.

4.6 Payments to Construction Contractor shall in no way imply approval or acceptance of Construction Contractor's Work.

4.7 Each Application for Payment shall be accompanied by: (a) properly executed and notarized (i) Release and Affidavit, in the form attached to the Agreement as Exhibit H, and (ii) Waiver of Right to Claim Against the Payment Bond (Progress Payment) in form prescribed by applicable law, showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment has been requested have been paid in full through the previous month's Application for Payment, from Construction Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond (Progress Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (b) updated Schedule(s) required by the Contract Documents, (c) a written consent from the surety for the payment being requested; and (d) such other information, documentation, and materials as Owner or Design Professional may reasonably require (e.g. payrolls, petty cash accounts, an invoices). Owner shall not be required to make payment until and unless these affidavits, waivers, reports and other information, documentation and materials are furnished by Construction Contractor. Further, if Construction Contractor is withholding any portion of a payment to any subcontractor or supplier for any labor, services, or materials for which Owner has paid Construction Contractor, Construction Contractor agrees to refund such money to Owner.

4.8 Applications for Payment shall not include requests for payment for portions of the Work for which Construction Contractor does not intend to pay a subcontractor or supplier unless such Work has been performed by others whom Construction Contractor intends to pay.

4.9 Each Application for Payment shall constitute a certification and representation by Construction Contractor to Owner that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; (iii) there are no liens or claims outstanding or known to exist at the date of the Application for Payment; (iv) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (v) duly executed waivers and releases have been obtained from all subcontractors and suppliers for work done and materials furnished through the date of payment; (vi) Construction Contractor is entitled to payment in the amount requested; (vii) such Application for Payment represents a just estimate of cost reimbursable to Construction Contractor under the terms of the Contract Documents, and (viii) such Application for Payment has not been front-end-loaded either by Construction Contractor or by any of its subcontractors or suppliers (including placing a value on a line item that

is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

4.10 Construction Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment unless later passage of title is expressly provided for elsewhere herein. Construction Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Construction Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Construction Contractor, subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

5. PAYMENTS WITHHELD

5.1 Design Professional shall review each Application for Payment submitted by Construction Contractor and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Contractor under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Contractor in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Contractor under the Contract or any other agreement between Owner and Construction Contractor, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Construction Contractor; (c) Construction Contractor's failure to make timely and proper payments to all subcontractors and suppliers;(d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Contractor's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Contractor. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Contractor's expense, if such items are not cured by Construction Contractor to Owner's reasonable satisfaction within three (3) days after Construction Contractor's receipt of written notice from Owner.

6. FINAL PAYMENT

6.1 Owner shall make final payment to Construction Contractor within sixty (60) calendar days after the Work is finally accepted by Owner in accordance with Subsection 23.2 herein, provided that Construction Contractor first, and as an explicit condition precedent to the accrual of Construction Contractor's right to final payment, shall have furnished Owner with: (a) a properly executed and notarized (i) final release (conditioned only upon receipt of final payment) in the form

of the Release and Affidavit attached to the Agreement as Exhibit H and, (ii) Waiver of Right to Claim Against the Payment Bond (Final Payment) in form prescribed by applicable law, from Construction Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond (Final Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (d) all as-built Contract Documents, including as-built drawings for design-build systems delegated to Construction Contractor; (e) a complete list of subcontractors and principal suppliers on the Project, including addresses and telephone numbers; (f) evidence reasonably acceptable to Owner that the Work has passed all requisite governmental inspections; (g) an indexed, readable and searchable electronic copy, in format acceptable to Owner and, if requested, hard copies of all operation and maintenance manuals, permits, and temporary and final certificates of completion or occupancy, as applicable, and third party warranty documents applicable to the Work; (h) a Final Payment Affidavit in statutory form; (i) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (j) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; and (k) all other materials, information and documents listed in the Project Closeout Checklist attached to the Agreement as Exhibit J and such other materials, information and documentation that may be required by the Contract Documents or Owner. Notwithstanding the foregoing, Owner reserves the right to require any of the foregoing items or portions thereof which may have been completed prior to final completion as a condition to payment of any progress payment to be made after completion of such item(s).

6.2 Construction Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Contractor against Owner arising out of the Contractor otherwise relating to the Project, except those identified in writing by Construction Contractor as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Contractor hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS

7.1 Construction Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules, and samples. Construction Contractor shall prepare a submittal schedule prior to the delivery of the guaranteed maximum price proposal and shall submit the schedule(s) for Owner's and Design Professional's approval. The submittal schedule shall (1) be coordinated with Construction Contractor's construction schedule, and (2) allow Design Professional reasonable time to review submittals. Construction Contractor shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in accordance with the approved submittal schedule, or in the absence of an approved submittal schedule, in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Construction Contractor shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to Design Professional for review and action. Design Professional will transmit them back to Construction Contractor who will then issue the submittals to the affected subcontractor for fabrication or revision. Construction Contractor shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. Construction Contractor shall request Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. Construction Contractor shall advise Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable Design Professional to prioritize requests coming from Construction Contractor. Construction Contractor shall advise Owner and Design Professional in writing when timely response is not occurring on any of the above. Shop drawings and other submittals submitted in accordance with this Section 7 are not Contract Documents. Their purpose is to demonstrate the way by which Construction Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. By submitting shop drawings and other submittals, Construction Contractor represents to Owner and Design Professional that Construction Contractor has: (a) reviewed and approved them, (b) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (c) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals except that Construction Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Professional's approval of submittals unless Construction Contractor has specifically informed Design Professional in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued authorizing the deviation. Construction Contractor shall not be relieved of responsibility for errors or omissions in submittals by Design Professional's approval thereof. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Contractor to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Contractor. All such requests, to the extent possible, should be submitted by

Construction Contractor to Design Professional prior to the setting of the GMP.

7.2 If Construction Contractor wishes to furnish or use a substitute item of material or equipment, Construction Contractor shall make application to Owner and Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Owner and Design Professional in evaluating the proposed substitute. The Design Professional may require Construction Contractor to furnish at Construction Contractor's expense additional data about the proposed substitute.

7.3 If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, Construction Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction acceptable to Design Professional, if Construction Contractor submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.4 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. Acceptance of a substitute shall be at Owner's sole discretion. No substitute shall be ordered, installed, or utilized without Owner's and Design Professional's prior written acceptance, which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Contractor to furnish at Construction Contractor's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Contractor to reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating the proposed substitute.

8. PRE-CONSTRUCTION PHASE SERVICES

Construction Contractor shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of the Contract:

8.1 Review, Recommendations and Warranty: Construction Contractor shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Pre-Construction Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). Construction Contractor shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives, including assistance to Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. Construction Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. Construction Contractor shall submit to Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. Construction Contractor shall promptly call to Owner's and Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. Construction Contractor shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by the guaranteed maximum price proposal. The Program Verification Phase, Program Estimate, Schematic Design Estimate, and Design Development Estimate shall have the meanings ascribed to them in the Design Agreement. Construction Contractor acknowledges that accurate construction cost estimates are critical to Owner's ability to establish and verify its budget for the Project and, therefore, Construction Contractor shall work closely with Design Professional and use its best skill and judgment as a contractor familiar with the construction industry in the locality of the Project in preparing its construction cost estimates.

8.2 Review Reports: Within ten (10) days after receiving the documents produced by Design Professional, Construction Contractor shall perform a specific review thereof, focused upon factors of a nature encompassed in Subsection 8.1 above and on factors set out in Subsections 8.3 and 8.4 below. Within the same ten (10) day period, Construction Contractor shall submit to Owner, with copies to Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as Construction Contractor may deem appropriate, and all actions taken by Design Professional with respect to same, any comments Construction Contractor may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments. AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN THE GMP AMENDMENT, CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, EXCEPT AS MAY BE SPECIFICALLY ALLOCATED TO CONSTRUCTION CONTRACTOR IN THE CONSTRUCTION DOCUMENTS (E.G. DESIGN- BUILD SYSTEMS), THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE.

FURTHER, CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME AND WITHIN THE GMP.

8.3 Long Lead Procurement: Construction Contractor shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies) and consult with Design Professional concerning same. When each item is identified, Construction Contractor shall notify the subcontractors, Owner and Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. Construction Contractor shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and promptly advise Owner and Design Professional in writing of any problems or possible delays in delivery.

8.4 Interfacing:

8.4.1 Construction Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap and sequenced to maintain completion of all Work on schedule. Construction Contractor shall give particular attention to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to the other separate subcontractors.

8.4.2 Without assuming any design responsibilities of Design Professional, Construction Contractor shall include in the reports required under Subsection 8.2 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that Design Professional may arrange for necessary corrections.

8.5 General Conditions/General Requirements Expenses: Construction Contractor shall submit to Owner for Owner's review before the earlier of: (a) the completion of the Schematic Design Phase (Phase I), or (b) sixty (60) days after Owner's Notice to Proceed with the Pre-Construction Phase Services: (i) an itemized statement of Construction Contractor's "General Conditions" expenses for the Project, which, once agreed to by Owner shall be an Attachment to the GMP Amendment, (ii) an itemized statement of Construction Contractor's "General Requirements" expenses for the Project, and (iii) Construction Contractor's proposed Construction Contractor Fee, if not already established in the Agreement. The foregoing statements shall be in form and substance and with such detail as may be required by Owner. General Conditions' expenses and General Requirements expenses shall each be line items in the Schedule of Values to be attached to the GMP Amendment.

8.6 Facilities Condition Assessment: During the Pre-Construction Phase, Construction Contractor (in addition to its investigation and assessment obligations contained elsewhere in the Contract Documents) shall perform a thorough assessment of the Project site and facilities, if any,

located thereon and/or thereunder. Construction Contractor's assessment shall include at a minimum: (a) confirming field measurements of any existing conditions related to the Work, (b) confirming the location, condition, layout and nature of the Project site and surrounding areas, (c) working with Design Professional to identify any discrepancies between existing "as-built" documentation and actual site conditions. Owner shall not be required to make any adjustment in either the Contract Amount or Contract Time in connection with any failure by Construction Contractor to perform a thorough assessment.

9. CONSTRUCTION PHASE SERVICES

Construction Contractor shall provide the following services in addition to any other Construction Phase Services required by the terms of the Contract:

9.1 Construction Contractor shall arrange for all job-site facilities as required by Owner and necessary to enable Construction Contractor and Design Professional to perform their respective duties and to accommodate any representatives of Owner which Owner may choose to have present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.

9.1.1 Tangible personal property, otherwise referred to as job-site facilities, include, such things as trailers, toilets, computers, and any other equipment necessary to carry on the Work. The method of acquiring such job-site facilities, which are planned to become the property of Owner at the conclusion of the Work, shall be evaluated based on their cost over the life of the Project. Owning versus leasing shall be considered by Construction Contractor, obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usable life of the item. Construction Contractor shall present its evaluation with recommendation to Owner for approval.

9.1.2 When Construction Contractor wishes to supply job-site facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in Subsection 9.1.1 above. If leasing is found to be the least expensive approach, then it may lease such job-site facilities from its own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

9.1.3 For all such job-site facilities purchased, which may become the property of Owner at the conclusion of the Work, Construction Contractor shall maintain ownership, maintenance, and repair responsibilities of such facilities until final acceptance of the Work. Reimbursement for cost of such equipment will be made at the conclusion of the Work at the documented purchase price. At that time, Construction Contractor shall provide Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to Owner or to its designee.

9.1.4 Construction Contractor is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to Owner, Owner may refuse acceptance

of the equipment if Owner determines, in its sole discretion, that the equipment has not been properly cared for by Construction Contractor or that such acquisition would not otherwise be in the best interest of Owner. In such event, Construction Contractor will be reimbursed for such item in accordance with Section 5 of the Agreement.

9.2 Construction Contractor's administration of the Work shall include the following:

9.2.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

9.2.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

9.2.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

9.2.4 Provide labor relations management for a harmonious, productive Project.

9.3 Construction Contractor also shall provide job site administration functions during construction to assure proper documentation, including the following:

9.3.1 Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Construction Contractor shall arrange and conduct regular weekly Project status meetings with Design Professional and Owner.

Construction Contractor shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Construction Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Contractor shall note the action to be taken by such party or parties. Construction Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Contractor shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution. Construction Contractor shall prepare written minutes of job meetings described in this Subsection and deliver copies of such written minutes to Owner and Design Professional within three (3) days of each meeting.

9.3.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to Design Professional of such submittals for action, and closely monitor their review process.

9.3.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all

subcontractors and maintain a material and equipment expediting log.

9.3.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.

9.3.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to Design Professional in writing. Monitor all such requests and implement procedures for timely follow-up on all such requests.

9.3.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner and Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, Design Professional, and any permitting authority inspectors.

9.3.7 Subcontractors Progress: Prepare periodic deficiency logs and punch list logs for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion. The deficiency logs shall be maintained based off of any deficiencies identified by Design Professional, building department inspectors, material testing firms, manufacturers, threshold inspectors, and any other inspectors. These two (2) types of logs must be maintained and continually updated by Construction Contractor and updated versions must be submitted by Construction Contractor, to Owner with Construction Contractor's monthly payment application as an express condition precedent to Construction Contractor's right to payment. The data on the logs submitted with Construction Contractor's payment application must be current and the logs must be updated no more than seven (7) days prior to the submission of the payment application.

9.3.8 Substantial Completion: Pursuant to the provisions of Subsection 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Contractor and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for Owner's review.

9.3.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner and Design Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner, through Design Professional, and as an express condition precedent to final payment, all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books.

9.3.10 Start-Up: With Owner's personnel, direct the check-out of utilities, operations, systems, and equipment for readiness and assist in their initial start-up and testing by the subcontractors. Additionally, Construction Contractor shall coordinate, participate and, if directed by Owner, conduct an Owner system-wide commissioning process reasonably satisfactory to Owner in form and content as an express condition precedent to its entitlement to final payment.

9.3.11 As-Built Drawings: Pursuant to the terms of Subsection 10.2 hereafter, Construction Contractor shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Contractor into the final as-built drawings.

9.4 Construction Contractor shall maintain at the Project site, originals, or copies of, on a current basis, all Project files and records, including the following administrative records:

9.4.1 Subcontracts and Purchase Orders

9.4.2 Subcontractor Licenses

9.4.3 Shop Drawing Submittal/Approval Logs

9.4.4 Equipment Purchase/Delivery Logs

9.4.5 Contract Drawings and Specifications with Addenda, RFIs

9.4.6 Warranties and Guarantees

9.4.7 Cost Accounting Records

9.4.8 Labor Costs

9.4.9 Material Costs

9.4.10 Equipment Costs

9.4.11 Cost Proposal Requests

9.4.12 Payment Request Records

9.4.13 Meeting Minutes

9.4.14 Cost-Estimates

9.4.15 Bulletin Quotations

9.4.16 Lab Test Reports

9.4.17 Insurance Policies and/or Insurance Certificates, Additional Insured Endorsements and Bonds

9.4.18 Contract Changes

9.4.19 Permits

9.4.20 Material Purchase Delivery Logs

9.4.21 Technical Standards

9.4.22 Design Handbooks

9.4.23 “As-Built” Marked Prints

9.4.24 Operating & Maintenance Instructions

9.4.25 Daily Progress Reports

9.4.26 Monthly Progress Reports, Meetings minutes

9.4.27 Correspondence Files

9.4.28 Transmittal Records

9.4.29 Inspection Reports

9.4.30 Bid/Award Information

9.4.31 Bid Analysis and Negotiations

9.4.32 Punch Lists

9.4.33 PMIS Schedule and Updates

9.4.34 Suspense (Tickler) Files of Outstanding Requirements

9.4.35 Policy and Procedure Manual

9.4.36 Safety Procedures and Safety Logs

9.4.37 Accident/Incident Reports

9.4.38 Evacuation Route

9.4.39 Material Safety Data Sheets

9.4.40 Documentation related to sustainability (e.g. “green globes”)

9.4.41 Environmental Reports

9.4.42 Description of Environmental Issues, if any

9.4.43 Any other Project related items

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

9.5 Construction Contractor shall provide the following services with respect to the Work, to facilitate the smooth, successful, and timely occupancy of the Project by Owner:

9.5.1 Construction Contractor shall provide a milestone schedule for required deliverables to Owner.

9.5.2 Construction Contractor shall provide consultation and Project management to facilitate Owner’s occupancy of the Project and provide transitional services to place the Work “on line” in such conditions as will satisfy Owner’s operations requirements. The services include Construction Contractor’s coordination of the delivery of Owner supplied furniture, fixtures, and equipment for the Project.

9.5.3 Construction Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to Owner in such a manner as to promote their usability. Construction Contractor shall provide Owner’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be videotaped by Construction Contractor for subsequent presentation to Owner’s operations and maintenance personnel.

9.5.4 Construction Contractor shall secure required guarantees and warranties and shall assemble and deliver same to Owner in the manner required by Owner.

9.6 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Construction Contractor by the Contract Documents, Design Professional will specify performance and design criteria that such services must satisfy. Construction Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Professional. Owner and Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided Design Professional has specified to Construction Contractor performance and design criteria that such services must satisfy. Design Professional will review, approve, or take other appropriate action on submittals for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

10. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS

10.1 Construction Contractor shall prepare, maintain, and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in this Agreement, including Exhibit B to the Agreement. Construction Contractor's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Contractor. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Contractor to Owner or Design Professional pursuant to the Contract Documents.

10.2 Construction Contractor shall maintain in a safe place at the Project site one as-built copy and one permit set of the Contract Documents, including all drawings, specifications, addenda, amendments, Change Orders and Construction Change Directives, as well as all written interpretations and clarifications issued by Design Professional, in good order and legibly annotated to show all changes made during construction. The as-built Contract Documents shall be continuously updated by Construction Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders and Construction Change Directives, and all concealed and buried installations of piping, conduit, and utility services. Construction Contractor shall certify the accuracy of the updated as-built Contract Documents. As a condition precedent to Owner's obligation to pay Construction Contractor, Construction Contractor shall provide evidence, satisfactory to Owner and Design Professional, that Construction Contractor is fulfilling its obligation to continuously update the as-built Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the as-built Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The as-built Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The as-built Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Contractor's entitlement to final payment, the as-built

Contract Documents, samples, and shop drawings shall be delivered to Design Professional by Construction Contractor for Owner.

10.3 Construction Contractor shall advise Owner, its representatives, and Design Professional of their requested or required participation in any meeting or inspection giving each at least one (1) week written notice unless such notice is made impossible by conditions beyond Construction Contractor's fault and control, in which case at least forty-eight (48) hours prior written notice must be given.

11. CONTRACT TIME AND TIME EXTENSIONS

11.1 Construction Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Contractor or anyone for whom Construction Contractor is responsible or liable. Unless expressly noted otherwise in the Contract Documents, Construction Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, coordination of trades and subcontractors, coordination of drawings to existing as-built conditions and site conditions, and the coordination of Owner's suppliers and contractors as set forth in Section 14 of these General Terms and Conditions.

11.2 Should Construction Contractor actually be obstructed or delayed in the critical path of the prosecution of, or completion of, the Work as a result of unforeseeable causes: (a) beyond the control of Construction Contractor, (b) not due to Construction Contractor's fault or neglect, and (c) which could not be avoided by the exercise of reasonable diligence, including: (i) acts of God or of the public enemy, (ii) acts of government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine regulation, (vii) strikes, (viii) lockouts, or (ix) weather conditions abnormal for the period of time (as defined below) which exceed the aggregate number of days allotted for adverse weather conditions in Construction Contractor's schedule approved by Owner, Construction Contractor shall notify Owner and Design Professional in writing within forty-eight (48) hours after the commencement of such delay (which time period shall control over any conflicting time periods specified elsewhere herein) stating the cause or causes thereof, or be deemed to have waived any right which Construction Contractor may have had to request a time extension therefor. "Abnormal for the period of time" for purposes of this Section means rain or bad weather (e.g. named tropical storms or hurricanes), only when such rain or bad weather is in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion, as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Ashville, North Carolina, for Metropolitan Atlanta, Georgia, Reporting Station. Construction Contractor's schedule shall allow the number of days it deems necessary for rain and bad weather when Construction Contractor prepares its schedule and not every day of adverse weather conditions abnormal for the period of time shall be grounds for an extension of time. Construction Contractor and Owner acknowledge that any Project site rain gauge measurements will not be relied upon for determining rain fall amounts. Contractor shall use commercially reasonable efforts to mitigate the effects of any delays described in this Section so as to minimize any effect on the schedule for completion of the Work.

11.2.1 Owner shall have the right, at any time, whether or not Construction Contractor is behind schedule, to order Construction Contractor to accelerate its Work. In the event that Owner orders Construction Contractor to accelerate its Work and Construction Contractor (i) is not behind schedule, and (ii) believes that acceleration will increase the cost of performance, Construction Contractor, shall be required to submit a Claim, hereinafter defined, for increase pursuant to Section 13 of these General Terms and Conditions. Any such Claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

11.3 Construction Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If Construction Contractor encounters on the Project site any materials reasonably believed by Construction Contractor to be petroleum or petroleum related products or other hazardous or toxic substances (collectively, "**hazardous materials**") not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material which have not been rendered harmless, Construction Contractor immediately shall (i) stop Work in the area affected, and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by Construction Contractor or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Contractor shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such hazardous material.

11.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Construction Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This Section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom Owner is liable, and such delays have a cumulative total of more than twenty-one (21) calendar days after receipt by Owner of written notice from Construction Contractor of such fault or neglect, Construction Contractor may make a Claim for its actual and direct delay damages accruing after said twenty-one (21) calendar days; provided, however, Construction Contractor expressly acknowledges and agrees that its actual and direct delay damages shall not exceed, and shall be limited to no more than One Thousand and No/100 Dollars ($1,000.00) per calendar day. In no event shall Owner be liable to Construction Contractor whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, punitive, special, indirect, incidental, or consequential damages of any kind or nature whatsoever. For the avoidance of doubt, Owner's exercise of its reserved right to change, increase or decrease the Work shall not be deemed to be "fault or neglect of Owner" serving as the

basis for additional compensation under this Subsection 11.4. Claims for increased compensation or extension of time for such changes, increases or decreases shall be governed by Section 12 of these General Terms and Conditions.

12. CHANGES IN THE WORK

12.1 Owner shall have the right at any time during the progress of the Work, without invalidating the Contract, to change, increase or decrease the Work. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Contractor for any increased compensation or adjustment to the Contract Time without such written order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Construction Contractor shall familiarize itself with Owner's Change Order approval process and shall manage progress of the Work accordingly.

12.1.1 Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Construction Contractor's estimate shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and Construction Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Construction Contractor fails to submit a written proposal or request additional time for submitting the proposal within the fourteen (14) day time period, it shall be presumed that the change described in Owner's request for a proposed change will not result in a modification to the Contract Amount or Contract Time and, if directed by Owner in writing, the change shall be performed by Construction Contractor without additional compensation. Owner's request for a proposed change does not authorize Construction Contractor to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change be performed, the Work shall be authorized according to Change Order or Construction Change Directive procedures set forth herein.

12.1.2 If Construction Contractor observes any circumstance that may, in its opinion, be a change in the scope of the Work that justifies a change to the Contract Amount or Contract Time or Construction Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then Construction Contractor may submit a written Change Order Request ("**COR**") (to be followed by substantiating data), in a format acceptable to Owner, and must specify the reasons for such proposed change, including relevant circumstances and impacts on the schedule. Construction Contractor shall submit a written price proposal concurrently with the COR. Contractor may request additional compensation and/or time through a COR but not for instances that Construction Contractor knew or reasonably should have known occurred more than

fourteen (14) days prior to the date the COR is submitted. Construction Contractor's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Contract Amount or the Contract Time for the alleged change. Any such COR that is approved by Owner will be incorporated in a Change Order or Construction Change Directive. If Owner determines that the Work in question is not a change in the scope of the Work and the COR is denied but Construction Contractor believes that it does have merit, the Contractor may submit a Claim in accordance with the procedures set forth herein.

12.2 A Change Order, in the form attached as **Exhibit J** to the Agreement, shall be prepared by Construction Contractor, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Contractor and Owner concerning requested changes. Construction Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Contractor shall mutually agree. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Amount and the Contract Time.

12.3 If Owner and Construction Contractor are unable to agree on a Change Order for a requested change, Construction Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Contractor disagrees with Owner's adjustment determination, Construction Contractor must make a Claim pursuant to Section 13 of these General Terms and Conditions or else be deemed to have waived any Claim it might otherwise have had on that matter.

12.4 In the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP by the amount of Construction Contractor's actual and reasonable direct Cost of the Work (including bond premiums). In the event such change Work is performed by subcontractors or sub-subcontractors, a maximum ten percent (10%) markup for each of those subcontractors and sub-subcontractors for all overhead and profit on their direct labor and material costs and actual equipment costs shall be permitted; provided, however, there shall be no mark-up for a subcontractor's General Conditions expenses on the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order and Construction Change Directive Work to be performed by such subcontractor. Construction Contractor shall not be entitled to any mark-up for Change Order work, nor shall the Construction Management Fee be increased as a result of any Change Order work; provided, however, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in the GMP Amendment to be exceeded by Five Hundred Thousand and No/100 Dollars ($500,000.00), Construction Contractor shall be entitled to an increase to the Construction Management Fee in the amount of a fixed percentage of the amount that exceeds the sum of the original GMP plus Five Hundred Thousand and No/100 Dollars ($500,000.00). If at the time final payment is made to Construction Contractor the total Cost of the Work has been decreased by approved Change Orders in an amount causing the original GMP as set forth in the

GMP Amendment to be reduced by more than One Hundred Thousand and No/100 Dollars ($100,000.00), then the Construction Management Fee shall be reduced in the amount of a fixed percentage of the Reduction amount, such fixed percentage to be established at the time the GMP is initially agreed upon by the parties. Further, there shall be no additional General Conditions expenses payable to Construction Contractor on the first Five Hundred Thousand and No/100 Dollars ($500,000.00) of Change Order or Construction Change Directive Work.

12.5 Owner shall have the right to conduct an audit of Construction Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Contractor's claim with respect to Construction Contractor's costs associated with any Change Order or Construction Change Directive.

13. CLAIMS AND DISPUTES

13.1 The term "**Claim**" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2 Initial notice of Claims by Construction Contractor shall be made in writing to Owner and Design Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within thirty (30) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Subsection 12.4 hereof.

13.3 Construction Contractor shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents during the pendency of any Claim.

13.4 Prior to the initiation of any action or proceeding permitted by the Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Georgia. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Georgia law.

13.5 Any litigation between Owner and Construction Contractor (which term for the purposes of this Section shall include Construction Contractor's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof or performance of Work hereunder, shall be brought, maintained and pursued only in the appropriate State courts of the State of Georgia; and Owner and Construction Contractor each hereby waive and renounce any and all rights and options

which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. The exclusive venue of any such litigation between Owner and Construction Contractor shall lie and be only in the State or Superior Courts of DeKalb County, Georgia. Construction Contractor consents and submits to personal jurisdiction of any such court, and expressly waives all objections or defenses to personal jurisdiction or venue in these courts, or that the forum is inconvenient for the purpose of carrying out this provision. OWNER AND CONSTRUCTION CONTRACTOR EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH LITIGATION.

13.6 In the event of any claim or dispute arising out of the Contract, the prevailing party shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees (including fees for determining the amount of fees due) at all levels, including at trial, on appeal, and in bankruptcy and post-judgment proceedings. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed or interpreted as (1) denying to any party any remedy or defense available to such party under the laws of the State of Georgia; (2) the consent of the State of Georgia or its agents or agencies to be sued; or (3) a waiver of sovereign immunity of the State of Georgia beyond the waiver provided under Georgia law.

14. OTHER WORK

14.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Contractor prior to starting any such other work. If Construction Contractor believes that such performance will involve additional expense to Construction Contractor or require additional time, Construction Contractor shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Contractor fails to send the above required seven (7) calendar days' notice, Construction Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

14.2 Construction Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Contractor shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Contractor shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.

14.3 If any part of Construction Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Contractor shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Contractor first became aware of the delay, defect, or deficiency or by the scheduled commencement of Construction Contractor's dependent Work, whichever occurs first. Construction Contractor's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Contractor's Work.

15. INSURANCE

15.1 During the term of the Agreement or for such longer period as specified in the Contract Documents or required by applicable law, Construction Contractor shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Georgia. Simultaneously with the execution and delivery of the Agreement by Construction Contractor, Construction Contractor has delivered to Owner properly executed Certificates of Insurance (on the modified ACCORD form attached as Exhibit N to the Agreement) and required additional insured endorsements in form acceptable to Owner, evidencing the fact that Construction Contractor has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to

Owner, on a timely basis, if requested by Owner. These Certificates, additional insured endorsements and policies shall contain provisions that thirty (30) calendar days written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Contractor shall also notify Owner, in a like manner, within two (2) days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Contractor from its insurer, and nothing contained herein shall relieve Construction Contractor of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to the Contract. In no event shall any failure of Owner to receive copies or certificates of policies required under the Contract be construed as a waiver by Owner of Construction Contractor's obligations to obtain insurance pursuant as required by the Contract. The obligation to procure and maintain insurance required by the Contract is a separate responsibility of Construction Contractor and independent of its duty to furnish a copy or certificate of such insurance policies.

15.2 All insurance policies required by the Contract shall include the following provisions and conditions by endorsement to the policies:

15.2.1 The term "**The School District and DeKalb County Board of Education**" shall include the DeKalb County School District, the DeKalb County School Board, a body corporate, the DeKalb County Public School System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices thereof and individual members, officers, and employees thereof in their official capacity, and/or while acting on behalf of the DeKalb County School Board.

15.2.2 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Contractor to meet the requirements of the Contract shall name The School District and the DeKalb County Board of Education as that name is defined in Subsection 15.2.1, above, as an additional insured as to the operations of Construction Contractor under the Contract Documents and shall contain a severability of interest's provisions.

15.2.3 Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Contractor.

15.2.4 All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to the Contract, and the "Other Insurance" provisions of any policies obtained by Construction Contractor shall not apply to any insurance or self-insurance program carried by Owner applicable to the Agreement.

15.2.5 The Certificates of Insurance, which are to be provided pursuant to Subsection 15.1 above, must identify the Contract and be on the form attached to the Agreement

as Exhibit N.

15.2.6 All insurance policies shall be fully performable in DeKalb County, Georgia, and shall be construed in accordance with the laws of the State of Georgia.

15.2.7 All insurance policies to be provided by Construction Contractor pursuant to the terms hereof must expressly state that the insurance company will accept service of process in DeKalb County, Georgia and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in DeKalb County, Georgia.

15.3 The acceptance by Owner of any evidence of the insurance coverages and limits required by the Contract, including any Certificate of Insurance, policy, or additional insured endorsement, does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the evidence of insurance are in compliance with the requirements of the Contract.

15.4 Before starting and until completion of all Work required hereunder or for such longer period as otherwise specified herein or required by applicable law, Construction Contractor shall procure and maintain insurance of the types and to the limits specified in Exhibit E to the Agreement, "Insurance Coverage," which is attached hereto and made a part hereof Construction Contractor shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant's or subcontractor's work or services or for such longer period as otherwise specified herein or required by applicable law, insurance of the types and to the limits specified in Exhibit E to the Agreement, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.

15.5 If any insurance provided pursuant to the Contract expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies and applicable additional insured endorsements, shall be furnished to Owner thirty (30) calendar days prior to the date of expiration.

15.6 Should at any time Construction Contractor not maintain the insurance coverages required in the Agreement, Owner may cancel the Agreement and any Amendments issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge Construction Contractor for such coverages purchased. If Construction Contractor fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Construction Contractor under the Contract. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under the Contract.

15.7 All insurance companies from whom Construction Contractor obtains the insurance policies required hereunder must meet the following minimum requirements:

15.7.1 The insurance company must be duly licensed and authorized by the

Department of Insurance of the State of Georgia to transact the appropriate insurance business in the State of Georgia.

15.7.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of the Agreement.

15.7.3 The insurance company must have an A. M. Best policyholder rating of either "A+", "A", or "A-".

15.7.4 The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.

15.8 Unless otherwise noted in the Contract Documents, Owner shall maintain property insurance with respect to the Project. The property insurance shall include the interests of Construction Contractor and its subcontractors and suppliers in the Project. The property insurance shall be an "All Risk" type of policy, with coverage amounts, deductibles and sublimit established by Owner. The property insurance shall not cover loss to any of Construction Contractor's or its subcontractors owned, leased, or rented property, including trailers, tools, supplies and equipment. Any losses under the property insurance shall be adjusted by Owner, with the cooperation of Construction Contractor, with any claim check being made payable to Owner. Construction Contractor shall be liable and responsible for all property insurance deductibles up to the amount of Five Thousand and No/100 Dollars ($5,000.00) on each loss occurrence.

15.9 Insurance requirements itemized in the Contract and required of Construction Contractor shall be provided on behalf of all sub-contractors to cover their operations performed under the Contract. Construction Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

15.10 Each insurance policy required by the Contract shall:

15.10.1 Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability; and Not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Owner.

15.11 Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

15.12 The procuring of required policies of insurance shall not be construed to limit Construction Contractor's liability or to fulfill the indemnification provisions and requirements of the Contract.

15.13 Construction Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of the Contract and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

15.14 Claims Made Policies will be accepted for Professional Liability and Pollution Liability (Hazardous Materials), and such other risks as are authorized by Owner. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than four (4) years. If provided as an option, Construction Contractor shall purchase the extended reporting period on cancellation or termination unless a new policy is affected. Any new policy shall maintain the original retroactive date evidenced at the commencement of the Contract.

15.15 Certificates of Insurance or, if required by Owner, certified copies of the applicable insurance policies, and applicable additional insured endorsements, evidencing Claims Made or Occurrence Form Coverage and conditions to the Contract are to be furnished to Owner prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract, when applicable. All insurance certificates or, if required by Owner, certified copies of the applicable insurance policies, and applicable additional insured endorsements or shall be received by Owner before Construction Contractor will be allowed to commence or continue work. All certificates will reference the contract, bid, project or job number on the certificate. All insurance carriers listed on the certificate must have their corresponding AM Best carrier ID listed.

15.16 Notices of Accidents (occurrences) and Notices of Claims associated with the Work being performed under the Contract, shall be provided to Construction Contractor's/ subcontractor's/consultant's insurance company and Owner as soon as practicable after notice to the insured.

16. WAIVER OF SUBROGATION

16.1 Construction Contractor waives all rights of subrogation against Owner, Design Professional, the Program Manager (if any), and the board members, directors, officers, agents, employees, subconsultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance required to be maintained by Construction Contractor or its subcontractors, to the extent such damages or injuries are covered by such insurance. Construction Contractor shall require similar waivers from all of its subcontractors.

16.2 If any policies of insurance required to be maintained by Construction Contractor or its subcontractors require an endorsement to provide any waiver of subrogation referenced above, Construction Contractor shall cause such policies to be so endorsed.

17. INDEMNIFICATION

To the fullest extent permitted by law, the Construction Contractor shall indemnify, defend, and hold harmless the Owner, the DeKalb County School District, and the Owner's Program Manager, and all of their respective past, present and future officials, officers, employees, and agents (hereinafter collectively referred to as the "Owner Indemnitees"), from and against 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 Construction Contractor's performance of this Contract or of the Work, to the extent caused in part by the Construction Contractor or anyone for whose acts the Construction 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 Indemnitees; provided, however, that the Construction Contractor shall not be required to indemnify, defend, or hold harmless the Owner Indemnitees against claims, liabilities, damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner or of the Owner Indemnitees. Construction Contractor's indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

18. CLEANUP AND PROTECTIONS

18.1 Construction Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Contractor fails to keep the Project site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to back charge Construction Contractor for the costs of such clean up. At the completion of the Work, Construction Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

18.2 Any existing surface or subsurface improvements, including pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Contractor at its expense to condition at least equal to that existing at the time of Construction Contractor's commencement of the Work.

18.3 Construction Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Protection of construction materials or equipment stored on the site from weather, theft and damage is the sole responsibility and risk of Construction Contractor.

18.4 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by Construction Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Construction Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

18.5 Construction Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work, and (ii) the building in the event of partial occupancy.

18.6 All labor, material and equipment required to provide and maintain controls for the duration of the Project including those associated with traffic control (including all signage, street, sidewalks barriers and fencing), storm water and pollution controls shall be supplied and paid for and maintained by Construction Contractor.

19. ASSIGNMENT

19.1 Construction Contractor shall not assign the Contract or any part thereof, without the prior consent in writing of Owner. Any attempted assignment in violation of the foregoing prohibition without Owner's prior written consent shall be void. If Construction Contractor does, with approval, assign the Contract or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Contractor all of the obligations and responsibilities that Construction Contractor has assumed toward Owner.

20. PERMITS, LICENSES AND TAXES

20.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Contractor. Permits and licenses to be acquired by Construction Contractor with the assistance of Design Professional include building, site, Department of Education, and utility permits, as well as all Health Department (DER) permits required for the construction or relocation of DeKalb County water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in the Contract. If Construction Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Construction Contractor shall bear all costs arising therefrom. All costs incurred by Construction Contractor with respect to performing its obligations under this Subsection 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Contract. Owner shall fully cooperate with Construction Contractor where necessary. Construction Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

20.2 Construction Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

21. TERMINATION FOR DEFAULT

21.1 Construction Contractor shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Section, if Construction Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform

the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2 If Owner determines that Construction Contractor is in default under the Contract, Owner shall notify Construction Contractor in writing of Construction Contractor's default(s). If Owner determines that Construction Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Contractor of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Contractor, take assignments of any of Construction Contractor's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Contractor is in default under the Contract or the subsequent determination that Construction Contractor has failed to satisfactorily cure its default, Owner may rely solely upon Design Professional's certification to Owner that in Design Professional's opinion Construction Contractor is in default or has failed to satisfactorily cure its default.

21.3 If Owner deems any of the foregoing remedies necessary, Construction Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Contractor shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Management Fee earned and the Cost of the Work incurred prior to Construction Contractor's right to continue performance under the Contract being terminated. Any amounts to be paid to Owner by Construction Contractor pursuant to this Subsection 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

21.4 The liability of Construction Contractor hereunder shall extend to and include the

full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Construction Contractor's default, Construction Contractor shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

21.5 If, after notice of termination of Construction Contractor's right to proceed pursuant to this Section, it is determined for any reason that Construction Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Contractor provided herein, then such termination shall be deemed a termination for Owner's convenience and Construction Contractor's remedies against Owner shall be the same as and limited to those afforded Construction Contractor under Subsection 22.1 below.

22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

22.1 Owner shall have the right to terminate the Contract without cause upon seven (7) calendar days' written notice to Construction Contractor. In the event of such termination for convenience, Construction Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Contractor shall not be entitled to any other or further recovery against Owner, including damages or any anticipated profit on portions of the Work not performed.

22.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Contractor two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Contractor be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents; provided, however, if the ordered suspension exceeds ninety (90) calendar days, Construction Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension. When all or a portion of the Work is suspended for any reason, Construction Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage.

23. COMPLETION

23.1 When the entire Work (or any portion thereof designated in writing by Owner) is substantially complete, Construction Contractor shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial

Substantial Completion). The issuance of a Certificate of Occupancy or Conditional Certificate of Occupancy for the Work shall be an express condition precedent to Contractor's right to request that Design Professional issue a Certificate of Substantial Completion. The written notice from Construction Contractor referenced in the first sentence of this Subsection shall include a proposed punch list of all items of Work to be completed or corrected by Construction Contractor. Within a reasonable time thereafter, Owner, Construction Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Contractor in writing giving the reasons therefor. In such case, Construction Contractor shall pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Contractor and include a final punch list of items to be completed or corrected by Construction Contractor before final payment. Such final punch list shall be in compliance with the Contract Documents and all applicable laws. Accordingly, Design Professional shall provide the final punch list to Construction Contractor within seven (7) calendar days after Construction Contractor has achieved Substantial Completion. Construction Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Contractor to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this Section for each building, structure, or phase of the Project. Owner shall have the right to exclude Construction Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or partial Substantial Completion), but Owner shall allow Construction Contractor reasonable access to complete or correct items on the final punch list.

23.2 When Construction Contractor believes it has fully performed all of the Work, including all punch list items, Construction Contractor shall deliver to Owner a written affidavit from Construction Contractor certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Contractor at the same time it submits its final Application for Payment, which Construction Contractor shall submit within one hundred twenty (120) days of the date of Substantial Completion. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Design Professional determine Construction Contractor has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Contractor, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Contractor's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Contractor submits: (1) the Interim and

final Release and Affidavit in the forms attached to the Agreement as Exhibit H, (2) consent of surety to final payment, (3) all close-out documentation and information required by the Contract Documents to be provided by Construction Contractor prior to its entitlement to final payment, and (4) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable.

24. WARRANTY

24.1 Construction Contractor shall obtain and assign to Owner on a non-exclusive basis all warranties given to Construction Contractor by any subcontractors or by any materialmen supplying materials, equipment, or fixtures to be incorporated into the Project. Construction Contractor expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Contractor expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers, or processors except as otherwise provided for in the Contract Documents. Further, any warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions, or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Contractor expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Contractor shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one (1) year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved. With respect to the correction of any defective or nonconforming Work, Construction Contractor shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contractor shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved. Construction Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Contractor, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Contractor), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Contractor), or normal wear and tear under normal usage.

25. TESTS AND INSPECTIONS

25.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Contractor shall provide proper, safe conditions for such access. Construction Contractor shall provide Design Professional and the Owner with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests, or approvals.

25.2 If the Contract Documents or any codes, laws, ordinances, rules, or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested, or approved, Construction Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.

25.3 If any Work that is to be inspected, tested, or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Contractor and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Contractor's expense unless Construction Contractor has given Design Professional forty-eight (48) hours' written notice of Construction Contractor's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Design Professional, such Work must, if requested by Design Professional, be uncovered for Design Professional's observation, and be replaced at Construction Contractor's sole expense.

25.4 Owner shall charge to Construction Contractor and may deduct from any payments due Construction Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by Owner and Construction Contractor was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday, or holidays.

25.5 Neither observations by Design Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Contractor from Construction Contractor's obligations to perform the Work in accordance with the Contract Documents.

25.6 Construction Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs, to the extent such re-inspections are due to the fault or neglect of Construction Contractor.

25.7 Construction Contractor shall only use a certified independent testing and balancing

services contractor to perform "Test and Balance" ("T&B") services for this Project. The T&B contractor shall be completely independent of Construction Contractor's mechanical and ventilating subcontractor(s). Construction Contractor shall be responsible for coordinating mechanical/ventilating ("HVAC") work, including HVAC control systems and T&B work.

25.8 A completed preliminary T&B report meeting the requirements of the governmental authority(ies) having jurisdiction over the Project shall be delivered by Construction Contractor to Owner prior to and as a condition of achieving Substantial Completion. Construction Contractor shall deliver to Owner the final T&B report within thirty (30) days after the date of Substantial Completion and the delivery of such final T&B report shall be a condition of final payment.

25.9 In addition to all other inspection obligations of Construction Contractor under the Contract Documents, Construction Contractor shall provide structural inspections on threshold buildings pursuant to a structural inspection plan prepared by Design Professional. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures, and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. The threshold building inspection shall be performed by a threshold inspector, certified by the State of Georgia, and approved by Owner. Construction Contractor shall promptly provide to Owner and Design Professional copies of all thresholds building inspection reports.

26. DEFECTIVE WORK

26.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Contractor shall as directed, either correct all defective Work, whether or not fabricated, installed, or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Contractor shall bear all direct, indirect, and consequential costs of such correction or removal (including fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

26.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Contractor, at Design Professional's or Owner's request, shall uncover, expose, or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Construction Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

26.3 Owner shall have the right to order Construction Contractor to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Contractor's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include Construction Contractor's failure to provide adequate labor, materials, or equipment to satisfactorily maintain the various Project schedules (including the Master Project Schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Contractor or any other person.

26.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Construction Contractor shall bear all direct, indirect, and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents, and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Contractor shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

26.5 If Construction Contractor fails, within a reasonable time (as determined by Owner) after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Contractor fails to perform the Work in accordance with the Contract Documents, or if Construction Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Contractor's services related thereto, take possession of Construction Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Contractor but which are stored elsewhere. Construction Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Section. All direct, indirect, and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Contractor, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect, and consequential costs shall include fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Construction Contractor's defective Work. Construction Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

27. SUPERVISION AND CONSTRUCTION CONTRACTOR'S REPRESENTATIVE

27.1 Construction Contractor is responsible for supervising, coordinating, and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Contractor is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Contractor shall keep on the Work at all times specified in the Itemized General Conditions Expenses Attachment to be attached to the GMP Amendment during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Contractor. All communications given to the representative shall be as binding as if given to Construction Contractor. Owner shall have the right to direct Construction Contractor to remove and replace its Project representative or any other employee of Construction Contractor or any employee of any subcontractor from the Project, with or without cause.

27.2 Construction Contractor shall maintain sufficient off-site support staff, and competent full-time staff at the Project site authorized to act on behalf of Construction Contractor to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Contractor shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit L to the Agreement. Construction Contractor shall not change any of those persons identified in Exhibit L unless mutually agreed to in writing by Owner and Construction Contractor. In such case, Owner shall have the right to approve the replacement personnel.

27.3 Construction Contractor shall establish and maintain lines of authority for its personnel and shall provide this information to Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and Design Professional. Owner and Design Professional may attend meetings between Construction Contractor and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of Construction Contractor to administer the subcontracts.

27.4 Construction Contractor shall be responsible to Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to Construction Contractor. Construction Contractor shall develop and maintain a program, acceptable to Owner and Design Professional, to assure quality control of the Work. Construction Contractor shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Contractor shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between Construction Contractor and Design Professional over the acceptability of the Work, Owner, in its sole discretion, shall have the right to determine the acceptability.

27.5 Construction Contractor shall not employ on the Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct,

nor permit any subcontractor to assign any employee of it to the Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

28. PROTECTION OF WORK

28.1 Construction Contractor shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. Loss or damage includes environmental impacts to the ground, air, and water. If Construction Contractor or anyone for whom Construction Contractor is legally liable is responsible for any loss or damage to the Work or other work or materials of Owner or Owner's separate contractors, or adjacent property, Construction Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Contractor.

28.2 Construction Contractor shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

28.3 Construction Contractor shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Contractor subject any part of the Work or adjacent property to any forces that will endanger it.

28.4 Construction Contractor shall not disturb any benchmark established by Owner with respect to the Project. If Construction Contractor, or its subcontractors, agents or anyone for whom Construction Contractor is legally liable, disturbs Owner's benchmarks, Construction Contractor shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Contractor shall be liable for all costs incurred by Owner associated therewith.

29. EMERGENCIES

29.1 Construction Contractor shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project site. Property damage includes environmental impacts to the ground, air, and water. Construction Contractor shall give Design Professional, Owner and Program Manager written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. In addition, Construction Contractor shall deliver to the Owner and Program Manager copies of any written notice of violations received by Construction Contractor or subcontractors within forty-eight (48) hours following notification by the regulatory agency. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Contractor fails to provide the forty-eight (48) hour written notice noted above, Construction Contractor shall be deemed to have waived any right it otherwise may have had to

seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Contractor is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage. The notice procedures contained in this Section 29 control over any conflicting notice periods herein.

30. USE OF PREMISES

30.1 At all times during the performance of the Work, Construction Contractor shall keep all of its operations, (including the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Contractor shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Contractor is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

30.2 Except as required by the Contract Documents or otherwise required in order for Construction Contractor to satisfy its safety and security obligations under the Contract Documents, Construction Contractor shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

30.3 Construction Contractor acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Contractor shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.

30.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Contractor the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Contractor's cost or time of performance, Construction Contractor shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

31. SAFETY

31.1 Construction Contractor is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is Construction Contractor's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off of the Project site. Construction Contractor shall develop and implement, in accordance with the requirements of the Contract Documents, a safety plan for the Work.

31.2 Construction Contractor shall comply with, and give notices required by, all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety, and building codes, environmental laws, ordinances, rules, and regulations. Construction Contractor shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, or replacement of their property. Construction Contractor's duties and responsibilities for the safety and protection of the Work and the environment shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred. Construction Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. Further, Construction Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other laws and the Contract Documents. Construction Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

31.3 At all times during the performance of the Work at the Project site, Construction Contractor shall have designated, and located on a full-time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Contractor's safety program at the Project site. Construction Contractor hereby designates its superintendent as that safety representative. Construction Contractor may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Contractor's safety representative at the Project site. Alcohol, drugs, and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Contractor, as well as those of all subcontractors and those of any other person or entity for whom Construction Contractor is legally liable (collectively referred to herein as "**Employees**"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

31.4 Construction Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Contractor shall comply with the following:

31.4.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

31.4.2 All Employees shall be provided an identification badge by Construction Contractor. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must sign in and out with Construction Contractor each day.

31.4.3 Construction Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property

without Owner's expressed prior written consent;

31.4.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

31.4.5 All Employees shall at all times comply with OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

31.4.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

31.4.7 When requested, Construction Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

31.4.8 Owner is committed to the education and safety of its students, faculty, and employees. To that end, Construction Contractor is required to ensure that all Employees do not possess criminal records that would violate Owner's standard for employment as set forth by the Georgia Department of Education. Construction Contractor shall ensure at all times that the Employees are in compliance with such standards; Interaction between the Employees and the teacher and student population is strictly prohibited; and

31.4.9 The Employees may not solicit, distribute, or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property.

31.5 At all times Construction Contractor shall adhere to Owner's safety and security regulations and shall comply with all security requirements at Owner's facilities, including all safety and security regulations and requirements, as said regulations and requirements may be modified or changed by Owner from time to time.

31.6 Construction Contractor certifies that no person or subcontractor will be assigned to work on any work pursuant to the Contract that pose any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor, or property of Owner. Further, Construction Contractor agrees to indemnify and hold harmless Owner and its officers and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Construction Contractor's employees or subcontractors assigned to do work pursuant to the Contract.

32. PROJECT MEETINGS

32.1 Prior to the commencement of Work, Construction Contractor shall attend a

preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Contractor shall attend any and all meetings convened by Owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Design Professional.

33. MATERIAL SAFETY DATA SHEET

Construction Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If any chemicals, materials, or products containing toxic substances, as defined by 29 C.F.R. 1910, Subpart Z or any local, state or federal statutes or regulations, are contained in the products used on site or incorporated into the construction by Construction Contractor or any of its subcontractors, Construction Contractor shall provide to Design Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product. Construction Contractor shall indemnify and hold harmless Owner against the cost and expense Owner incurs: (a) for remediation of a material or substance Construction Contractor brings to the site and negligently handles, or (b) where Construction Contractor fails to perform its obligations under Subsection 11.3 above, except to the extent that the cost and expense are due to Owner's fault or negligence.

34. AUDITING AND RECORDKEEPING

34.1 Construction Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of the Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Contractor shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Contractor's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Contractor shall cooperate in any audit, inspection, or copying of the documents.

34.2 Construction Contractor acknowledges and agrees that Owner is obligated to timely comply with requests for information pursuant to state and federal laws and regulations. Construction Contractor agrees and shall comply with all provision of the Georgia Open Records Act ("ORA") (O.C.G.A. § 50-18-70 et. seq.), and to make records pertaining to performance of services, provision of goods or other functions under this Agreement available for public inspection upon request, unless otherwise exempt under other provisions of the ORA.

34.3 If at any time, Owner conducts such an audit of Construction Contractor's records and documentation and finds that Construction Contractor overcharged Owner, Construction Contractor shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of Twelve percent (12%) per annum. If the Overcharged Amount is equal to or greater than Ten Thousand and No/100 Dollars ($10,000.00), Construction Contractor shall pay to Owner the

Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Contractor. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Contractor with regard to the Project or under any other agreement between Construction Contractor and Owner. If such amounts owed Construction Contractor are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Contractor hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

34.4 This Section 34, including all access, inspection, copying, auditing, reimbursement, and repayment rights shall survive the termination of the Contract.

35. COMPLIANCE WITH LAWS

35.1 Construction Contractor agrees to and shall comply, at its own expense, with all federal, state, and local laws, codes, statutes, ordinances, rules, administrative orders, regulations, and requirements applicable to the Project and to the Work, including but not limited to local building codes, fire safety and accountability codes, and other safety codes and regulations, and shall also ensure the compliance of its subcontractors, sub-subcontractors, and consultants. If Construction Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

35.2 For federally funded projects, Construction Contractor must comply with all federal rules and regulations including those defined in the Davis Bacon Wage Rate Act, the federal Education Department General Administrative Regulations (EDGAR), and those acts referred to by EDGAR, such as the Copeland Anti-Kickback Act (29 C.F.R. Part 3) and the Contract Work Hours and Safety Standards Act (28 C.F.R. Part 5).

35.3 Compliance with Federal and State Work Authorization and Immigration Laws. The Contractor and all Subcontractors and consultants must comply with all federal and state work authorization and immigration laws, and must, as a material condition of this Contract, certify compliance with O.C.G.A. §13-10-91. The required Contractor's affidavit set forth in Exhibit G must be filed with the Owner at contract execution and shall become a part of this Contract. Required subcontractor affidavits set forth in Exhibit G must be obtained and maintained by the Contractor as of the beginning date of this contract and the beginning date of each subcontract or consultant contract. A copy of each such verification shall be provided to the Owner at the time the subcontractor or consultant is retained. State officials, including officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Contractor, its Subcontractors, and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Chapter 300-10-1 *et seq.* of the Rules and Regulations of the Georgia Department of Labor. Contractor warrants that it will include a similar provision in all contracts entered into with Subcontractors for the physical performance of services in satisfaction of this Contract.

35.4 Construction Contractor further agrees to pay any expenses, including attorneys' fees, incurred by Owner as a result of such failure to comply with applicable federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project.

36. SUBCONTRACTS

36.1 Construction Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Master Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval. Construction Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

36.2 A subcontractor is any person or entity who is performing, furnishing, supplying, or providing any portion of the Work pursuant to a contract with Construction Contractor. Construction Contractor shall be solely responsible for and have control over the subcontractors. Construction Contractor shall negotiate all Change Orders, Construction Change Directives and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

36.3 When Construction Contractor submits its guaranteed maximum price proposal to Owner, Construction Contractor also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Contractor intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Contractor shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Contractor shall not enter into a subcontract with any subcontractor if Owner reasonably objects to that subcontractor. Construction Contractor shall not be required to contract with anyone its reasonably objects to. As part of the Project document file to be maintained by Construction Contractor at the Project site, Construction Contractor shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses.

36.4 All subcontracts between Construction Contractor and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall: (1) require each subcontractor to be bound to Construction Contractor to the same extent Construction Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Contractor to Owner at the election of Owner upon termination of Construction

Contractor, (3) provide that Owner and its officers and employees will be additional indemnified parties of the subcontract, (4) provide that Owner and its officers and employees will be additional insureds on all insurance policies required to be provided by the subcontractor except workman's compensation and professional liability, if applicable, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, (7) provide that the Work being performed pursuant to such subcontract be performed in accordance with the requirements and intent of the Contract Documents and provide for retainage as specified Subsection 4.5 of these General Terms and Conditions; (8) provide for submission of Applications for Payment in form acceptable to Owner, together with reasonable backup and supporting information, together with Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond, in the forms required by the Contract, (9) provide that each subcontractor, sub-subcontractor and supplier furnish to Construction Contractor or the applicable subcontractor, as the case may be, in a timely fashion all information necessary for the preparation and submission of the reports required by the Contract; (10) provide that the subcontractor will resolve all disputes involving Owner in the same manner as provided in the Contract, and (11) incorporate the requirements of Exhibit E to the Agreement into all of its subcontracts and, upon Owner's request, to provide copies of such insurance policies and additional insured endorsements, to Owner (and require similar incorporation into all sub-subcontracts). Construction Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Subsection 36.4 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors. Construction Contractor shall make available for Owner's review and copying or, at Owner's request, deliver to Owner true and complete copies of Construction Contractor's agreements with subcontractors and suppliers.

36.5 Each subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work. Further, each major subcontractor must agree in its subcontract to provide field (on-site) supervision through a named superintendent. For purposes of this Subsection, "major subcontractors" shall include subcontractors responsible for general concrete forming and placement, masonry, mechanical, plumbing, electrical, drywall, glass and glazing, roofing and other trades identified by Owner from time to time.

36.6 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

36.6.1 LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY

> That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than ten percent (10%) for overhead and profit, provided that there shall be no additional compensation paid to Subcontractor for General Conditions expenses for the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order or Construction Change Directive Work to be performed by such subcontractor.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses, or additional compensation. Further, Construction Contractor shall incorporate terms of Subsection 11.4 of these General Terms and Conditions in all of its subcontracts and require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

36.6.2 Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Contractor within the time and in the manner in which Construction Contractor must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

36.7 Contractor shall promptly report to Owner any occasion in which the contract price in an agreement with a subcontractor or supplier is lower than the estimated price included in the GMP for the scope of Work covered by such agreement (including any Change Order and Construction Change Directive Work). Further, Owner reserves the right to audit Construction Contractor's agreements with subcontractors and suppliers and Construction Contractor shall promptly make available to Owner all records necessary for such purpose.

37. MARKET ANALYSIS AND SOLICITATION OF BIDS

37.1 The purpose of this Section is to ensure that Construction Contractor makes a genuine effort to stimulate subcontractor interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. At all times, Owner shall have access to and the right to require copies of all correspondence, records, files, and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Contractor shall notify Owner of the date, time and place of all bid openings and Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in DeKalb County, Georgia. Finally, Construction Contractor shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Contractor shall not deviate from such procedures without obtaining Owner's prior written consent.

37.1.1 Construction Contractor shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work; Construction Contractor shall make an analysis as necessary to (i) determine and report on availability of labor,

materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

37.1.2 Within thirty (30) days after execution of the Agreement, Construction Contractor shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Contractor shall submit to Owner and Design Professional a list of potential bidders for their review and approval. Construction Contractor shall be responsible for promoting and encouraging bid competition.

37.1.3 Construction Contractor shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

37.2 Construction Contractor shall prepare invitations for bids and all other appropriate bid documents for all procurement of long lead items, materials, and services, for subcontractor contracts and for site utilities. All such invitations for bids and bid packages shall be submitted to Design Professional and Owner for their review and approval prior to distribution to bidders.

37.2.1 Except as hereafter provided in Subsection 37.5, all subcontracts are to be awarded to the lowest responsive and responsible bidder.

37.2.2 Subcontracts not exceeding Twenty-Five Thousand and No/100 Dollars ($25,000.00) may be awarded based upon verbal bids. Construction Contractor shall obtain a minimum of at least two (2) verbal or written bids on all such subcontracts. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comments prior to Construction Contractor awarding the subcontract.

37.2.3 Subcontracts exceeding Twenty-five Thousand and No/100 Dollars ($25,000.00) must be publicly advertised for at least two (2) consecutive weeks prior to the established bid opening time and date. All such bids must be in writing and shall be received and opened in the manner and at the location, date and time established in the bid documents. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comment prior to Construction Contractor awarding the subcontract.

37.3 As part of its bid preparation, Construction Contractor shall review the specifications and drawings prepared by Design Professional. Ambiguities, conflicts, or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by Construction Contractor shall be brought to the attention of Owner and Design Professional in written form.

37.4 For each subcontract that exceeds Twenty-five Thousand and No/100 Dollars ($25,000.00), Construction Contractor shall, unless waived in writing by Owner, conduct a pre-bid conference with prospective bidders and a pre-award conference with the apparent successful bidder. Design Professional and Owner shall be invited to all such meetings. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, Construction Contractor shall transmit these to Design Professional in writing and upon receiving clarification or correction in writing from Owner or Design Professional shall issue an addendum to the bidding documents to all of the prospective bidders.

37.5 Notwithstanding the provision above requiring award of subcontracts to the lowest responsive and responsible bidder, Construction Contractor may award a subcontract to someone other than the lowest responsive and responsible bidder provided Construction Contractor has first received Owner's express written consent to such award. Owner's consent to any such award will be at Owner's sole discretion. Whenever Construction Contractor wishes to award a subcontract to someone who is not the lowest responsive and responsible bidder, Construction Contractor must notify Owner in writing, setting out in detail the reasons and justifications for the suggested award.

38. SURVIVAL

38.1 All representations and covenants of the parties shall survive the expiration of the Agreement. Further, all of Construction Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of Construction Contractor's Work or termination or completion of the Contract or termination of the Work of Construction Contractor.

39. SECURING AGREEMENT

39.1 Construction Contractor warrants that Construction Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Construction Contractor, to solicit or secure the Contract and that Construction Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract Amount, or otherwise recover, the full amount of such fee, commission, percentage, gift of consideration. Construction Contractor's compensation shall be adjusted to exclude any significant sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs. All such adjustments must be made within one (1) year following the completion of the Work or the earlier termination of the Contract.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT B

SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms and Conditions hereby amend, modify and supersede in the event of a conflict the terms of the Agreement and the General Terms and Conditions attached thereto as Exhibit A.

Construction Contractor shall provide Owner, its representatives and Design Professional with copies of a Policy and Procedure Manual (total number of copies not to exceed 5) developed and updated in accordance with the following requirements:

1. Upon execution of the Agreement, Construction Contractor shall develop a comprehensive Policy and Procedure Manual (the "**Manual**") describing the services to be provided by Construction Contractor per the Contract Documents. The Manual shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization, including identification of key personnel, responsibilities of Construction Contractor, Owner and Design Professional; Workflow diagrams; and strategy for bidding and subcontracting the Work. Owner shall have the right to review the Manual and to approve its content and format. The Manual shall be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without Owner's prior written concurrence. Five (5) copies of the Manual and any updates shall be submitted to Owner and Design Professional. In developing the Manual, Construction Contractor shall coordinate and consult with Owner and Design Professional. The initial Manual shall be submitted to Owner for approval.

2. Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:

   2.1 Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub- projects.

   2.2 Project Goals: The schedule, budget, physical, technical, and other objectives for the Project shall be defined.

2.3 Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.

2.4 Project Work Plan: A matrix display of the Work to be performed by Construction Contractor, as well as the services and items to be furnished by Design Professional and Owner during each phase of the Project.

2.5 Project Organization: A summary organization chart showing the interrelationships between Owner, Construction Contractor and Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for Construction Contractor and Design Professional, showing organizational elements participating in the Project shall be included.

2.6 Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of Owner, Design Professional, and Construction Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. Construction Contractor shall develop a similar chart for the personnel within its own organization who are assigned to the Project, as well as for Design Professional's and Owner's personnel assigned to the Project from data supplied by them.

2.7 Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and Change Orders.

2.8 Written Procedure: Construction Contractor will provide written procedures for communications and coordination required between Construction Contractor, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Contractor and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Contractor

throughout the Project duration, with Construction Contractor distributing a copy of all updates to Owner and Design Professional.

3. This Policy and Procedure Manual shall be completed and submitted to Design Professional and Owner for their review and Owner's approval as a condition precedent to payment by Owner to Construction Contractor for any services provided in the Construction Phase under the Contract.

4. This Policy and Procedure Manual is merely an amplification and clarification of the Contract. Any conflicts between the Policy and Procedure Manual and the Contract shall be governed by the latter.

B. Construction Contractor shall provide the following Project Management Information System ("**PMIS**"), which system shall be in place for both the Pre-Construction Phase Services and Construction Phase Services to be provided by Construction Contractor pursuant to the Contract.

1. General:

1.1 Commencing immediately after the Notice to Proceed is issued to Construction Contractor by Owner, Construction Contractor shall implement and shall utilize throughout the life of the Contract all subsystems of the PMIS.

1.2 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.

1.3 If requested by Owner, Construction Contractor shall conduct a comprehensive workshop in Tucker, Georgia, for participants designated by Owner and additional seminars as required by Owner to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant's and Owner's representatives' use and understanding of the PMIS.

1.4 The PMIS shall be described in terms of the following major subsystems:

1.4.1 Narrative Reporting;

1.4.2 Schedule Control;

1.4.3 Cost Control and Estimating;

1.4.4 Project Accounting;

1.4.5 Accounting and Payment; and

1.4.6 Action Reports.

1.5 The above reports shall be submitted at least on a monthly basis and shall accompany each monthly Application for Payment.

2. Narrative Reporting Subsystem.

2.1 Construction Contractor shall prepare written reports as described hereunder. All reports shall be in 8 1/2" x 11" format.

2.2 The Narrative Reporting Subsystem shall include the following reports:

2.2.1 Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.

2.2.2 Monthly Cost Narrative describing the current construction cost estimate status of the Project.

2.2.3 A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an explanation of all variances from the plan. This report shall include an analysis of the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

2.2.4 Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be

provided.

2.2.5 A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.2.6 Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.3 The Reports outlined in Subsections 2.2.1 through 2.2.5 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to Owner and Design Professional. A bound copy of the complete diary shall be submitted to Owner at the conclusion of the Project.

3. Schedule Control Subsystem.

3.1 Master Project Schedule: Prior to the submittal of its first application for payment, Construction Contractor shall submit to Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Subsection 3.4 below. Further, this schedule shall account for any Owner scheduling requirements, such as prohibiting any Work in or near any areas where standardized assessment testing or other assessment testing is taking place during such testing that would disturb or interfere with such testing. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by Construction Contractor throughout the Project. Within fifteen (15) calendar days of Construction Contractor's submittal, Owner and Design Professional shall review the schedule and provide Construction Contractor a written list of corrections needed to approve the schedule. Construction Contractor must make all corrections and resolve all comments within thirty (30) calendar days after its receipt of Owner's and Design Professional's comments. If the schedule is not approved within said thirty (30) calendar days, Owner may withhold all Contract payments until the schedule is approved. The acceptance of the schedule by Owner and Design Professional in no

way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. Construction Contractor is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.

3.2 Construction Schedule: Construction Contractor shall prepare and submit to Owner and Design Professional, for their review and approval, a construction schedule. This construction schedule shall conform to the format outlined in Subsection 3.4 below ("**Construction Schedule**"). The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.

3.2.1 Following development and approval of the Construction Schedule as aforesaid, Construction Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to Owner in duplicate. No additional compensation will be due Construction Contractor for making such updates. Failure of Construction Contractor to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for Owner to find Construction Contractor in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to Construction Contractor until a schedule or schedule update acceptable to Owner is submitted.

3.3 Construction Contractor shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

3.3.1 Pre-Bid Schedules (Subnetworks): Construction Contractor shall prepare a construction schedule for that portion of the Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors and shall establish milestones keyed to the Master Project Schedule.

3.3.2 Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, Construction Contractor shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the work schedule of the other subcontractors. The subcontractor's construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

3.3.3 Occupancy Schedule: Construction Contractor shall jointly develop with Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

3.4 Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time. Further, Owner reserves the right to require Construction Contractor to provide a cost loaded schedule. Further, both the Master Project Schedule and the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit K to the Agreement.

3.4.1 No activity shall have duration greater than fifteen (15) workdays or less than one (1) workday. If requested by Owner or Design Professional, Construction Contractor shall furnish any information needed to justify the reasonableness of activity duration. Such information shall include estimated activity manpower, anticipated quantities, and production rates.

3.4.2 Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Contractor shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.

3.4.3 Only contractual constraints shall be shown in the schedule logic. No other constraints are allowed unless approved in writing by Owner or Design Professional. This disallowance of constraints includes the use of any mandatory start or finish dates selected by Construction Contractor.

3.4.4 Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity.

3.4.5 The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.

3.4.6 Float is defined as the amount of time between when an activity "can finish" (the early finish) and when an activity "must finish" (the late finish). It is understood by Owner and Construction Contractor that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.

3.4.7 The CPM schedules must be compatible with Primavera Project Planner Software (P6) by Primavera Systems, Inc., Bala Cynwyd, PA. It is Construction Contractor's responsibility to ascertain the software compatibility with Owner or Design Professional.

3.4.8 Initial Schedule Submittal Requirements:

3.4.8.1 Predecessor/Successor Sort

3.4.8.2 Total Float/Early Start Sort

3.4.8.3 Responsibility/Early Start Sort

3.4.8.4 Phase/Area/Early Start Sort

3.4.8.5 Narrative discussing general approach to completion of the Work.

3.4.8.6 Electronic media in Primavera (P6) format.

3.4.9 Schedule Update Requirements: Construction Contractor shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:

3.4.9.1 Dates of activities' actual starts and completions.

3.4.9.2 Percent of Work remaining for activities started but not completed as of the update date.

3.4.9.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.

3.4.9.4 Predecessor/Successor Sort

3.4.9.5 Total Float/Early Start Sort

3.4.9.6 Responsibility/Early Start Sort

3.4.9.7 Phase/Area/Early Start Sort

3.4.9.8 Electronic media in the required Primavera (P6) format

3.4.9.9 Fragnet of logic diagram for all requested logic changes.

3.4.9.10 Updated logic diagram as required by Owner. At

a minimum, Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.

3.4.9.11 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

3.4.9.12 All update information shall be an accurate representation of the actual Work progress.

3.5 Recovery Schedule: If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of Owner's request. The Recovery Schedule shall describe in detail Construction Contractor's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.

3.6 Change Orders: When a Change Order is proposed, Construction Contractor must identify all logic changes as a result of the Change Order. Construction Contractor shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Construction Schedule. This sketch shall be known as the fragment for the change. Upon acceptance of the fragment, Construction Contractor will revise the Construction Schedule or current update. The logic changes required by the Change Order will be considered incidental to Construction Contractor's work and no separate payment will be made therefor.

4. Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit Construction Contractor to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that the Work will be completed at a cost which, together with the Construction Management Fee, will not exceed the GMP. Requirements of this subsystem include submissions at the following phases of the Project:

4.1 Pre-Construction Phase Estimates; and

4.2 At establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable Construction Contractor to plan effectively and Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:

5.1 Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.

5.2 A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

5.3 A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.

5.4 A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

5.5 A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

EXHIBIT C: PAYMENT BOND

_____, 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: _____
_____("Project"); and,
[*Insert Description and Location of the Project]*

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]	_____[SEAL]
[Typed Name]	*[Typed Name]*
By: _____	By: _____
[Signature]	*[Signature]*
_____	_____
[Printed Name, Title and Address]	*[Printed Name, Title and Address]*
_____	_____
_____	_____

EXHIBIT D: PERFORMANCE BOND

_____, 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: _____

_____
[*Insert Description and Location of the Project]*

("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: Erick 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:
_____[Seal]	_____[Seal]
[Typed Name]	*[Typed Name]*
By: _____	By: _____
[Signature]	*[Signature]*
_____	_____
[Printed Name, Title and Address]	*[Printed Name, Title and Address]*
_____	_____
_____	_____

EXHIBIT E
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 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 F
LIQUIDATED DAMAGES

Liquidated damages applicable to Section 7 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:	Daily Liquidated Damages Shall Be:
Up to $49,999.99	$50
$50,000.00 to $99,999.99	$100
$100,000.00 to $299,999.99	$200
$300,000.00 to $599,999.99	$300
$600,000.00 to $999,999.99	$400
$1,000,000.00 to $1,999,999.99	$500
$2,000,000.00 to $4,999,999.99	$750
$5,000,000.00 to $9,999,999.99	$1,500
$10,000,000.00 to $14,999,999.99	$2,500
$15,000,000.00 to $19,999,999.99	$3,500
$20,000,000.00 or above	The product of .0002 multiplied by the Original Contract Price.

EXHIBIT G
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:_____

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 H
RELEASE AND AFFIDAVIT

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED CONTRACTOR, MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF OWNER OR CONTRACTOR EMPLOYED BY) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

_____
_____
_____
_____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE CONTRACTOR, MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, _____.

_____

Contractor/Subcontractor

By:_____

Printed Name:_____

Its:_____

Sworn and subscribed before me this ____

day of _____, 201__

_____

Notary Public

My Commission Expires:

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED CONTRACTOR, MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF OWNER OR CONTRACTOR EMPLOYED BY) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____ _____ COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

_____

_____

_____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE CONTRACTOR, MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, _____.

_____

Contractor/Subcontractor/Mechanic Materialman

By: _____

Printed Name: _____

Its:_____

Sworn and subscribed before me this _____

day of _____, 201___

_____

Notary Public

My Commission Expires:

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

CONTRACTOR AFFIDAVIT WAIVING LIEN RIGHTS

Personally appeared before me, the undersigned officer duly authorized to administer oaths, (name of the Affiant), who after being duly sworn, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit. The facts set forth herein are based upon my personal knowledge. I am a duly authorized representative of (name of the contractor) who, was in charge of the property improvement described as follows:

(describe the construction project) _____
_____
_____
_____
_____

The improvement describe above was made with respect to the property owned by (name of the record property owner), and that property is more fully identified as follows:

(describe the improved property by, at least, reference to the street address, city and county. It is recommended that the property's legal description be referenced here and attached as an exhibit to this affidavit.) _____

2. The construction improvement referenced herein now has been completed, and the agreed price or reasonable value of the labor, services, or materials furnished in connection with this improvement have been fully paid. All subcontractors, materialman, laborers and others supplying materials, labor, services or otherwise contributing in any way to the property improvement have been fully paid, and there are no unresolved claims, disputes, or unpaid bills which relate in any way to any contribution made in connection with the property improvement.

3. I represent that all contracts, bills or claims with respect to any fixture or item of personal property used in or installed as part of the property improvement have been fully paid and satisfied.

4. I acknowledge that (name of contractor) has received payment in full for all amounts due in connection with the improvement of the property described herein and hereby releases all rights to any lien on that improvement or the property so improved.

5. This Affidavit is given in compliance with the requirements of O.C.G.A. § 44-14¬361.2, and as part of a transaction involving a conveyance of title in a bona fide sale, a loan in which the improved real property is to secure repayment of the loan, or where final disbursement of the contract price is made by the owner to this general contractor.

6. On behalf of (name of contractor), I further represent that, as of the date of this Affidavit, there is no valid preliminary notice or claim of lien which affects the improved property described herein and which has not been previously cancelled, dissolved, or expired.

_____

_____

(Name of Affiant)

ON BEHALF OF (name of contractor)

Sworn to and subscribed before me

this _____ day of _____,

2_____.

_____

Notary Public

My Commission Expires: _____

EXHIBIT I
CONSTRUCTION CONTRACTOR APPLICATION FOR PAYMENT

See Attachment

EXHIBIT J
CHANGE ORDER

CHANGE ORDER NO._____ CONTRACT NO. _____

TO:_____
_____
_____

_____

DATE: _____

PROJECT NO.:_____

Under our AGREEMENT dated_____, 20___.

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of the Agreement:

Description of change(s):_____

For the (Additive) (Deductive) Sum of: _____

($_____)

Original Agreement Amount	$_____
Sum of Previous Changes	$_____
This Change Order (Add) (Deduct)	$_____
Present Agreement Amount	$_____

The time for completion shall be (increased/decreased) by _____calendar days due to this Change Order. Accordingly, the Contract Time is now_____(_____) calendar days and the Substantial Completion date is_____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted:_____, 20_____

CONSTRUCTION CONTRACTOR:

_____

By:_____

OWNER:

The School Board of DeKalb County, Georgia

By:_____

DESIGN PROFESSIONAL:

_____

By:_____

EXHIBIT J1

PROJECT CLOSEOUT CHECKLIST

DeKalb County School District	**Division 01 - General Requirements**	
	FACILITIES SERVICES – DESIGN	**DESIGN GUIDELINE**

School Name:	Architect / Engineer:
Project Name/#	Project Manager:
CM/Contractor Name:	

PROJECT CLOSEOUT CHECKLIST – LIST OF DELIVERABLES	DATE	NOTES
1. Closeout Manual (Electronic Only)		
(Separate PDF required for 1) Arch/Civil, 2) Mech/Plumb, 3) Elec, 4) Fire, 5) Kitchen)		
a. Copy of Specification Section		
b. O&M Material		
c. Copy of Warranty		
d. Spare Parts / Maintenance Stock (Exhibit D)		
e. Performance Verification / Demonstration to Owner (Exhibit E)		
2. Environmental Close Out Manual (Electronic Only)		
3. Closeout Manual: Fire (Hard Copy; include items a thru e listed above)		
4. Closeout Manual: Kitchen (Hard Copy; include items a thru e listed above)		
5. Warranties & Guarantees Manual (Hard Copies in a Binder)		
6. A/E Consolidated Punch List Sign-Off (Electronic Only)		
7. General Requirements Sign-Off		
8. As Built Drawings (Electronic Only; in Color)		
9. Certificate of Occupancy		
10. Certificate of Substantial Completion		
11. Certificate of Final Inspection		
12. Record Drawings (CAD) and Project Manuals (Electronic Only)		
13. Final DCSD Pay Application (Electronic Only; include the following 4 items)		
a. Final MWBE Form (Electronic Only)		
b. Final Release of Liens (Electronic Only)		
c. Consent of Surety (Electronic Only)		
d. Certificate of Insurance (Electronic Only)		
14. Sustainability Letter & Sustainability Scorecard (Electronic Only)		
15. OEF 564 Cost Breakdown Information (Electronic Only)		
16. GMP account reconciliation (by line item)		
17. DCSD Facilities Server Files Populated (Unused Folders Removed by Doc Control Mgr)		

Construction Manager / General Contractor Date

Architect of Record Date

SPLOST IV Project Manager (*PM Team's Closeout Manager to initial*) Date

Facilities Project Manager, Planning & Design (*Planning /Archives Team Member to initial*) Date

SPLOST IV Program Director, Construction Date

Chief Operations Officer, DeKalb County School District Date

EXHIBIT K
MASTER PROJECT SCHEDULE MILESTONES

See Attachment

EXHIBIT L
CONSTRUCTION CONTRACTOR'S STAFFING SCHEDULE

STAFF NAME	STAFF POSITION

EXHIBIT L1
PRE-CONSTRUCTION PHASE SERVICES REIMBURSABLE

EXPENSE PROPOSAL

See Attachment

EXHIBIT M

GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR

AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR FOR _____ AGREEMENT NO. _____

Pursuant to Sections 4.B and 7.A of the Construction Management Agreement ("Agreement"), dated_____, between The School Board of DeKalb County, Georgia ("**Owner**") and _____ _____ ("**Construction Contractor**"), with respect to the construction of Owner's _____ ("**Project**"), Owner and Construction Contractor hereby agree to amend and modify the Agreement by this Amendment No. 1 and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below. All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement, unless otherwise noted.

ARTICLE 1

SCOPE OF WORK

The scope of the Work consists of the construction of a _____ _____, in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through____below, which are hereby incorporated into and made a part of the Amendment by this reference:

Attachment No.	Description	Pages	Date
List of Drawings, Specifications and Addendums			
1.	Allowances	_____ through _____	_____
2.	Assumptions and Clarifications	_____ through _____	_____
3.	Completion Schedule	_____ through _____	_____
4.	Schedule of Values	_____ through _____	_____
5.	List of Itemized General Conditions	_____ through _____	_____
6.	List of Subcontractors and Major Suppliers	_____ through _____	_____
7.	Alternates	_____ through _____	_____

ARTICLE 2

GUARANTEED MAXIMUM PRICE

2.1 Construction Contractor's Guaranteed Maximum Price ("**GMP**") for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement and the Construction Management Fee as defined in Section 4 of the Agreement, is _____ _____ ($_____).

2.2 The Construction Management Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of _____ ($_____), said lump sum amount is included within the above noted GMP.

2.3 The general condition expenses for the entire Work anticipated on this Project are hereby established as a lump sum amount of _____ ($_____), said lump sum amount is included within the above noted GMP ("General Conditions Expenses"). The items included as General Condition Expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No._____. Except as said lump sum amount for General Condition Expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted lump sum amount and Construction Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above lump sum amount. There shall be no additional General Conditions Expenses payable to Construction Contractor on the first Five Hundred Thousand and No/100 Dollars ($500,000.00) of Change Order or Construction Change Directive Work (i.e. the lump sum amount specified in this Subsection includes consideration for up to $500,000.00 of Change Order and/or Construction Change Directive Work). Further, there shall be no mark-up for a subcontractor's General Conditions expenses on the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order and Construction Change Directive Work to be performed by such subcontractor.

2.4 Monthly installment payment of the Construction Management Fee and the General Condition Expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.5 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of_____and __/100 Dollars ($_____) ("**Owner's Contingency**"). Owner's Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction

Contractor shall not proceed with any portion of the Work which it intends to charge against the Owner's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion of the Work which is to be charged against the Owner's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Owner's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Owner's Contingency expenditures. Further, the work that is the subject of any Owner's Contingency expenditures shall be deemed part of the Work. The GMP shall be reduced by unused Owner's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion of any unused Owner's Contingency.

2.6 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed_____and /100 Dollars ($_____) ("**Contractor's Contingency**"). Construction Contractor shall not proceed with any portion of the Work which it intends to charge against the Contractor's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion of Work which is to be charged against the Contractor's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Contractor's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Contractor's Contingency expenditures. Further, the work that is the subject of any Owner's Contingency expenditures shall be deemed part of the Work. The GMP shall be reduced by unused Contractor's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion of any unused Contractor's Contingency. Construction Contractor shall be entitled to an increase in the Construction Management Fee in the amount of____% of the Cost of the Work charged against the Contractor's Contingency.

2.7 The parties have agreed to establish an allowance within the GMP for _____ in the amount of_____and /100 Dollars ($_____). Construction Contractor shall not proceed with any portion of the Work associated with the aforesaid allowance ("**Allowance Work**") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments_____through. Unless otherwise provided in the Contract Documents: (a) allowances amounts shall cover the cost to Construction Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; (b) Construction Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances, unless otherwise stated in the allowance; and (c) whenever costs are more than or less than allowances, the GMP shall be adjusted accordingly by Change Order.

2.8 Pursuant to Subsection 12.3 of Exhibit A to the Agreement, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in this Amendment to be exceeded by more than_____and /100 Dollars ($_____), then Construction Contractor shall be entitled to an increase in the Construction Management Fee in the amount of_and /100 Dollars (_____%) of the amount exceeding the sum of _____and /100 Dollars ($_____) plus that original GMP amount.

2.9 Construction Contractor recognizes that the Contract includes work for trench excavation in excess of five feet deep. Construction Contractor acknowledges the requirements set forth by all federal, state and local requirements. Construction Contractor certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Contractor agrees to comply with all such required trench safety standards.

2.10.1 The amount of _____and /100 Dollars ($_____) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.

2.10 At the completion of the Work, should the actual amount of "General Requirements" expenses be less than the amount included therefor in the Schedule of Values approved by Owner, the resulting "savings" shall accrue to the benefit of Owner and a deductive Change Order or Construction Change Directive shall be issued reducing the GMP by the amount of such savings. For the avoidance of doubt, any savings obtained General Requirements expenses may not be moved to contingency or be used to offset cost overruns in other items within the GMP. Further, the line item for General Requirements expenses in the Schedule of Values constitutes a separate guaranteed maximum price for such expenses and any overruns in General Requirements expenses shall be borne by Construction Contractor without reimbursement from Owner.

2.11 By executing this Amendment and furnishing Owner with a GMP based on a detailed Schedule of Values and a Master Project Schedule, Construction Contractor represents and warrants that the Contract Documents, including the Construction Documents, as well as other materials, and information furnished Construction Contractor as of the date of this Amendment have described the scope, construction requirements, and design intent of the Work in detail sufficient to enable Construction Contractor to establish firmly the GMP, Contract Time and the Project Schedule. To the extent that the Construction Documents are anticipated to require further development, Construction Contractor has provided in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom.

2.12 Savings will be computed as of the date of final completion of the Work and shall consist of the difference between (i) the Guaranteed Maximum Price (as it may be adjusted in accordance with the terms of the Contract Documents) and (ii) the total aggregate sum of the Cost of the Work plus the Construction Management Fee paid by Owner shall accrue to the sole benefit of Owner.

ARTICLE 3

CONTRACT TIME

3.1 The Construction Phase Commencement Date for the Work is_____. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is_____(_____) days ("**Contract Time**"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS_____.

3.2 Pursuant to the Agreement, the parties have established liquidated damage rates for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Contractor's responsibility to substantially complete the Work within the Contract Time as stated herein and finally complete the Work within the time prescribed in the Contract. Accordingly, the liquidated damage rates established in the Agreement shall be assessed against Construction Contractor for each calendar day Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time or final completion of the Work within the time prescribed in the Contract.

ARTICLE 4

MISCELLANEOUS

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. All terms not specifically defined herein shall have the meaning ascribed to them in the Agreement. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Contractor agree that the terms of this Amendment shall prevail and control. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Owner	Construction Contractor
By:_____	By: _____
Its:_____	Its: _____
Date:_____	Date:_____
Attest:_____	Attest:_____

<u>Attachment 1</u>

List of Drawings, Specifications and Addendums

See Attachment

<u>Attachment 2</u>
Allowances

See Attachment

<u>Attachment 3</u>
Assumptions and Clarifications

See Attachment

Attachment 4
Completion Schedule

See Attachment

<u>Attachment 5</u>
Schedule of Values

See Attachment

<u>Attachment 6</u>

Itemized General Conditions Expenses

See Attachment

Attachment 7

List of Sub-Contractors and Major Suppliers

See Attachment

<u>Attachment 8</u>
Alternates

See Attachment

EXHIBIT N

CERTIFICATE OF INSURANCE FORM

See Attachment

EXHIBIT O

SCHOOL CALENDARS

See Attachment

ATTACHMENT M2

STANDARD FORM OF

CONSTRUCTION MANAGEMENTCONTRACT

BETWEEN

THE DEKALB COUNTY BOARD OF EDUCATION

AND

_____

[Contractor]

PROJECT: **Toney Elementary School HVAC Systems Replacement and Renovations**

Project Address: **2701 Oakland Terrace Decatur, GA 30032**

ARCHITECT: **Croft & Associates, Inc.**

Architect's Address: **3380 Blue Springs Road Kennesaw, GA. 20144**

Cost Code: **SP5FACCON.35235. GENCONTR**

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CONSTRUCTION MANAGEMENT AGREEMENT

THE DEKALB COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of Georgia ("**Owner**"), hereby contracts with _____, ("**Construction Contractor**"), authorized to do business in the State of Georgia, whose business address is _____, to perform all work ("**Work**") in connection with the management and construction of _____ (hereafter referred to as the "Project") located at _____, said Work being set forth in the plans and specifications being prepared by _____, the Architect and/or Engineer of Record ("**Design Professional**") and all other Contract Documents hereafter specified.

Owner and Construction Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, and amendments signed by Owner relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project ("**Construction Documents**") being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. Upon Owner's acceptance of Construction Contractor's guaranteed maximum price proposal, the Contract Documents will also include the GMP Amendment and all Attachments thereto. All of the foregoing Contract Documents are sometimes referred to herein as the "**Contract**".

B. Owner shall furnish Construction Contractor with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Contractor for execution of the Work, shall be made by Construction Contractor from its reproducible set at Construction Contractor's sole cost and expense. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work by Owner or termination of the Contract, whichever occurs first; provided, however, Owner is furnishing Construction Contractor a reproducible set of Construction Documents for Construction Contractor's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

Section 2. Scope of Work

The Work to be provided by Construction Contractor pursuant to the Contract shall be performed essentially in two phases; those phases being Pre-Construction Phase Services and Construction

Phase Services, both of which are hereinafter defined. At the discretion of Owner, those two phases may overlap.

A. **Pre-Construction Phase Services.** Construction Contractor shall review and comment upon the Construction Documents being developed by Design Professional. The scope of that review shall include reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Agreement between Design Professional and Owner ("**Design Agreement**"), Construction Contractor shall provide Owner with detailed construction cost estimates with respect to those documents. Construction Contractor agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project. Construction Contractor shall provide all other services during the conducted during the Pre-Construction Phase of the Project as set forth in the Contract Documents (collectively, the "**Pre-Construction Phase Services**"). The duration of the "Pre-Construction Phase" shall be defined in Section 7 of this Agreement.

B. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Contractor have agreed in writing upon the guaranteed maximum price to be paid Construction Contractor and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Contractor shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents (collectively, the "**Construction Phase Services**"). For the avoidance of doubt, Construction Contractor shall have the responsibility to perform the Work and build the entire Project in accordance with the Construction Documents, except any work as may specifically be stated in the Contract Documents to be the responsibility of others. Construction Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, as defined in Section 5 hereof, prior to the commencement of the Construction Phase, unless Owner provides prior written authorization for such costs. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Contractor shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid Construction Contractor and the performance time for such portion of the Work.

Section 3. Relationship of Parties

A. Construction Contractor accepts the relationship of trust and confidence established by this Agreement. Construction Contractor covenants with Owner to cooperate with Design Professional; to utilize Construction Contractor's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times

an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Contractor acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management, and construction of school facilities, and
(ii) that such representation is a material inducement to Owner to enter into the Contract.

Notwithstanding anything to the contrary in the Contract Documents, Construction Contractor is fully responsible to Owner for all duties of Construction Contractor under the Contract Documents, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract despite Construction Contractor's delegation of the responsibility therefor to any of its subcontractors. In addition, if the Work required under the Contract Documents requires Construction Contractor to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Construction Contractor shall be directly responsible to Owner for any portion of the Work so required. In no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents. Upon issuance of Construction Notice to Proceed, Construction Contractor further agrees to attend the first available training session provided by DeKalb County School District, Building Code Compliance Office at no cost and is obligated to ensure that representatives from each of the various trades who are involved in the inspection process attend the training session as well.

B. Wherever the terms of the Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

C. Owner may utilize the services of a Program Manager to assist it with the management of the design and construction of the Project. In the event Owner does utilize the services of a Program Manager with respect to this Project, Owner shall notify Construction Contractor in writing of such decision and the Program Manager shall be deemed to be an Owner designee as referenced in Subsection 3.B. above. Further, to the extent Construction Contractor is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Contractor pursuant to the terms of the Contract Documents, Construction Contractor shall cause the Program Manager to also be named as an additional insured party under all such policies. The Program Manager shall be Owner's representative with respect to the Project, with authority to transmit instructions, receive information, and interpret and define Owner's policies and decisions with respect to the Work. However, except as may be otherwise expressly authorized in writing by Owner, the Program Manager is not authorized on behalf of Owner to issue any verbal or written orders or instructions to Construction Contractor that would have the effect, or be interpreted to have the effect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the: (1) scope or quality of Work to be performed and provided by Construction Contractor as set forth in the Contract Documents; (2)

the time within which Construction Contractor is obligated to complete the Work; or (3) the amount of compensation Owner is obligated or committed to pay Construction Contractor as set forth in the Contract Documents. Construction Contractor hereby designates _____ as its Project Manager, with full authority to bind and obligate Construction Contractor on all matters arising out of or relating to the Work or the Contract Documents. Construction Contractor shall ensure that the Project Manager devotes whatever time is required to satisfactorily manage the Work and Construction Contractor will provide for such required amount of time in the Itemized General Conditions Expenses Attachment to be attached to the GMP Amendment. The Project Manager shall not be removed or replaced by Construction Contractor without Owner's prior written approval, which approval shall not be unreasonably withheld.

D. Construction Contractor shall be acting as an independent contractor at all times during the performance of the Work and no provision in the Contract shall create an employment or agent relationship between the parties.

E. Construction Contractor represents and warrants the following to Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (i) that it and, to the best of its knowledge, its subcontractors are financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (ii) that it is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (iii) that its execution of this Agreement and all of the Contract Documents, and its performance thereof is within its duly authorized power; (iv) that its duly authorized representative has visited, or prior to the submission of Construction Contractor's guaranteed maximum price proposal, will have visited the site of the Project and is, or prior to the submission of the guaranteed maximum price proposal will be, familiar with the local and special conditions under which the Work is to be performed and has, or prior to the submission of the guaranteed maximum price proposal will have, correlated onsite observations with the requirements of the Contract Documents; and (v) that it possesses a high level of experience and expertise in the construction of projects of the size, complexity and nature of this particular Project and that it will perform the Work with the care, skill and diligence of such a contractor/construction manager.

Section 4. Contract Amount

In consideration of the full and faithful performance by Construction Contractor of the covenants in the Contract, Owner agrees to pay, or cause to be paid, to Construction Contractor the following amounts (herein "**Contract Amount**"), in accordance with the terms of the Contract:

A. **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, including providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases,

and preparing cost estimates, Construction Contractor shall receive the fixed amount of _____ ($_____) as the total lump sum compensation for its services. Additionally, Construction Contractor shall receive reimbursement, without mark-up, for actual amounts incurred by Construction Contractor for the reimbursable expense items specified in the Pre-Construction Phase Services Reimbursable Expense Proposal attached hereto and incorporated herein as **Exhibit____**, , up to the "not to exceed amounts" specified for such items in **Exhibit____**.. Monthly installment payments of the total lump sum compensation and reimbursement for reimbursable expense items specified on **Exhibit___**(subject, however, to the "not to exceed" caps on such items) shall be based upon the percent completion of the designated portion of the Pre-Construction Phase Services for each particular month as determined by Owner and an itemized statement of reimbursable expenses incurred for such month, respectively, and Owner's receipt of Construction Contractor's written invoice for such payment. Construction Contractor's invoices shall be in a form reasonably acceptable to Owner and be accompanied by such other information, documentation, and materials as Owner may reasonably require. The final invoice shall not be submitted until either (i) the GMP Amendment is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate the Contract as provided in Section 4.B hereafter, whichever occurs first.

K. **Construction Phase Services.** With respect to the Construction Phase Services to be provided by Construction Contractor hereunder, Owner shall reimburse Construction Contractor for the Cost of the Work (hereinafter defined) and pay Construction Contractor a fixed Construction Management Fee calculated as a percentage based on the estimated Cost of the Work. The Construction Management Fee and Cost of Work shall be estimated at the time the GMP (hereinafter defined) is initially adopted by the parties. The "Construction Management Fee" shall be Construction Contractor's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Contractor's total profit for Construction Phase Services. Within forty-five (45) days after the Owner's deems the Construction Documents sufficiently completed by the Design Professional and approved in writing by Owner, Construction Contractor agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work. To the extent that the Construction Documents are anticipated to require further development by Design Professional, Construction Contractor shall provide in the guaranteed maximum price proposal for such further development consistent with the Contract Documents and reasonably inferable therefrom such that the guaranteed maximum price shall not be adjusted as a result of such further development of the Construction Documents. Such further development to be included in the guaranteed maximum price proposal does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order, Construction Change Directive, or other method of adjustment available to Owner under the Contract Documents. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Contractor in its response to a request for qualifications issued by the Owner. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Contractor agrees that all of its books, records, and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price ("**GMP**") mutually agreed upon by Owner and Construction Contractor shall be set forth in the GMP Amendment. The form for GMP Amendment is attached hereto as Exhibit M. Construction

Contractor shall provide a detailed breakdown in a format acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. For each line item in the GMP, Construction Contractor shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line-item price incorporated into the GMP. Construction Contractor guarantees that, in no event, shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. To the extent the Construction Management Fee and Cost of the Work exceed the GMP, Construction Contractor shall bear such costs in excess of the GMP without reimbursement or additional compensation from Owner. In the event Construction Contractor and Owner fail to reach an agreement on the GMP, Owner may elect to terminate the Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by Owner. Notwithstanding the foregoing, Construction Contractor shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed.

Section 5. Cost of Work

A. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Contractor in the proper performance of the Construction Phase Services portion of the Work. Cost of the Work shall not include any costs ore expenses incurred by the Construction Contractor related to or incurred during the performance of the Pre-Construction Phase Services. Such costs shall be incurred at rates not higher than the standard industry rates paid at the place of the Project except with the prior written consent of Owner only after Construction Contractor has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. Items of Work not included in this Subsection 5.A. are compensable only as part of the Construction Management Fee and are otherwise not reimbursable. The Cost of the Work shall include only those items set forth below in this Subsection 5.A:

1. **Labor Costs**.

   a. Wages of construction workers directly employed by Construction Contractor to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.

   b. Wages or salaries of Construction Contractor's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement.

c. Wages and salaries of Construction Contractor's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as in Subsection 5.A.1.b above.

d. The parties hereby establish the fixed markup rate of _____ percent (%) for all labor burden, including all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining.

agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under Subsections 5.A.1.a through A.1.c, above. Further, such labor burden shall not include amounts for items specified in Subsection 5.B.3 that are to be excluded from the Cost of the Work.

Construction Contractor's "General Conditions" expenses, that are to be more particularly itemized in an Attachment to the GMP Amendment and incorporated therein by reference, are a lump sum to be paid as the Work progresses with each Application for Payment based on the percentage of completion. Many of the labor costs itemized in this Subsection 5.A.1 are included in General Conditions' expenses, whether or not specifically noted as such, and are not to be billed separately. Construction Contractor shall promptly report to Owner any occasion in which the labor/payroll rates paid to personnel is lower than the estimated price included in the GMP Attachment for the General Conditions expense. Further, Owner reserves the right to audit Contractor's payroll. And Construction Contractor shall promptly make available to Owner all records necessary for such purpose.

2. **Subcontract Costs.** Payments made by Construction Contractor to subcontractors in accordance with the requirements of the applicable written subcontracts.

3. **Cost of Materials and Equipment Incorporated into the Completed Construction**.

a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in Subsection 5.A.3.a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if

any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Contractor; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

4. **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**.

a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Contractor.

b. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site, whether rented from Construction Contractor or others, and costs of transportation, installation, minor repairs, and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Contractor or others, shall be subject to Owner's prior written approval.

c. Cost of removal and proper disposal of debris from the Project site.

d. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

e. That portion of the reasonable travel and subsistence expenses of Construction Contractor's personnel, assigned to the Project site, incurred while traveling outside of the Atlanta/DeKalb County metropolitan area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner.

5. **Miscellaneous Costs**.

a. That portion of any separate premiums for (i) bonds directly attributable

to the Contract, and (ii) any additional insurance coverages which are purchased by Construction Contractor, with Owner's prior written approval, beyond the level of coverage specified herein.

b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Contractor is liable.

c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Contractor is required by the Contract Documents to pay.

d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of the Contract.

e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

f. Deposits lost for causes other than Construction Contractor's fault or negligence.

g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Contractor, reasonably incurred by Construction Contractor in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.

h. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Contractor, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Contractor to Owner set forth in the Contract Documents, or (ii) Construction Contractor's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Contractor's personnel to supervise adequately those portions of the Work to be performed by Construction Contractor's subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by Construction Contractor from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.

6. **Other Costs.** Other costs necessarily and reasonably incurred in performance of the Work if and to the extent approved in advance in writing by Owner.

B. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

1. Salaries and other compensation of Construction Contractor's personnel stationed at Construction Contractor's principal office or offices other than the Project site office.

2. Expenses of Construction Contractor's principal office and offices other than the Project site office.

3. Discretionary bonuses, incentive compensation and other discretionary payments paid to anyone hired by Construction Contractor or paid to any subcontractor or supplier.

4. Overhead and general expenses, except as may be expressly included in Subsection 5.A. above.

5. Construction Contractor's capital expenses, including interest on Construction Contractor's capital employed for the Work.

6. Rental costs of machinery and equipment, except as specifically provided in Subsection 5.A.4.b. above.

7. Except as expressly provided in Subsection 5.A.5.h. above or otherwise expressly agreed to in writing by Owner, costs due to the fault or negligence of Construction Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing or remedying damage to property not otherwise included in the Work.

8. Any costs not specifically and expressly described in Subsection 5.A. above.

9. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

C. **Discounts, Rebates and Refunds**.

1. Cash discounts obtained on payments made by Construction Contractor shall accrue to Owner if (i) before making the payment, Construction Contractor included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Construction Contractor with which to make payments; otherwise, cash discounts shall accrue to Construction Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Contractor shall make provisions so that they can be secured. Construction Contractor shall use its best efforts to obtain for the benefit of Owner all available discounts, rebates, and refunds.

2. Amounts which accrued to Owner in accordance with the provisions of Subsection 5.C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

Section 6. Bonds

A. Within ten (10) business days after the GMP is agreed to by Owner and Construction Contractor and before any portion of the Construction Phase Work to be covered by such bonds is commenced, Construction Contractor shall provide Owner with a Performance Bond and a Payment Bond (together, the "**Bonds**"), in the form prescribed in Exhibits C and D, in the amount of one hundred percent (100%) of the total sum of the GMP, the costs of which are to be paid by Construction Contractor and reimbursed in accordance with Subsection 5.A.5.(a). The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner, in its sole discretion:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Georgia, Department of Insurance, authorizing it to write surety bonds in the State of Georgia.

2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Georgia Insurance Code.

4. The surety company shall have at least twice the minimum surplus and capital required by the Georgia Insurance Code at the time the invitation to bid is issued.

5. The Bonds must be fully performable in Georgia, with service and venue in DeKalb County, Georgia.

6. If the GMP exceeds Five Hundred Thousand and No/100 ($500,000.00), the surety company shall also comply with the following provisions:

a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:

(1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier, provided authorization or approval by the State of Georgia, Department of Insurance to do business in this State have been met.

(2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged, or held subject to the consent of the surety and for the protection of the surety shall be deducted.

B. If the surety for any bond furnished by Construction Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Georgia, or it ceases to meet the requirements imposed by the Contract Documents, Construction Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's prior written approval.

Section 7. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under the Contract. The "**Pre-Construction Commencement Date**" shall be established in a written "Notice to Proceed" to be issued by Owner. Construction Contractor shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Contractor prior to the Pre-Construction Phase Commencement Date shall be at the sole risk and expense of Construction Contractor. The "**Construction Phase Commencement Date**" shall be established in GMP Amendment. Construction Contractor shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion, hereinafter defined, of the Work is referred to hereafter as the "**Contract Time**". The Contract Time is set forth with more specificity in Subsection 7.B below.

B. Because the Work is to be completed in two phases, the timely completion of the Pre-Construction Phase Services is critical to the timely completion of the Construction Phase Services and, therefore, completion of the entire Project. Accordingly, Construction Contractor agrees to provide the Pre-Construction Phase Services in accordance with the design schedule approved by Owner in writing. With respect to the Construction Phase Services, the GMP Amendment shall include a schedule of dates outlining when each portion of the Work associated with the Construction Phase Services must be deemed substantially completed by Construction Contractor. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Contractor and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate the Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by Owner. Notwithstanding the foregoing, Construction Contractor shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed. "Substantial Completion" of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy or Conditional Certificate of Occupancy (with conditions acceptable to Owner in its sole discretion) or their equivalent. Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within One Hundred Twenty (120) calendar days after the Substantial Completion date, or within One Hundred Twenty

(120) calendar days after Construction Contractor's receipt of the punch list, whichever date occurs last ("**Final Completion Date**").

C. Owner and Construction Contractor recognize that, since time is of the essence for the Contract, Owner will suffer financial loss if the Construction Contractor fails to achieve Substantial Completion of the Work associated with the Construction Phase within the time specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to ascertain and quantify because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable education to the public, in DeKalb County, Georgia. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Contractor if Construction Contractor fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, a daily rate described herein for each calendar day the Construction Manager fails to achieve Substantial Completion. Liquidated damages will be assessed at a daily rate of the sum indicated at Exhibit "F" attached hereto and by reference made a part hereof. Construction Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Owner may deduct liquidated damages prescribed in this subsection from any unpaid amounts then or thereafter due Construction Contractor under the Contract and any liquidated damages not so deducted shall be payable to Owner by Construction Contractor upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays is intended to compensate Owner solely if Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time and shall not release Construction Contractor from liability from any other breach of Contract requirements. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Construction Contractor's failure to achieve Substantial Completion of the Work.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Georgia, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday, or legal holiday. "**Days**" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word "days". The term "**business day**" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

E. Construction Contractor shall not be allowed to perform work at the Project site or any other school properties on dates designated on the School Calendars attached hereto and incorporated herein as composite **Exhibit O** as standardized assessment testing days or days when

the schools or Owner's district offices are closed. Construction Contractor must obtain prior written approval from Owner, which approval Construction Contractor acknowledges may not be provided by Owner depending upon the particular circumstances, before performing any Work on these designated dates.

Section 8. Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

Exhibit A:	General Terms and Conditions
Exhibit B:	Supplemental Terms and Conditions
Exhibit C:	Form of Payment Bond
Exhibit D:	Form of Performance Bond
Exhibit E:	Insurance Requirements
Exhibit F:	Liquidated Damages
Exhibit G:	Contractor and Subcontractor Affidavit
Exhibit H:	Form of Release and Affidavit
Exhibit I:	Form of Construction Contractor Application for Payment
Exhibit J:	Form of Change Order
Exhibit J1:	Project Closeout Checklist
Exhibit K:	Master Project Schedule Milestones
Exhibit L:	Construction Contractor's Staffing Schedule
Exhibit L1:	Pre-construction Phase Services Reimbursable Expense Proposal
Exhibit M:	GMP Amendment to Agreement between Owner and Construction Contractor
Exhibit N:	Certificate of Insurance Form
Exhibit O:	School Calendars

Section 9. Notices

A. All notices, consents, or approvals required or permitted to be given under the terms of the Contract shall be in writing and shall be sent by: (a) FedEx or other nationally recognized overnight air courier service, postage prepaid, for next business day delivery, or (b) hand delivery, to the notice address of the respective parties set forth below in Subsection 9.B or 9.C, as applicable. Notice given in accordance with this Section 9 shall be effective on the earlier of the day actually received, if received on a business day (or, if not received on a business day, on the first business day after the day of receipt) or, regardless of whether or not received after the dates specified below, (i) on the date of delivery or refusal of delivery, if by hand delivery, or (ii) on the first business day after having been delivered to a nationally recognized overnight air courier service, such as FedEx, for "next business day" delivery in each case addressed to the respective party at the address for notice to the party specified in Subsection 9.B or 9.C, as applicable, below.

B. Notices, consents, or approvals required or permitted to be given to Owner shall be delivered to Owner at:

DeKalb County School District
Sam A. Moss Service Center
1780 Montreal Road
Tucker, Georgia 30084

C. Notices, consents, or approvals required or permitted to be given to Construction Contractor shall be delivered to Construction Contractor at:

_____

_____

ATTENTION: _____

Fax No.:_____

D. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 10. Modification

No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 11. Successors and Assigns

Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to the Contract.

Section 12. Governing Law

The Contract shall be interpreted under, and its performance governed by the laws of the State of Georgia, without regard to its choice of law provisions.

Section 13. No Waiver

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, 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 herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of the Contract shall not be

deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the Contract. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

Section 14. Entire Agreement

The Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated, and superseded by the Contract.

Section 15. Severability

Should any provision of the Contract be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 16. Construction

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. The headings of the Articles, Sections, Paragraphs, Schedules, Exhibits and Attachments as contained in the Contract are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions in such Articles, Sections, Paragraphs, Schedules, Exhibits and Attachments. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation. The remedies granted to Owner in the Contract are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

Section 17. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below:

OWNER:

DEKALB COUNTY BOARD OF EDUCATION

By: _____
[SIGNATURE]

Mr. Dijjon DaCosta, Board Chairperson____
[TYPED NAME & TITLE]

By: _____
[SIGNATURE]

Dr. Devon Q. Horton, Superintendent_____
[TYPED NAME & TITLE]

DeKalb County Board of Education_____

1701 Mountain Industrial Boulevard_____

Stone Mountain, GA 30083_____

_____
[DATE OF EXECUTION]

_____
Erick Hofstetter, Chief Operating Officer

CONTRACTOR:

By: _____
[SIGNATURE]

_____
[TYPED NAME & TITLE]

_____

_____

_____
[ADDRESS]

_____
[DATE]

EXHIBIT A

GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS

1.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Construction Documents are permitted, except as may be otherwise specifically stated in the Contract Documents; provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties, Construction Contractor shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.

1.2 If during the performance of the Work, Construction Contractor discovers a conflict, error or discrepancy in the Contract Documents, Construction Contractor immediately shall report same to Design Professional and Program Manager in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Prior to commencing each portion of the Work, Construction Contractor shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Contractor shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Contractor, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Contractor shall be required to immediately notify Design Professional and Project Manager and, absent contrary instruction from Owner, comply with the provision which is the more restrictive or stringent requirement upon Construction Contractor, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

1.4 In the event of conflicts or discrepancies among the Contract Documents, Construction Contractor shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict will be based upon the following Contract Documents, which are set forth and ranked in order of precedence:

1.4.1 Duly executed amendments, Change Orders and Construction Change Directives, with those of a later date having precedence over those of an earlier date;

1.4.2 Supplemental Terms and Conditions attached to the Agreement as Exhibit B;

1.4.3 The Agreement, not including the Exhibits, which are addressed above and Below;

1.4.4 These General Terms and Conditions;

1.4.5 The other Exhibits to the Agreement; and

1.4.6 All other Contract Documents, if any.

1.5 The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Construction Contractor, with the exception of Owner's third-party beneficiary rights under Contractor's agreements with its subcontractors and suppliers.

2. INVESTIGATION AND UTILITIES

2.1 Construction Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; noise ordinances; work hours; surrounding building conditions and all other costs associated with such performance. If Construction Contractor fails to perform the foregoing obligations, Construction Contractor shall pay such costs and damages to Owner as would have been avoided if Construction Contractor had performed such obligations. The failure of Construction Contractor to acquaint itself with any applicable conditions shall not relieve Construction Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Construction Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "**Utilities**". Construction Contractor

shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Contractor shall be responsible for properly shoring, supporting, and protecting all Utilities at all times during the course of the Work. If Construction Contractor fails to perform the foregoing obligations of this Section 2.2, Construction Contractor shall pay such costs and damages to Owner as would have been avoided if Construction Contractor had performed such obligations.

2.3 If during the performance of the Work, Construction Contractor or any subcontractor, sub-subcontractor, agent, employee, or anyone else for whom Construction Contractor is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Contractor shall take all actions necessary and required to immediately restore such Utilities service. If Construction Contractor fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Contractor within five (5) business days of written demand for same from Owner.

3. SCHEDULE

3.1 Construction Contractor shall prepare and provide the various schedules set forth in Exhibit B to the Agreement. Said schedules shall include an overall progress schedule for the Project which not only includes the Pre-Construction Phase Services and Construction Phase Services to be provided by Construction Contractor hereunder, but also shall include Design Professional's performance schedules ("**Master Project Schedule**").

3.2 The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Contractor as often as is specified in Exhibit B to the Agreement. The Master Project Schedule and all updates to it shall be subject to Owner's and Design Professional's review and comment. Construction Contractor's submittal of a satisfactory Master Project Schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Contractor.

4. PROGRESS PAYMENTS

4.1 Construction Contractor's monthly Applications for Payment shall be in such form and contain such detail and backup and other information, documentation, and materials as Owner reasonably may require. Prior to submitting its first monthly Application for Payment, Construction Contractor shall submit to Owner and Design Professional, for their review and approval, a Schedule of Values based upon the lump sum compensation to be paid Construction Contractor for Pre-Construction Phase Services hereunder. After its approval by Owner, that Schedule of Values shall be used as the basis for Construction Contractor's monthly Applications for Payment with respect to Pre-Construction Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Pre-Construction Phase Commencement Date. The approved Schedule of Values shall be updated to reflect current Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and

notarized copy of the Application for Payment form attached to the Agreement as Exhibit I.

4.2 At the time it submits its guaranteed maximum price proposal to Owner, Construction Contractor also shall submit to Owner and Design Professional, for their review, a revised Schedule of Values based upon the guaranteed maximum price proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element and, if required by Owner, broken down further into the major elements of the Work to be completed during the various phases of the Work. That revised Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment, and shall be used as the basis for Construction Contractor's monthly Applications for Payment thereafter. This revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit I.

4.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

4.4 Construction Contractor shall submit two (2) notarized original copies of its monthly Application for Payment to Design Professional on or before the twenty-fifth (25th) day of each month for Work performed during the previous month. Invoices received after the twenty-fifth (25th) day of each month shall be considered for payment as part of the next month's application. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Contractor. Owner shall pay Construction Contractor that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Contractor within thirty (30) calendar days of Owner's receipt of the Certificate for Payment. General conditions and/or general requirements will be paid based on the percentage of Work complete on site, with the exception of Construction Contractor's initial Application for Payment which may include the reimbursement of costs for the Bonds.

4.5 Owner shall retain ten percent (10%) of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment, until fifty percent (50%) completion of the Work. Upon fifty percent (50%) completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to five percent (5%) of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment. Also, after fifty percent (50%) completion of the Work has been achieved, Construction Contractor may request in its next monthly Application for Payment release of up to one-half (1/2) of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment; provided, however, nothing in this Subsection 4.5 shall preclude or limit

Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law. Further, any reduction or release of retainage, or portion thereof shall not be a waiver of (i) any of Owner's rights to retainage in connection with other payments to Construction Contractor, or (ii) any other right or remedy that Owner has under the Contract Documents, at law or in equity.

4.6 Payments to Construction Contractor shall in no way imply approval or acceptance of Construction Contractor's Work.

4.7 Each Application for Payment shall be accompanied by: (a) properly executed and notarized (i) Release and Affidavit, in the form attached to the Agreement as Exhibit H, and (ii) Waiver of Right to Claim Against the Payment Bond (Progress Payment) in form prescribed by applicable law, showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment has been requested have been paid in full through the previous month's Application for Payment, from Construction Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond (Progress Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (b) updated Schedule(s) required by the Contract Documents, (c) a written consent from the surety for the payment being requested; and (d) such other information, documentation, and materials as Owner or Design Professional may reasonably require (e.g. payrolls, petty cash accounts, an invoices). Owner shall not be required to make payment until and unless these affidavits, waivers, reports and other information, documentation and materials are furnished by Construction Contractor. Further, if Construction Contractor is withholding any portion of a payment to any subcontractor or supplier for any labor, services, or materials for which Owner has paid Construction Contractor, Construction Contractor agrees to refund such money to Owner.

4.8 Applications for Payment shall not include requests for payment for portions of the Work for which Construction Contractor does not intend to pay a subcontractor or supplier unless such Work has been performed by others whom Construction Contractor intends to pay.

4.9 Each Application for Payment shall constitute a certification and representation by Construction Contractor to Owner that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; (iii) there are no liens or claims outstanding or known to exist at the date of the Application for Payment; (iv) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (v) duly executed waivers and releases have been obtained from all subcontractors and suppliers for work done and materials furnished through the date of payment; (vi) Construction Contractor is entitled to payment in the amount requested; (vii) such Application for Payment represents a just estimate of cost reimbursable to Construction Contractor under the terms of the Contract Documents, and (viii) such Application for Payment has not been front-end-loaded either by Construction Contractor or by any of its subcontractors or suppliers (including placing a value on a line item that

is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

4.10 Construction Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment unless later passage of title is expressly provided for elsewhere herein. Construction Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Construction Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Construction Contractor, subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

5. PAYMENTS WITHHELD

5.1 Design Professional shall review each Application for Payment submitted by Construction Contractor and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Contractor under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Contractor in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Contractor under the Contract or any other agreement between Owner and Construction Contractor, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Construction Contractor; (c) Construction Contractor's failure to make timely and proper payments to all subcontractors and suppliers;(d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Contractor's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Contractor. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Contractor's expense, if such items are not cured by Construction Contractor to Owner's reasonable satisfaction within three (3) days after Construction Contractor's receipt of written notice from Owner.

6. FINAL PAYMENT

6.1 Owner shall make final payment to Construction Contractor within sixty (60) calendar days after the Work is finally accepted by Owner in accordance with Subsection 23.2 herein, provided that Construction Contractor first, and as an explicit condition precedent to the accrual of Construction Contractor's right to final payment, shall have furnished Owner with: (a) a properly executed and notarized (i) final release (conditioned only upon receipt of final payment) in the form

of the Release and Affidavit attached to the Agreement as Exhibit H and, (ii) Waiver of Right to Claim Against the Payment Bond (Final Payment) in form prescribed by applicable law, from Construction Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond (Final Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (d) all as-built Contract Documents, including as-built drawings for design-build systems delegated to Construction Contractor; (e) a complete list of subcontractors and principal suppliers on the Project, including addresses and telephone numbers; (f) evidence reasonably acceptable to Owner that the Work has passed all requisite governmental inspections; (g) an indexed, readable and searchable electronic copy, in format acceptable to Owner and, if requested, hard copies of all operation and maintenance manuals, permits, and temporary and final certificates of completion or occupancy, as applicable, and third party warranty documents applicable to the Work; (h) a Final Payment Affidavit in statutory form; (i) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (j) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; and (k) all other materials, information and documents listed in the Project Closeout Checklist attached to the Agreement as Exhibit J and such other materials, information and documentation that may be required by the Contract Documents or Owner. Notwithstanding the foregoing, Owner reserves the right to require any of the foregoing items or portions thereof which may have been completed prior to final completion as a condition to payment of any progress payment to be made after completion of such item(s).

6.2 Construction Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Contractor against Owner arising out of the Contractor otherwise relating to the Project, except those identified in writing by Construction Contractor as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Contractor hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS

7.1 Construction Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules, and samples. Construction Contractor shall prepare a submittal schedule prior to the delivery of the guaranteed maximum price proposal and shall submit the schedule(s) for Owner's and Design Professional's approval. The submittal schedule shall (1) be coordinated with Construction Contractor's construction schedule, and (2) allow Design Professional reasonable time to review submittals. Construction Contractor shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in accordance with the approved submittal schedule, or in the absence of an approved submittal schedule, in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Construction Contractor shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to Design Professional for review and action. Design Professional will transmit them back to Construction Contractor who will then issue the submittals to the affected subcontractor for fabrication or revision. Construction Contractor shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. Construction Contractor shall request Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. Construction Contractor shall advise Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable Design Professional to prioritize requests coming from Construction Contractor. Construction Contractor shall advise Owner and Design Professional in writing when timely response is not occurring on any of the above. Shop drawings and other submittals submitted in accordance with this Section 7 are not Contract Documents. Their purpose is to demonstrate the way by which Construction Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. By submitting shop drawings and other submittals, Construction Contractor represents to Owner and Design Professional that Construction Contractor has: (a) reviewed and approved them, (b) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (c) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals except that Construction Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Professional's approval of submittals unless Construction Contractor has specifically informed Design Professional in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued authorizing the deviation. Construction Contractor shall not be relieved of responsibility for errors or omissions in submittals by Design Professional's approval thereof. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Contractor to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Contractor. All such requests, to the extent possible, should be submitted by

Construction Contractor to Design Professional prior to the setting of the GMP.

7.2 If Construction Contractor wishes to furnish or use a substitute item of material or equipment, Construction Contractor shall make application to Owner and Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Owner and Design Professional in evaluating the proposed substitute. The Design Professional may require Construction Contractor to furnish at Construction Contractor's expense additional data about the proposed substitute.

7.3 If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, Construction Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional, if Construction Contractor submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.4 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. Acceptance of a substitute shall be at Owner's sole discretion. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance, which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Contractor to furnish at Construction Contractor's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Contractor to reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating the proposed substitute.

8. PRE-CONSTRUCTION PHASE SERVICES

Construction Contractor shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of the Contract:

8.1 Review, Recommendations and Warranty: Construction Contractor shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Pre-Construction Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). Construction Contractor shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives, including assistance to Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. Construction Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. Construction Contractor shall submit to Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. Construction Contractor shall promptly call to Owner's and Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. Construction Contractor shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by the guaranteed maximum price proposal. The Program Verification Phase, Program Estimate, Schematic Design Estimate, and Design Development Estimate shall have the meanings ascribed to them in the Design Agreement. Construction Contractor acknowledges that accurate construction cost estimates are critical to Owner's ability to establish and verify its budget for the Project and, therefore, Construction Contractor shall work closely with Design Professional and use its best skill and judgment as a contractor familiar with the construction industry in the locality of the Project in preparing its construction cost estimates.

8.2 Review Reports: Within ten (10) days after receiving the documents produced by Design Professional, Construction Contractor shall perform a specific review thereof, focused upon factors of a nature encompassed in Subsection 8.1 above and on factors set out in Subsections 8.3 and 8.4 below. Within the same ten (10) day period, Construction Contractor shall submit to Owner, with copies to Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as Construction Contractor may deem appropriate, and all actions taken by Design Professional with respect to same, any comments Construction Contractor may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments. AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN THE GMP AMENDMENT, CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, EXCEPT AS MAY BE SPECIFICALLY ALLOCATED TO CONSTRUCTION CONTRACTOR IN THE CONSTRUCTION DOCUMENTS (E.G. DESIGN- BUILD SYSTEMS), THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE.

FURTHER, CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME AND WITHIN THE GMP.

8.3 Long Lead Procurement: Construction Contractor shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies) and consult with Design Professional concerning same. When each item is identified, Construction Contractor shall notify the subcontractors, Owner and Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. Construction Contractor shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and promptly advise Owner and Design Professional in writing of any problems or possible delays in delivery.

8.4 Interfacing:

8.4.1 Construction Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap and sequenced to maintain completion of all Work on schedule. Construction Contractor shall give particular attention to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to the other separate subcontractors.

8.4.2 Without assuming any design responsibilities of Design Professional, Construction Contractor shall include in the reports required under Subsection 8.2 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that Design Professional may arrange for necessary corrections.

8.5 General Conditions/General Requirements Expenses: Construction Contractor shall submit to Owner for Owner's review before the earlier of: (a) the completion of the Schematic Design Phase (Phase I), or (b) sixty (60) days after Owner's Notice to Proceed with the Pre-Construction Phase Services: (i) an itemized statement of Construction Contractor's "General Conditions" expenses for the Project, which, once agreed to by Owner shall be an Attachment to the GMP Amendment, (ii) an itemized statement of Construction Contractor's "General Requirements" expenses for the Project, and (iii) Construction Contractor's proposed Construction Contractor Fee, if not already established in the Agreement. The foregoing statements shall be in form and substance and with such detail as may be required by Owner. General Conditions' expenses and General Requirements expenses shall each be line items in the Schedule of Values to be attached to the GMP Amendment.

8.6 Facilities Condition Assessment: During the Pre-Construction Phase, Construction Contractor (in addition to its investigation and assessment obligations contained elsewhere in the Contract Documents) shall perform a thorough assessment of the Project site and facilities, if any,

located thereon and/or thereunder. Construction Contractor's assessment shall include at a minimum: (a) confirming field measurements of any existing conditions related to the Work, (b) confirming the location, condition, layout and nature of the Project site and surrounding areas, (c) working with Design Professional to identify any discrepancies between existing "as-built" documentation and actual site conditions. Owner shall not be required to make any adjustment in either the Contract Amount or Contract Time in connection with any failure by Construction Contractor to perform a thorough assessment.

9. CONSTRUCTION PHASE SERVICES

Construction Contractor shall provide the following services in addition to any other Construction Phase Services required by the terms of the Contract:

9.1 Construction Contractor shall arrange for all job-site facilities as required by Owner and necessary to enable Construction Contractor and Design Professional to perform their respective duties and to accommodate any representatives of Owner which Owner may choose to have present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.

9.1.1 Tangible personal property, otherwise referred to as job-site facilities, include, such things as trailers, toilets, computers, and any other equipment necessary to carry on the Work. The method of acquiring such job-site facilities, which are planned to become the property of Owner at the conclusion of the Work, shall be evaluated based on their cost over the life of the Project. Owning versus leasing shall be considered by Construction Contractor, obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usable life of the item. Construction Contractor shall present its evaluation with recommendation to Owner for approval.

9.1.2 When Construction Contractor wishes to supply job-site facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in Subsection 9.1.1 above. If leasing is found to be the least expensive approach, then it may lease such job-site facilities from its own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

9.1.3 For all such job-site facilities purchased, which may become the property of Owner at the conclusion of the Work, Construction Contractor shall maintain ownership, maintenance, and repair responsibilities of such facilities until final acceptance of the Work. Reimbursement for cost of such equipment will be made at the conclusion of the Work at the documented purchase price. At that time, Construction Contractor shall provide Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to Owner or to its designee.

9.1.4 Construction Contractor is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to Owner, Owner may refuse acceptance

of the equipment if Owner determines, in its sole discretion, that the equipment has not been properly cared for by Construction Contractor or that such acquisition would not otherwise be in the best interest of Owner. In such event, Construction Contractor will be reimbursed for such item in accordance with Section 5 of the Agreement.

9.2 Construction Contractor's administration of the Work shall include the following:

9.2.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

9.2.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

9.2.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

9.2.4 Provide labor relations management for a harmonious, productive Project.

9.3 Construction Contractor also shall provide job site administration functions during construction to assure proper documentation, including the following:

9.3.1 Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Construction Contractor shall arrange and conduct regular weekly Project status meetings with Design Professional and Owner.

Construction Contractor shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Construction Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Contractor shall note the action to be taken by such party or parties. Construction Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Contractor shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution. Construction Contractor shall prepare written minutes of job meetings described in this Subsection and deliver copies of such written minutes to Owner and Design Professional within three (3) days of each meeting.

9.3.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to Design Professional of such submittals for action, and closely monitor their review process.

9.3.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all

subcontractors and maintain a material and equipment expediting log.

9.3.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing, and payment of applications by subcontractors for progress and final payments.

9.3.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to Design Professional in writing. Monitor all such requests and implement procedures for timely follow-up on all such requests.

9.3.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner and Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, Design Professional, and any permitting authority inspectors.

9.3.7 Subcontractors Progress: Prepare periodic deficiency logs and punch list logs for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion. The deficiency logs shall be maintained based off of any deficiencies identified by Design Professional, building department inspectors, material testing firms, manufacturers, threshold inspectors, and any other inspectors. These two (2) types of logs must be maintained and continually updated by Construction Contractor and updated versions must be submitted by Construction Contractor, to Owner with Construction Contractor's monthly payment application as an express condition precedent to Construction Contractor's right to payment. The data on the logs submitted with Construction Contractor's payment application must be current and the logs must be updated no more than seven (7) days prior to the submission of the payment application.

9.3.8 Substantial Completion: Pursuant to the provisions of Subsection 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Contractor and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for Owner's review.

9.3.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner and Design Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner, through Design Professional, and as an express condition precedent to final payment, all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books.

9.3.10 Start-Up: With Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors. Additionally, Construction Contractor shall coordinate, participate and, if directed by Owner, conduct an Owner system-wide commissioning process reasonably satisfactory to Owner in form and content as an express condition precedent to its entitlement to final payment.

9.3.11 As-Built Drawings: Pursuant to the terms of Subsection 10.2 hereafter, Construction Contractor shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Contractor into the final as-built drawings.

9.4 Construction Contractor shall maintain at the Project site, originals, or copies of, on a current basis, all Project files and records, including the following administrative records:

9.4.1 Subcontracts and Purchase Orders

9.4.2 Subcontractor Licenses

9.4.3 Shop Drawing Submittal/Approval Logs

9.4.4 Equipment Purchase/Delivery Logs

9.4.5 Contract Drawings and Specifications with Addenda, RFIs

9.4.6 Warranties and Guarantees

9.4.7 Cost Accounting Records

9.4.8 Labor Costs

9.4.9 Material Costs

9.4.10 Equipment Costs

9.4.11 Cost Proposal Requests

9.4.12 Payment Request Records

9.4.13 Meeting Minutes

9.4.14 Cost-Estimates

9.4.15 Bulletin Quotations

9.4.16 Lab Test Reports

9.4.17 Insurance Policies and/or Insurance Certificates, Additional Insured Endorsements and Bonds

9.4.18 Contract Changes

9.4.19 Permits

9.4.20 Material Purchase Delivery Logs

9.4.21 Technical Standards

9.4.22 Design Handbooks

9.4.23 “As-Built” Marked Prints

9.4.24 Operating & Maintenance Instructions

9.4.25 Daily Progress Reports

9.4.26 Monthly Progress Reports, Meetings minutes

9.4.27 Correspondence Files

9.4.28 Transmittal Records

9.4.29 Inspection Reports

9.4.30 Bid/Award Information

9.4.31 Bid Analysis and Negotiations

9.4.32 Punch Lists

9.4.33 PMIS Schedule and Updates

9.4.34 Suspense (Tickler) Files of Outstanding Requirements

9.4.35 Policy and Procedure Manual

9.4.36 Safety Procedures and Safety Logs

9.4.37 Accident/Incident Reports

9.4.38 Evacuation Route

9.4.39 Material Safety Data Sheets

9.4.40 Documentation related to sustainability (e.g. “green globes”)

9.4.41 Environmental Reports

9.4.42 Description of Environmental Issues, if any

9.4.43 Any other Project related items

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

9.5 Construction Contractor shall provide the following services with respect to the Work, to facilitate the smooth, successful, and timely occupancy of the Project by Owner:

9.5.1 Construction Contractor shall provide a milestone schedule for required deliverables to Owner.

9.5.2 Construction Contractor shall provide consultation and Project management to facilitate Owner’s occupancy of the Project and provide transitional services to place the Work “online” in such conditions as will satisfy Owner’s operations requirements. The services include Construction Contractor’s coordination of the delivery of Owner supplied furniture, fixtures, and equipment for the Project.

9.5.3 Construction Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to Owner in such a manner as to promote their usability. Construction Contractor shall provide Owner’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be videotaped by Construction Contractor for subsequent presentation to Owner’s operations and maintenance personnel.

9.5.4 Construction Contractor shall secure required guarantees and warranties and shall assemble and deliver same to Owner in the manner required by Owner.

9.6 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Construction Contractor by the Contract Documents, Design Professional will specify performance and design criteria that such services must satisfy. Construction Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Professional. Owner and Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided Design Professional has specified to Construction Contractor performance and design criteria that such services must satisfy. Design Professional will review, approve, or take other appropriate action on submittals for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

10. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS

10.1 Construction Contractor shall prepare, maintain, and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in this Agreement, including Exhibit B to the Agreement. Construction Contractor's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Contractor. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Contractor to Owner or Design Professional pursuant to the Contract Documents.

10.2 Construction Contractor shall maintain in a safe place at the Project site one as-built copy and one permit set of the Contract Documents, including all drawings, specifications, addenda, amendments, Change Orders and Construction Change Directives, as well as all written interpretations and clarifications issued by Design Professional, in good order and legibly annotated to show all changes made during construction. The as-built Contract Documents shall be continuously updated by Construction Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders and Construction Change Directives, and all concealed and buried installations of piping, conduit, and utility services. Construction Contractor shall certify the accuracy of the updated as-built Contract Documents. As a condition precedent to Owner's obligation to pay Construction Contractor, Construction Contractor shall provide evidence, satisfactory to Owner and Design Professional, that Construction Contractor is fulfilling its obligation to continuously update the as-built Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the as-built Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The as-built Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The as-built Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Contractor's entitlement to final payment, the as-built

Contract Documents, samples, and shop drawings shall be delivered to Design Professional by Construction Contractor for Owner.

10.3 Construction Contractor shall advise Owner, its representatives, and Design Professional of their requested or required participation in any meeting or inspection giving each at least one (1) week written notice unless such notice is made impossible by conditions beyond Construction Contractor's fault and control, in which case at least forty-eight (48) hours prior written notice must be given.

11. CONTRACT TIME AND TIME EXTENSIONS

11.1 Construction Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Contractor or anyone for whom Construction Contractor is responsible or liable. Unless expressly noted otherwise in the Contract Documents, Construction Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, coordination of trades and subcontractors, coordination of drawings to existing as-built conditions and site conditions, and the coordination of Owner's suppliers and contractors as set forth in Section 14 of these General Terms and Conditions.

11.2 Should Construction Contractor actually be obstructed or delayed in the critical path of the prosecution of, or completion of, the Work as a result of unforeseeable causes: (a) beyond the control of Construction Contractor, (b) not due to Construction Contractor's fault or neglect, and (c) which could not be avoided by the exercise of reasonable diligence, including: (i) acts of God or of the public enemy, (ii) acts of government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine regulation, (vii) strikes, (viii) lockouts, or (ix) weather conditions abnormal for the period of time (as defined below) which exceed the aggregate number of days allotted for adverse weather conditions in Construction Contractor's schedule approved by Owner, Construction Contractor shall notify Owner and Design Professional in writing within forty-eight (48) hours after the commencement of such delay (which time period shall control over any conflicting time periods specified elsewhere herein) stating the cause or causes thereof, or be deemed to have waived any right which Construction Contractor may have had to request a time extension therefor. "Abnormal for the period of time" for purposes of this Section means rain or bad weather (e.g. named tropical storms or hurricanes), only when such rain or bad weather is in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion, as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Ashville, North Carolina, for Metropolitan Atlanta, Georgia, Reporting Station. Construction Contractor's schedule shall allow the number of days it deems necessary for rain and bad weather when Construction Contractor prepares its schedule and not every day of adverse weather conditions abnormal for the period of time shall be grounds for an extension of time. Construction Contractor and Owner acknowledge that any Project site rain gauge measurements will not be relied upon for determining rain fall amounts. Contractor shall use commercially reasonable efforts to mitigate the effects of any delays described in this Section so as to minimize any effect on the schedule for completion of the Work.

11.2.1 Owner shall have the right, at any time, whether or not Construction Contractor is behind schedule, to order Construction Contractor to accelerate its Work. In the event that Owner orders Construction Contractor to accelerate its Work and Construction Contractor (i) is not behind schedule, and (ii) believes that acceleration will increase the cost of performance, Construction Contractor, shall be required to submit a Claim, hereinafter defined, for increase pursuant to Section 13 of these General Terms and Conditions. Any such Claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

11.3 Construction Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If Construction Contractor encounters on the Project site any materials reasonably believed by Construction Contractor to be petroleum or petroleum related products or other hazardous or toxic substances (collectively, "**hazardous materials**") not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material which have not been rendered harmless, Construction Contractor immediately shall (i) stop Work in the area affected, and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by Construction Contractor or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Contractor shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such hazardous material.

11.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Construction Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This Section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom Owner is liable, and such delays have a cumulative total of more than twenty-one (21) calendar days after receipt by Owner of written notice from Construction Contractor of such fault or neglect, Construction Contractor may make a Claim for its actual and direct delay damages accruing after said twenty-one (21) calendar days; provided, however, Construction Contractor expressly acknowledges and agrees that its actual and direct delay damages shall not exceed, and shall be limited to no more than One Thousand and No/100 Dollars ($1,000.00) per calendar day. In no event shall Owner be liable to Construction Contractor whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, punitive, special, indirect, incidental, or consequential damages of any kind or nature whatsoever. For the avoidance of doubt, Owner's exercise of its reserved right to change, increase or decrease the Work shall not be deemed to be "fault or neglect of Owner" serving as the

basis for additional compensation under this Subsection 11.4. Claims for increased compensation or extension of time for such changes, increases or decreases shall be governed by Section 12 of these General Terms and Conditions.

12. CHANGES IN THE WORK

12.1 Owner shall have the right at any time during the progress of the Work, without invalidating the Contract, to change, increase or decrease the Work. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Contractor for any increased compensation or adjustment to the Contract Time without such written order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Construction Contractor shall familiarize itself with Owner's Change Order approval process and shall manage progress of the Work accordingly.

12.1.1 Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Construction Contractor's estimate shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and Construction Contractor's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Construction Contractor fails to submit a written proposal or request additional time for submitting the proposal within the fourteen (14) day time period, it shall be presumed that the change described in Owner's request for a proposed change will not result in a modification to the Contract Amount or Contract Time and, if directed by Owner in writing, the change shall be performed by Construction Contractor without additional compensation. Owner's request for a proposed change does not authorize Construction Contractor to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change be performed, the Work shall be authorized according to Change Order or Construction Change Directive procedures set forth herein.

12.1.2 If Construction Contractor observes any circumstance that may, in its opinion, be a change in the scope of the Work that justifies a change to the Contract Amount or Contract Time or Construction Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then Construction Contractor may submit a written Change Order Request ("**COR**") (to be followed by substantiating data), in a format acceptable to Owner, and must specify the reasons for such proposed change, including relevant circumstances and impacts on the schedule. Construction Contractor shall submit a written price proposal concurrently with the COR. Contractor may request additional compensation and/or time through a COR but not for instances that Construction Contractor knew or reasonably should have known occurred more than

fourteen (14) days prior to the date the COR is submitted. Construction Contractor's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Contract Amount or the Contract Time for the alleged change. Any such COR that is approved by Owner will be incorporated in a Change Order or Construction Change Directive. If Owner determines that the Work in question is not a change in the scope of the Work and the COR is denied but Construction Contractor believes that it does have merit, the Contractor may submit a Claim in accordance with the procedures set forth herein.

12.2 A Change Order, in the form attached as **Exhibit J** to the Agreement, shall be prepared by Construction Contractor, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Contractor and Owner concerning requested changes. Construction Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Contractor shall mutually agree. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Amount and the Contract Time.

12.3 If Owner and Construction Contractor are unable to agree on a Change Order for a requested change, Construction Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Contractor disagrees with Owner's adjustment determination, Construction Contractor must make a Claim pursuant to Section 13 of these General Terms and Conditions or else be deemed to have waived any Claim it might otherwise have had on that matter.

12.4 In the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP by the amount of Construction Contractor's actual and reasonable direct Cost of the Work (including bond premiums). In the event such change Work is performed by subcontractors or sub-subcontractors, a maximum ten percent (10%) markup for each of those subcontractors and sub-subcontractors for all overhead and profit on their direct labor and material costs and actual equipment costs shall be permitted; provided, however, there shall be no mark-up for a subcontractor's General Conditions expenses on the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order and Construction Change Directive Work to be performed by such subcontractor. Construction Contractor shall not be entitled to any mark-up for Change Order work, nor shall the Construction Management Fee be increased as a result of any Change Order work; provided, however, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in the GMP Amendment to be exceeded by Five Hundred Thousand and No/100 Dollars ($500,000.00), Construction Contractor shall be entitled to an increase to the Construction Management Fee in the amount of a fixed percentage of the amount that exceeds the sum of the original GMP plus Five Hundred Thousand and No/100 Dollars ($500,000.00). If at the time final payment is made to Construction Contractor the total Cost of the Work has been decreased by approved Change Orders in an amount causing the original GMP as set forth in the

GMP Amendment to be reduced by more than One Hundred Thousand and No/100 Dollars ($100,000.00), then the Construction Management Fee shall be reduced in the amount of a fixed percentage of the Reduction amount, such fixed percentage to be established at the time the GMP is initially agreed upon by the parties. Further, there shall be no additional General Conditions expenses payable to Construction Contractor on the first Five Hundred Thousand and No/100 Dollars ($500,000.00) of Change Order or Construction Change Directive Work.

12.5 Owner shall have the right to conduct an audit of Construction Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Contractor's claim with respect to Construction Contractor's costs associated with any Change Order or Construction Change Directive.

13. CLAIMS AND DISPUTES

13.1 The term "**Claim**" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2 Initial notice of Claims by Construction Contractor shall be made in writing to Owner and Design Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within thirty (30) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Subsection 12.4 hereof.

13.3 Construction Contractor shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents during the pendency of any Claim.

13.4 Prior to the initiation of any action or proceeding permitted by the Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Georgia. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Georgia law.

13.5 Any litigation between Owner and Construction Contractor (which term for the purposes of this Section shall include Construction Contractor's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof or performance of Work hereunder, shall be brought, maintained and pursued only in the appropriate State courts of the State of Georgia; and Owner and Construction Contractor each hereby waive and renounce any and all rights and options

which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. The exclusive venue of any such litigation between Owner and Construction Contractor shall lie and be only in the State or Superior Courts of DeKalb County, Georgia. Construction Contractor consents and submits to personal jurisdiction of any such court, and expressly waives all objections or defenses to personal jurisdiction or venue in these courts, or that the forum is inconvenient for the purpose of carrying out this provision. OWNER AND CONSTRUCTION CONTRACTOR EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH LITIGATION.

13.6 In the event of any claim or dispute arising out of the Contract, the prevailing party shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees (including fees for determining the amount of fees due) at all levels, including at trial, on appeal, and in bankruptcy and post-judgment proceedings. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed or interpreted as (1) denying to any party any remedy or defense available to such party under the laws of the State of Georgia; (2) the consent of the State of Georgia or its agents or agencies to be sued; or (3) a waiver of sovereign immunity of the State of Georgia beyond the waiver provided under Georgia law.

14. OTHER WORK

14.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Contractor prior to starting any such other work. If Construction Contractor believes that such performance will involve additional expense to Construction Contractor or require additional time, Construction Contractor shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Contractor fails to send the above required seven (7) calendar days' notice, Construction Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

14.2 Construction Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Contractor shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Contractor shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.

14.3 If any part of Construction Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Contractor shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Contractor first became aware of the delay, defect, or deficiency or by the scheduled commencement of Construction Contractor's dependent Work, whichever occurs first. Construction Contractor's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Contractor's Work.

15. INSURANCE

15.1 During the term of the Agreement or for such longer period as specified in the Contract Documents or required by applicable law, Construction Contractor shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Georgia. Simultaneously with the execution and delivery of the Agreement by Construction Contractor, Construction Contractor has delivered to Owner properly executed Certificates of Insurance (on the modified ACCORD form attached as Exhibit N to the Agreement) and required additional insured endorsements in form acceptable to Owner, evidencing the fact that Construction Contractor has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to

Owner, on a timely basis, if requested by Owner. These Certificates, additional insured endorsements and policies shall contain provisions that thirty (30) calendar days written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Contractor shall also notify Owner, in a like manner, within two (2) days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Contractor from its insurer, and nothing contained herein shall relieve Construction Contractor of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to the Contract. In no event shall any failure of Owner to receive copies or certificates of policies required under the Contract be construed as a waiver by Owner of Construction Contractor's obligations to obtain insurance pursuant as required by the Contract. The obligation to procure and maintain insurance required by the Contract is a separate responsibility of Construction Contractor and independent of its duty to furnish a copy or certificate of such insurance policies.

15.2 All insurance policies required by the Contract shall include the following provisions and conditions by endorsement to the policies:

15.2.1 The term "**The School District and DeKalb County Board of Education**" shall include the DeKalb County School District, the DeKalb County School Board, a body corporate, the DeKalb County Public School System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices thereof and individual members, officers, and employees thereof in their official capacity, and/or while acting on behalf of the DeKalb County School Board.

15.2.2 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Contractor to meet the requirements of the Contract shall name The School District and the DeKalb County Board of Education as that name is defined in Subsection 15.2.1, above, as an additional insured as to the operations of Construction Contractor under the Contract Documents and shall contain a severability of interest's provisions.

15.2.3 Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Contractor.

15.2.4 All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to the Contract, and the "Other Insurance" provisions of any policies obtained by Construction Contractor shall not apply to any insurance or self-insurance program carried by Owner applicable to the Agreement.

15.2.5 The Certificates of Insurance, which are to be provided pursuant to Subsection 15.1 above, must identify the Contract and be on the form attached to the Agreement

as Exhibit N.

15.2.6 All insurance policies shall be fully performable in DeKalb County, Georgia, and shall be construed in accordance with the laws of the State of Georgia.

15.2.7 All insurance policies to be provided by Construction Contractor pursuant to the terms hereof must expressly state that the insurance company will accept service of process in DeKalb County, Georgia and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in DeKalb County, Georgia.

15.3 The acceptance by Owner of any evidence of the insurance coverages and limits required by the Contract, including any Certificate of Insurance, policy, or additional insured endorsement, does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the evidence of insurance are in compliance with the requirements of the Contract.

15.4 Before starting and until completion of all Work required hereunder or for such longer period as otherwise specified herein or required by applicable law, Construction Contractor shall procure and maintain insurance of the types and to the limits specified in Exhibit E to the Agreement, "Insurance Coverage," which is attached hereto and made a part hereof Construction Contractor shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant's or subcontractor's work or services or for such longer period as otherwise specified herein or required by applicable law, insurance of the types and to the limits specified in Exhibit E to the Agreement, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.

15.5 If any insurance provided pursuant to the Contract expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies and applicable additional insured endorsements, shall be furnished to Owner thirty (30) calendar days prior to the date of expiration.

15.6 Should at any time Construction Contractor not maintain the insurance coverages required in the Agreement, Owner may cancel the Agreement and any Amendments issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge Construction Contractor for such coverages purchased. If Construction Contractor fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Construction Contractor under the Contract. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under the Contract.

15.7 All insurance companies from whom Construction Contractor obtains the insurance policies required hereunder must meet the following minimum requirements:

15.7.1 The insurance company must be duly licensed and authorized by the

Department of Insurance of the State of Georgia to transact the appropriate insurance business in the State of Georgia.

15.7.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of the Agreement.

15.7.3 The insurance company must have an A. M. Best policyholder rating of either "A+", "A", or "A-".

15.7.4 The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.

15.8 Unless otherwise noted in the Contract Documents, Owner shall maintain property insurance with respect to the Project. The property insurance shall include the interests of Construction Contractor and its subcontractors and suppliers in the Project. The property insurance shall be an "All Risk" type of policy, with coverage amounts, deductibles and sublimits established by Owner. The property insurance shall not cover loss to any of Construction Contractor's or its subcontractors owned, leased or rented property, including trailers, tools, supplies and equipment. Any losses under the property insurance shall be adjusted by Owner, with the cooperation of Construction Contractor, with any claim check being made payable to Owner. Construction Contractor shall be liable and responsible for all property insurance deductibles up to the amount of Five Thousand and No/100 Dollars ($5,000.00) on each loss occurrence.

15.9 Insurance requirements itemized in the Contract and required of Construction Contractor shall be provided on behalf of all sub-contractors to cover their operations performed under the Contract. Construction Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

15.10 Each insurance policy required by the Contract shall:

15.10.1 Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability; and Not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Owner.

15.11 Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

15.12 The procuring of required policies of insurance shall not be construed to limit Construction Contractor's liability or to fulfill the indemnification provisions and requirements of the Contract.

15.13 Construction Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of the Contract and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

15.14 Claims Made Policies will be accepted for Professional Liability and Pollution Liability (Hazardous Materials), and such other risks as are authorized by Owner. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than four (4) years. If provided as an option, Construction Contractor shall purchase the extended reporting period on cancellation or termination unless a new policy is affected. Any new policy shall maintain the original retroactive date evidenced at the commencement of the Contract.

15.15 Certificates of Insurance or, if required by Owner, certified copies of the applicable insurance policies, and applicable additional insured endorsements, evidencing Claims Made or Occurrence Form Coverage and conditions to the Contract are to be furnished to Owner prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract, when applicable. All insurance certificates or, if required by Owner, certified copies of the applicable insurance policies, and applicable additional insured endorsements or shall be received by Owner before Construction Contractor will be allowed to commence or continue work. All certificates will reference the contract, bid, project or job number on the certificate. All insurance carriers listed on the certificate must have their corresponding AM Best carrier ID listed.

15.16 Notices of Accidents (occurrences) and Notices of Claims associated with the Work being performed under the Contract, shall be provided to Construction Contractor's/ subcontractor's/consultant's insurance company and Owner as soon as practicable after notice to the insured.

16. WAIVER OF SUBROGATION

16.1 Construction Contractor waives all rights of subrogation against Owner, Design Professional, the Program Manager (if any), and the board members, directors, officers, agents, employees, subconsultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance required to be maintained by Construction Contractor or its subcontractors, to the extent such damages or injuries are covered by such insurance. Construction Contractor shall require similar waivers from all of its subcontractors.

16.2 If any policies of insurance required to be maintained by Construction Contractor or its subcontractors require an endorsement to provide any waiver of subrogation referenced above, Construction Contractor shall cause such policies to be so endorsed.

17. INDEMNIFICATION

To the fullest extent permitted by law, the Construction Contractor shall indemnify, defend, and hold harmless the Owner, the DeKalb County School District, and the Owner's Program Manager, and all of their respective past, present and future officials, officers, employees, and agents (hereinafter collectively referred to as the "Owner Indemnitees"), from and against 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 Construction Contractor's performance of this Contract or of the Work, to the extent caused in part by the Construction Contractor or anyone for whose acts the Construction 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 Indemnitees; provided, however, that the Construction Contractor shall not be required to indemnify, defend, or hold harmless the Owner Indemnitees against claims, liabilities, damages, losses, or expenses, including attorneys' fees, caused by or resulting from the sole negligence of the Owner or of the Owner Indemnitees. Construction Contractor's indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Contractor or its subcontractors, sub-subcontractors, or suppliers under workers' compensation acts, disability benefit acts or other employee benefit acts.

18. CLEANUP AND PROTECTIONS

18.1 Construction Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Contractor fails to keep the Project site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to back charge Construction Contractor for the costs of such clean up. At the completion of the Work, Construction Contractor shall remove all debris, rubbish, and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

18.2 Any existing surface or subsurface improvements, including pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees, and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Contractor at its expense to condition at least equal to that existing at the time of Construction Contractor's commencement of the Work.

18.3 Construction Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Protection of construction materials or equipment stored on the site from weather, theft and damage is the sole responsibility and risk of Construction Contractor.

18.4 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by Construction Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Construction Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

18.5 Construction Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work, and (ii) the building in the event of partial occupancy.

18.6 All labor, material and equipment required to provide and maintain controls for the duration of the Project including those associated with traffic control (including all signage, street, sidewalks barriers and fencing), storm water and pollution controls shall be supplied and paid for and maintained by Construction Contractor.

19. ASSIGNMENT

19.1 Construction Contractor shall not assign the Contract or any part thereof, without the prior consent in writing of Owner. Any attempted assignment in violation of the foregoing prohibition without Owner's prior written consent shall be void. If Construction Contractor does, with approval, assign the Contract or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Contractor all of the obligations and responsibilities that Construction Contractor has assumed toward Owner.

20. PERMITS, LICENSES AND TAXES

20.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Contractor. Permits and licenses to be acquired by Construction Contractor with the assistance of Design Professional include building, site, Department of Education, and utility permits, as well as all Health Department (DER) permits required for the construction or relocation of DeKalb County water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in the Contract. If Construction Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Construction Contractor shall bear all costs arising therefrom. All costs incurred by Construction Contractor with respect to performing its obligations under this Subsection 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Contract. Owner shall fully cooperate with Construction Contractor where necessary. Construction Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

20.2 Construction Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

21. TERMINATION FOR DEFAULT

21.1 Construction Contractor shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Section, if Construction Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform

the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2 If Owner determines that Construction Contractor is in default under the Contract, Owner shall notify Construction Contractor in writing of Construction Contractor's default(s). If Owner determines that Construction Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Contractor of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Contractor, take assignments of any of Construction Contractor's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Contractor is in default under the Contract or the subsequent determination that Construction Contractor has failed to satisfactorily cure its default, Owner may rely solely upon Design Professional's certification to Owner that in Design Professional's opinion Construction Contractor is in default or has failed to satisfactorily cure its default.

21.3 If Owner deems any of the foregoing remedies necessary, Construction Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Contractor shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Management Fee earned and the Cost of the Work incurred prior to Construction Contractor's right to continue performance under the Contract being terminated. Any amounts to be paid to Owner by Construction Contractor pursuant to this Subsection 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

21.4 The liability of Construction Contractor hereunder shall extend to and include the

full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Construction Contractor's default, Construction Contractor shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

21.5 If, after notice of termination of Construction Contractor's right to proceed pursuant to this Section, it is determined for any reason that Construction Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Contractor provided herein, then such termination shall be deemed a termination for Owner's convenience and Construction Contractor's remedies against Owner shall be the same as and limited to those afforded Construction Contractor under Subsection 22.1 below.

22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

22.1 Owner shall have the right to terminate the Contract without cause upon seven (7) calendar days' written notice to Construction Contractor. In the event of such termination for convenience, Construction Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Contractor shall not be entitled to any other or further recovery against Owner, including damages or any anticipated profit on portions of the Work not performed.

22.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Contractor two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Contractor be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents; provided, however, if the ordered suspension exceeds ninety (90) calendar days, Construction Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension. When all or a portion of the Work is suspended for any reason, Construction Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage.

23. COMPLETION

23.1 When the entire Work (or any portion thereof designated in writing by Owner) is substantially complete, Construction Contractor shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial

Substantial Completion). The issuance of a Certificate of Occupancy or Conditional Certificate of Occupancy for the Work shall be an express condition precedent to Contractor's right to request that Design Professional issue a Certificate of Substantial Completion. The written notice from Construction Contractor referenced in the first sentence of this Subsection shall include a proposed punch list of all items of Work to be completed or corrected by Construction Contractor. Within a reasonable time thereafter, Owner, Construction Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Contractor in writing giving the reasons therefor. In such case, Construction Contractor shall pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Contractor and include a final punch list of items to be completed or corrected by Construction Contractor before final payment. Such final punch list shall be in compliance with the Contract Documents and all applicable laws. Accordingly, Design Professional shall provide the final punch list to Construction Contractor within seven (7) calendar days after Construction Contractor has achieved Substantial Completion. Construction Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Contractor to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this Section for each building, structure, or phase of the Project. Owner shall have the right to exclude Construction Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or partial Substantial Completion), but Owner shall allow Construction Contractor reasonable access to complete or correct items on the final punch list.

23.2 When Construction Contractor believes it has fully performed all of the Work, including all punch list items, Construction Contractor shall deliver to Owner a written affidavit from Construction Contractor certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Contractor at the same time it submits its final Application for Payment, which Construction Contractor shall submit within one hundred twenty (120) days of the date of Substantial Completion. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Design Professional determine Construction Contractor has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Contractor, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Contractor's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Contractor submits: (1) the Interim and

final Release and Affidavit in the forms attached to the Agreement as Exhibit H, (2) consent of surety to final payment, (3) all close-out documentation and information required by the Contract Documents to be provided by Construction Contractor prior to its entitlement to final payment, and (4) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable.

24. WARRANTY

24.1 Construction Contractor shall obtain and assign to Owner on a non-exclusive basis all warranties given to Construction Contractor by any subcontractors or by any materialmen supplying materials, equipment, or fixtures to be incorporated into the Project. Construction Contractor expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Contractor expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers, or processors except as otherwise provided for in the Contract Documents. Further, any warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions, or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Contractor expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Contractor shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one (1) year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved. With respect to the correction of any defective or nonconforming Work, Construction Contractor shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contractor shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved. Construction Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Contractor, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Contractor), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Contractor), or normal wear and tear under normal usage.

25. TESTS AND INSPECTIONS

25.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection, and testing. Construction Contractor shall provide proper, safe conditions for such access. Construction Contractor shall provide Design Professional and the Owner with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests, or approvals.

25.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.

25.3 If any Work that is to be inspected, tested, or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Contractor and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Contractor's expense unless Construction Contractor has given Design Professional forty-eight (48) hours' written notice of Construction Contractor's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Design Professional, such Work must, if requested by Design Professional, be uncovered for Design Professional's observation, and be replaced at Construction Contractor's sole expense.

25.4 Owner shall charge to Construction Contractor and may deduct from any payments due Construction Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by Owner and Construction Contractor was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday, or holidays.

25.5 Neither observations by Design Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Contractor from Construction Contractor's obligations to perform the Work in accordance with the Contract Documents.

25.6 Construction Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs, to the extent such re-inspections are due to the fault or neglect of Construction Contractor.

25.7 Construction Contractor shall only use a certified independent testing and balancing

services contractor to perform "Test and Balance" ("T&B") services for this Project. The T&B contractor shall be completely independent of Construction Contractor's mechanical and ventilating subcontractor(s). Construction Contractor shall be responsible for coordinating mechanical/ventilating ("HVAC") work, including HVAC control systems and T&B work.

25.8 A completed preliminary T&B report meeting the requirements of the governmental authority(ies) having jurisdiction over the Project shall be delivered by Construction Contractor to Owner prior to and as a condition of achieving Substantial Completion. Construction Contractor shall deliver to Owner the final T&B report within thirty (30) days after the date of Substantial Completion and the delivery of such final T&B report shall be a condition of final payment.

25.9 In addition to all other inspection obligations of Construction Contractor under the Contract Documents, Construction Contractor shall provide structural inspections on threshold buildings pursuant to a structural inspection plan prepared by Design Professional. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures, and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. The threshold building inspection shall be performed by a threshold inspector, certified by the State of Georgia, and approved by Owner. Construction Contractor shall promptly provide to Owner and Design Professional copies of all thresholds building inspection reports.

26. DEFECTIVE WORK

26.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Contractor shall as direct, either correct all defective Work, whether or not fabricated, installed, or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Contractor shall bear all direct, indirect, and consequential costs of such correction or removal (including fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

26.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Contractor, at Design Professional's or Owner's request, shall uncover, expose, or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Construction Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

26.3 Owner shall have the right to order Construction Contractor to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Contractor's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include Construction Contractor's failure to provide adequate labor, materials, or equipment to satisfactorily maintain the various Project schedules (including the Master Project Schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Contractor or any other person.

26.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Construction Contractor shall bear all direct, indirect, and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents, and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Contractor shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

26.5 If Construction Contractor fails, within a reasonable time (as determined by Owner) after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Contractor fails to perform the Work in accordance with the Contract Documents, or if Construction Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Contractor's services related thereto, take possession of Construction Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Contractor but which are stored elsewhere. Construction Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Section. All direct, indirect, and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Contractor, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect, and consequential costs shall include fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Construction Contractor's defective Work. Construction Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

27. SUPERVISION AND CONSTRUCTION CONTRACTOR'S REPRESENTATIVE

27.1 Construction Contractor is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Contractor is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Contractor shall keep on the Work at all times specified in the Itemized General Conditions Expenses Attachment to be attached to the GMP Amendment during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Contractor. All communications given to the representative shall be as binding as if given to Construction Contractor. Owner shall have the right to direct Construction Contractor to remove and replace its Project representative or any other employee of Construction Contractor or any employee of any subcontractor from the Project, with or without cause.

27.2 Construction Contractor shall maintain sufficient off-site support staff, and competent full-time staff at the Project site authorized to act on behalf of Construction Contractor to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Contractor shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit L to the Agreement. Construction Contractor shall not change any of those persons identified in Exhibit L unless mutually agreed to in writing by Owner and Construction Contractor. In such case, Owner shall have the right to approve the replacement personnel.

27.3 Construction Contractor shall establish and maintain lines of authority for its personnel and shall provide this information to Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and Design Professional. Owner and Design Professional may attend meetings between Construction Contractor and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of Construction Contractor to administer the subcontracts.

27.4 Construction Contractor shall be responsible to Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to Construction Contractor. Construction Contractor shall develop and maintain a program, acceptable to Owner and Design Professional, to assure quality control of the Work. Construction Contractor shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Contractor shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between Construction Contractor and Design Professional over the acceptability of the Work, Owner, in its sole discretion, shall have the right to determine the acceptability.

27.5 Construction Contractor shall not employ on the Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct,

nor permit any subcontractor to assign any employee of it to the Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

28. PROTECTION OF WORK

28.1 Construction Contractor shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. Loss or damage includes environmental impacts to the ground, air, and water. If Construction Contractor or anyone for whom Construction Contractor is legally liable is responsible for any loss or damage to the Work or other work or materials of Owner or Owner's separate contractors, or adjacent property, Construction Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Contractor.

28.2 Construction Contractor shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

28.3 Construction Contractor shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Contractor subject any part of the Work or adjacent property to any forces that will endanger it.

28.4 Construction Contractor shall not disturb any benchmark established by Owner with respect to the Project. If Construction Contractor, or its subcontractors, agents or anyone for whom Construction Contractor is legally liable, disturbs Owner's benchmarks, Construction Contractor shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Contractor shall be liable for all costs incurred by Owner associated therewith.

29. EMERGENCIES

29.1 Construction Contractor shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project site. Property damage includes environmental impacts to the ground, air, and water. Construction Contractor shall give Design Professional, Owner and Program Manager written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. In addition, Construction Contractor shall deliver to the Owner and Program Manager copies of any written notice of violations received by Construction Contractor or subcontractors within forty-eight (48) hours following notification by the regulatory agency. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Contractor fails to provide the forty-eight (48) hour written notice noted above, Construction Contractor shall be deemed to have waived any right it otherwise may have had to

seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Contractor is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage. The notice procedures contained in this Section 29 control over any conflicting notice periods herein.

30. USE OF PREMISES

30.1 At all times during the performance of the Work, Construction Contractor shall keep all of its operations, (including the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Contractor shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Contractor is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

30.2 Except as required by the Contract Documents or otherwise required in order for Construction Contractor to satisfy its safety and security obligations under the Contract Documents, Construction Contractor shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

30.3 Construction Contractor acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Contractor shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.

30.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Contractor the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Contractor's cost or time of performance, Construction Contractor shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

31. SAFETY

31.1 Construction Contractor is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is Construction Contractor's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off of the Project site. Construction Contractor shall develop and implement, in accordance with the requirements of the Contract Documents, a safety plan for the Work.

31.2 Construction Contractor shall comply with, and give notices required by, all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety and building codes, environmental laws, ordinances, rules and regulations. Construction Contractor shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Contractor's duties and responsibilities for the safety and protection of the Work and the environment shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred. Construction Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Further, Construction Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other laws and the Contract Documents. Construction Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

31.3 At all times during the performance of the Work at the Project site, Construction Contractor shall have designated, and located on a full-time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Contractor's safety program at the Project site. Construction Contractor hereby designates its superintendent as that safety representative. Construction Contractor may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Contractor's safety representative at the Project site. Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Contractor, as well as those of all subcontractors and those of any other person or entity for whom Construction Contractor is legally liable (collectively referred to herein as "**Employees**"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

31.4 Construction Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Contractor shall comply with the following:

31.4.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

31.4.2 All Employees shall be provided an identification badge by Construction Contractor. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must sign in and out with Construction Contractor each day;

31.4.3 Construction Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property

without Owner's expressed prior written consent;

31.4.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

31.4.5 All Employees shall at all times comply with OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

31.4.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

31.4.7 When requested, Construction Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

31.4.8 Owner is committed to the education and safety of its students, faculty and employees. To that end, Construction Contractor is required to ensure that all Employees do not possess criminal records that would violate Owner's standard for employment as set forth by the Georgia Department of Education. Construction Contractor shall ensure at all times that the Employees are in compliance with such standards; Interaction between the Employees and the teacher and student population is strictly prohibited; and

31.4.9 The Employees may not solicit, distribute, or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property.

31.5 At all times Construction Contractor shall adhere to Owner's safety and security regulations and shall comply with all security requirements at Owner's facilities, including all safety and security regulations and requirements, as said regulations and requirements may be modified or changed by Owner from time to time.

31.6 Construction Contractor certifies that no person or subcontractor will be assigned to work on any work pursuant to the Contract that pose any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of Owner. Further, Construction Contractor agrees to indemnify and hold harmless Owner and its officers and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Construction Contractor's employees or subcontractors assigned to do work pursuant to the Contract.

32. PROJECT MEETINGS

32.1 Prior to the commencement of Work, Construction Contractor shall attend a

preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Contractor shall attend any and all meetings convened by Owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Design Professional.

33. MATERIAL SAFETY DATA SHEET

Construction Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If any chemicals, materials, or products containing toxic substances, as defined by 29 C.F.R. 1910, Subpart Z or any local, state or federal statutes or regulations, are contained in the products used on site or incorporated into the construction by Construction Contractor or any of its subcontractors, Construction Contractor shall provide to Design Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product. Construction Contractor shall indemnify and hold harmless Owner against the cost and expense Owner incurs: (a) for remediation of a material or substance Construction Contractor brings to the site and negligently handles, or (b) where Construction Contractor fails to perform its obligations under Subsection 11.3 above, except to the extent that the cost and expense are due to Owner's fault or negligence.

34. AUDITING AND RECORDKEEPING

34.1 Construction Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of the Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Contractor shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Contractor's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Contractor shall cooperate in any audit, inspection, or copying of the documents.

34.2 Construction Contractor acknowledges and agrees that Owner is obligated to timely comply with requests for information pursuant to state and federal laws and regulations. Construction Contractor agrees and shall comply with all provision of the Georgia Open Records Act ("ORA") (O.C.G.A. § 50-18-70 et. seq.), and to make records pertaining to performance of services, provision of goods or other functions under this Agreement available for public inspection upon request, unless otherwise exempt under other provisions of the ORA.

34.3 If at any time, Owner conducts such an audit of Construction Contractor's records and documentation and finds that Construction Contractor overcharged Owner, Construction Contractor shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of Twelve percent (12%) per annum. If the Overcharged Amount is equal to or greater than Ten Thousand and No/100 Dollars ($10,000.00), Construction Contractor shall pay to Owner the

Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Contractor. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Contractor with regard to the Project or under any other agreement between Construction Contractor and Owner. If such amounts owed Construction Contractor are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Contractor hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

34.4 This Section 34, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of the Contract.

35. COMPLIANCE WITH LAWS

35.1 Construction Contractor agrees to and shall comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project and to the Work, including but not limited to local building codes, fire safety and accountability codes, and other safety codes and regulations, and shall also ensure the compliance of its subcontractors, sub-subcontractors, and consultants. If Construction Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

35.2 For federally funded projects, Construction Contractor must comply with all federal rules and regulations including those defined in the Davis Bacon Wage Rate Act, the federal Education Department General Administrative Regulations (EDGAR), and those acts referred to by EDGAR, such as the Copeland Anti-Kickback Act (29 C.F.R. Part 3) and the Contract Work Hours and Safety Standards Act (28 C.F.R. Part 5).

35.3 Compliance with Federal and State Work Authorization and Immigration Laws. The Contractor and all Subcontractors and consultants must comply with all federal and state work authorization and immigration laws, and must, as a material condition of this Contract, certify compliance with O.C.G.A. §13-10-91 . The required Contractor's affidavit set forth in Exhibit G must be filed with the Owner at contract execution and shall become a part of this Contract. Required subcontractor affidavits set forth in Exhibit G must be obtained and maintained by the Contractor as of the beginning date of this contract and the beginning date of each subcontract or consultant contract. A copy of each such verification shall be provided to the Owner at the time the subcontractor or consultant is retained. State officials, including officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Contractor, its Subcontractors and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Chapter 300-10-1 *et seq.* of the Rules and Regulations of the Georgia Department of Labor. Contractor warrants that it will include a similar provision in all contracts entered into with Subcontractors for the physical performance of services in satisfaction of this Contract

35.4 Construction Contractor further agrees to pay any expenses, including attorneys' fees, incurred by Owner as a result of such failure to comply with applicable federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project.

36. SUBCONTRACTS

36.1 Construction Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Master Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval. Construction Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

36.2 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Contractor. Construction Contractor shall be solely responsible for and have control over the subcontractors. Construction Contractor shall negotiate all Change Orders, Construction Change Directives and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

36.3 When Construction Contractor submits its guaranteed maximum price proposal to Owner, Construction Contractor also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Contractor intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Contractor shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Contractor shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Contractor shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Contractor at the Project site, Construction Contractor shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses.

36.4 All subcontracts between Construction Contractor and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall: (1) require each subcontractor to be bound to Construction Contractor to the same extent Construction Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Contractor to Owner at the election of Owner upon termination of Construction

Contractor, (3) provide that Owner and its officers and employees will be additional indemnified parties of the subcontract, (4) provide that Owner and its officers and employees will be additional insureds on all insurance policies required to be provided by the subcontractor except workman's compensation and professional liability, if applicable, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, (7) provide that the Work being performed pursuant to such subcontract be performed in accordance with the requirements and intent of the Contract Documents and provide for retainage as specified Subsection 4.5 of these General Terms and Conditions; (8) provide for submission of Applications for Payment in form acceptable to Owner, together with reasonable backup and supporting information, together with Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond, in the forms required by the Contract, (9) provide that each subcontractor, sub-subcontractor and supplier furnish to Construction Contractor or the applicable subcontractor, as the case may be, in a timely fashion all information necessary for the preparation and submission of the reports required by the Contract; (10) provide that the subcontractor will resolve all disputes involving Owner in the same manner as provided in the Contract, and (11) incorporate the requirements of Exhibit E to the Agreement into all of its subcontracts and, upon Owner's request, to provide copies of such insurance policies and additional insured endorsements, to Owner (and require similar incorporation into all sub-subcontracts). Construction Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Subsection 36.4 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors. Construction Contractor shall make available for Owner's review and copying or, at Owner's request, deliver to Owner true and complete copies of Construction Contractor's agreements with subcontractors and suppliers.

36.5 Each subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work. Further, each major subcontractor must agree in its subcontract to provide field (on-site) supervision through a named superintendent. For purposes of this Subsection, "major subcontractors" shall include subcontractors responsible for general concrete forming and placement, masonry, mechanical, plumbing, electrical, drywall, glass and glazing, roofing and other trades identified by Owner from time to time.

36.6 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

36.6.1 LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY

> That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than ten percent (10%) for overhead and profit, provided that there shall be no additional compensation paid to Subcontractor for General Conditions expenses for the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order or Construction Change Directive Work to be performed by such subcontractor.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation. Further, Construction Contractor shall incorporate terms of Subsection 11.4 of these General Terms and Conditions in all of its subcontracts and require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

36.6.2 Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Contractor within the time and in the manner in which Construction Contractor must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

36.7 Contractor shall promptly report to Owner any occasion in which the contract price in an agreement with a subcontractor or supplier is lower than the estimated price included in the GMP for the scope of Work covered by such agreement (including any Change Order and Construction Change Directive Work). Further, Owner reserves the right to audit Construction Contractor's agreements with subcontractors and suppliers and Construction Contractor shall promptly make available to Owner all records necessary for such purpose.

37. MARKET ANALYSIS AND SOLICITATION OF BIDS

37.1 The purpose of this Section is to ensure that Construction Contractor makes a genuine effort to stimulate subcontractor interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. At all times, Owner shall have access to and the right to require copies of all correspondence, records, files and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Contractor shall notify Owner of the date, time and place of all bid openings and Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in DeKalb County, Georgia. Finally, Construction Contractor shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Contractor shall not deviate from such procedures without obtaining Owner's prior written consent.

37.1.1 Construction Contractor shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work; Construction Contractor shall make an analysis as necessary to (i) determine and report on availability of labor,

materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

37.1.2 Within thirty (30) days after execution of the Agreement, Construction Contractor shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Contractor shall submit to Owner and Design Professional a list of potential bidders for their review and approval. Construction Contractor shall be responsible for promoting and encouraging bid competition.

37.1.3 Construction Contractor shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

37.2 Construction Contractor shall prepare invitations for bids and all other appropriate bid documents for all procurement of long lead items, materials and services, for subcontractor contracts and for site utilities. All such invitations for bids and bid packages shall be submitted to Design Professional and Owner for their review and approval prior to distribution to bidders.

37.2.1 Except as hereafter provided in Subsection 37.5, all subcontracts are to be awarded to the lowest responsive and responsible bidder.

37.2.2 Subcontracts not exceeding Twenty-Five Thousand and No/100 Dollars ($25,000.00) may be awarded based upon verbal bids. Construction Contractor shall obtain a minimum of at least two (2) verbal or written bids on all such subcontracts. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comments prior to Construction Contractor awarding the subcontract.

37.2.3 Subcontracts exceeding Twenty-five Thousand and No/100 Dollars ($25,000.00) must be publicly advertised for at least two (2) consecutive weeks prior to the established bid opening time and date. All such bids must be in writing and shall be received and opened in the manner and at the location, date and time established in the bid documents. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comment prior to Construction Contractor awarding the subcontract.

37.3 As part of its bid preparation, Construction Contractor shall review the specifications and drawings prepared by Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by Construction Contractor shall be brought to the attention of Owner and Design Professional in written form.

37.4 For each subcontract that exceeds Twenty-five Thousand and No/100 Dollars ($25,000.00), Construction Contractor shall, unless waived in writing by Owner, conduct a pre-bid conference with prospective bidders and a pre-award conference with the apparent successful bidder. Design Professional and Owner shall be invited to all such meetings. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, Construction Contractor shall transmit these to Design Professional in writing and upon receiving clarification or correction in writing from Owner or Design Professional shall issue an addendum to the bidding documents to all of the prospective bidders.

37.5 Notwithstanding the provision above requiring award of subcontracts to the lowest responsive and responsible bidder, Construction Contractor may award a subcontract to someone other than the lowest responsive and responsible bidder provided Construction Contractor has first received Owner's express written consent to such award. Owner's consent to any such award will be at Owner's sole discretion. Whenever Construction Contractor wishes to award a subcontract to someone who is not the lowest responsive and responsible bidder, Construction Contractor must notify Owner in writing, setting out in detail the reasons and justifications for the suggested award.

38. SURVIVAL

38.1 All representations and covenants of the parties shall survive the expiration of the Agreement. Further, all of Construction Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of Construction Contractor's Work or termination or completion of the Contract or termination of the Work of Construction Contractor.

39. SECURING AGREEMENT

39.1 Construction Contractor warrants that Construction Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Construction Contractor, to solicit or secure the Contract and that Construction Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract Amount, or otherwise recover, the full amount of such fee, commission, percentage, gift of consideration. Construction Contractor's compensation shall be adjusted to exclude any significant sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs. All such adjustments must be made within one (1) year following the completion of the Work or the earlier termination of the Contract.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT B

SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms and Conditions hereby amend, modify and supersede in the event of a conflict the terms of the Agreement and the General Terms and Conditions attached thereto as Exhibit A.

Construction Contractor shall provide Owner, its representatives and Design Professional with copies of a Policy and Procedure Manual (total number of copies not to exceed 5) developed and updated in accordance with the following requirements:

1. Upon execution of the Agreement, Construction Contractor shall develop a comprehensive Policy and Procedure Manual (the "**Manual**") describing the services to be provided by Construction Contractor per the Contract Documents. The Manual shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization, including identification of key personnel, responsibilities of Construction Contractor, Owner and Design Professional; Work flow diagrams; and strategy for bidding and subcontracting the Work. Owner shall have the right to review the Manual and to approve its content and format. The Manual shall be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without Owner's prior written concurrence. Five (5) copies of the Manual and any updates shall be submitted to Owner and Design Professional. In developing the Manual, Construction Contractor shall coordinate and consult with Owner and Design Professional. The initial Manual shall be submitted to Owner for approval.

2. Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:

   2.1 Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub- projects.

   2.2 Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.

2.3 Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.

2.4 Project Work Plan: A matrix display of the Work to be performed by Construction Contractor, as well as the services and items to be furnished by Design Professional and Owner during each phase of the Project.

2.5 Project Organization: A summary organization chart showing the interrelationships between Owner, Construction Contractor and Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for Construction Contractor and Design Professional, showing organizational elements participating in the Project shall be included.

2.6 Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of Owner, Design Professional, and Construction Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. Construction Contractor shall develop a similar chart for the personnel within its own organization who are assigned to the Project, as well as for Design Professional's and Owner's personnel assigned to the Project from data supplied by them.

2.7 Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and Change Orders.

2.8 Written Procedure: Construction Contractor will provide written procedures for communications and coordination required between Construction Contractor, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Contractor and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Contractor

throughout the Project duration, with Construction Contractor distributing a copy of all updates to Owner and Design Professional.

3. This Policy and Procedure Manual shall be completed and submitted to Design Professional and Owner for their review and Owner's approval as a condition precedent to payment by Owner to Construction Contractor for any services provided in the Construction Phase under the Contract.

4. This Policy and Procedure Manual is merely an amplification and clarification of the Contract. Any conflicts between the Policy and Procedure Manual and the Contract shall be governed by the latter.

B. Construction Contractor shall provide the following Project Management Information System ("**PMIS**"), which system shall be in place for both the Pre-Construction Phase Services and Construction Phase Services to be provided by Construction Contractor pursuant to the Contract.

1. General:

1.1 Commencing immediately after the Notice to Proceed is issued to Construction Contractor by Owner, Construction Contractor shall implement and shall utilize throughout the life of the Contract all subsystems of the PMIS.

1.2 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.

1.3 If requested by Owner, Construction Contractor shall conduct a comprehensive workshop in Tucker, Georgia, for participants designated by Owner and additional seminars as required by Owner to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant's and Owner's representatives' use and understanding of the PMIS.

1.4 The PMIS shall be described in terms of the following major subsystems:

1.4.1 Narrative Reporting;

1.4.2 Schedule Control;

1.4.3 Cost Control and Estimating;

1.4.4 Project Accounting;

1.4.5 Accounting and Payment; and

1.4.6 Action Reports.

1.5 The above reports shall be submitted at least on a monthly basis and shall accompany each monthly Application for Payment.

2. Narrative Reporting Subsystem.

2.1 Construction Contractor shall prepare written reports as described hereunder. All reports shall be in 8 1/2" x 11" format.

2.2 The Narrative Reporting Subsystem shall include the following reports:

2.2.1 Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.

2.2.2 Monthly Cost Narrative describing the current construction cost estimate status of the Project.

2.2.3 A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an explanation of all variances from the plan. This report shall include an analysis of the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

2.2.4 Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be

provided.

2.2.5 A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.2.6 Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.3 The Reports outlined in Subsections 2.2.1 through 2.2.5 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to Owner and Design Professional. A bound copy of the complete diary shall be submitted to Owner at the conclusion of the Project.

3. Schedule Control Subsystem.

3.1 Master Project Schedule: Prior to the submittal of its first application for payment, Construction Contractor shall submit to Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Subsection 3.4 below. Further, this schedule shall account for any Owner scheduling requirements, such as prohibiting any Work in or near any areas where standardized assessment testing or other assessment testing is taking place during such testing that would disturb or interfere with such testing. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by Construction Contractor throughout the Project. Within fifteen (15) calendar days of Construction Contractor's submittal, Owner and Design Professional shall review the schedule and provide Construction Contractor a written list of corrections needed to approve the schedule. Construction Contractor must make all corrections and resolve all comments within thirty (30) calendar days after its receipt of Owner's and Design Professional's comments. If the schedule is not approved within said thirty (30) calendar days, Owner may withhold all Contract payments until the schedule is approved. The acceptance of the schedule by Owner and Design Professional in no

way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. Construction Contractor is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.

3.2 Construction Schedule: Construction Contractor shall prepare and submit to Owner and Design Professional, for their review and approval, a construction schedule. This construction schedule shall conform to the format outlined in Subsection 3.4 below ("**Construction Schedule**"). The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.

3.2.1 Following development and approval of the Construction Schedule as aforesaid, Construction Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to Owner in duplicate. No additional compensation will be due Construction Contractor for making such updates. Failure of Construction Contractor to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for Owner to find Construction Contractor in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to Construction Contractor until a schedule or schedule update acceptable to Owner is submitted.

3.3 Construction Contractor shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

3.3.1 Pre-Bid Schedules (Subnetworks): Construction Contractor shall prepare a construction schedule for that portion of the Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the Master Project Schedule.

3.3.2 Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, Construction Contractor shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the work schedule of the other subcontractors. The subcontractor's construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

3.3.3 Occupancy Schedule: Construction Contractor shall jointly develop with Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

3.4 Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time. Further, Owner reserves the right to require Construction Contractor to provide a cost loaded schedule. Further, both the Master Project Schedule and the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit K to the Agreement.

3.4.1 No activity shall have duration greater than fifteen (15) work days or less than one (1) work day. If requested by Owner or Design Professional, Construction Contractor shall furnish any information needed to justify the reasonableness of activity duration. Such information shall include estimated activity manpower, anticipated quantities, and production rates.

3.4.2 Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Contractor shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.

3.4.3 Only contractual constraints shall be shown in the schedule logic. No other constraints are allowed unless approved in writing by Owner or Design Professional. This disallowance of constraints includes the use of any mandatory start or finish dates selected by Construction Contractor.

3.4.4 Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity

3.4.5 The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.

3.4.6 Float is defined as the amount of time between when an activity "can finish" (the early finish) and when an activity "must finish" (the late finish). It is understood by Owner and Construction Contractor that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.

3.4.7 The CPM schedules must be compatible with Primavera Project Planner Software (P6) by Primavera Systems, Inc., Bala Cynwyd, PA. It is Construction Contractor's responsibility to ascertain the software compatibility with Owner or Design Professional.

3.4.8 Initial Schedule Submittal Requirements:

3.4.8.1 Predecessor/Successor Sort

3.4.8.2 Total Float/Early Start Sort

3.4.8.3 Responsibility/Early Start Sort

3.4.8.4 Phase/Area/Early Start Sort

3.4.8.5 Narrative discussing general approach to completion of the Work.

3.4.8.6 Electronic media in Primavera (P6) format.

3.4.9 Schedule Update Requirements: Construction Contractor shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:

3.4.9.1 Dates of activities' actual starts and completions.

3.4.9.2 Percent of Work remaining for activities started but not completed as of the update date.

3.4.9.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.

3.4.9.4 Predecessor/Successor Sort

3.4.9.5 Total Float/Early Start Sort

3.4.9.6 Responsibility/Early Start Sort

3.4.9.7 Phase/Area/Early Start Sort

3.4.9.8 Electronic media in the required Primavera (P6) format

3.4.9.9 Fragnet of logic diagram for all requested logic changes.

3.4.9.10 Updated logic diagram as required by Owner. At

a minimum, Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.

3.4.9.11 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

3.4.9.12 All update information shall be an accurate representation of the actual Work progress.

3.5 Recovery Schedule: If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of Owner's request. The Recovery Schedule shall describe in detail Construction Contractor's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.

3.6 Change Orders: When a Change Order is proposed, Construction Contractor must identify all logic changes as a result of the Change Order. Construction Contractor shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Construction Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, Construction Contractor will revise the Construction Schedule or current update. The logic changes required by the Change Order will be considered incidental to Construction Contractor's work and no separate payment will be made therefor.

4. Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit Construction Contractor to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that the Work will be completed at a cost which, together with the Construction Management Fee, will not exceed the GMP. Requirements of this subsystem include submissions at the following phases of the Project:

4.1 Pre-Construction Phase Estimates; and

4.2 At establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable Construction Contractor to plan effectively and Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:

5.1 Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.

5.2 A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

5.3 A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.

5.4 A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

5.5 A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

EXHIBIT C: PAYMENT BOND

_____, 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: _____
_____("Project"); and,
[*Insert Description and Location of the Project]*

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]	_____[SEAL]
[Typed Name]	*[Typed Name]*
By: _____	By: _____
[Signature]	*[Signature]*
_____	_____
[Printed Name, Title and Address]	*[Printed Name, Title and Address]*
_____	_____
_____	_____

EXHIBIT D: PERFORMANCE BOND

_____, 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: _____

_____
[*Insert Description and Location of the Project]*

("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: Erick 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:
_____[Seal]	_____[Seal]
[Typed Name]	*[Typed Name]*
By: _____	By: _____
[Signature]	*[Signature]*
_____	_____
[Printed Name, Title and Address]	*[Printed Name, Title and Address]*
_____	_____
_____	_____

EXHIBIT E
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 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 F
LIQUIDATED DAMAGES

Liquidated damages applicable to Section 7 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:	Daily Liquidated Damages Shall Be:
Up to $49,999.99	$50
$50,000.00 to $99,999.99	$100
$100,000.00 to $299,999.99	$200
$300,000.00 to $599,999.99	$300
$600,000.00 to $999,999.99	$400
$1,000,000.00 to $1,999,999.99	$500
$2,000,000.00 to $4,999,999.99	$750
$5,000,000.00 to $9,999,999.99	$1,500
$10,000,000.00 to $14,999,999.99	$2,500
$15,000,000.00 to $19,999,999.99	$3,500
$20,000,000.00 or above	The product of .0002 multiplied by the Original Contract Price.

EXHIBIT G
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:_____

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 H
RELEASE AND AFFIDAVIT

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED CONTRACTOR, MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF OWNER OR CONTRACTOR EMPLOYED BY) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

_____
_____
_____
_____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE CONTRACTOR, MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, _____.

_____

Contractor/Subcontractor

By:_____

Printed Name:_____

Its:_____

Sworn and subscribed before me this ____

day of _____, 201__

_____

Notary Public

My Commission Expires:

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED CONTRACTOR, MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF OWNER OR CONTRACTOR EMPLOYED BY) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____ _____ COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

_____

_____

_____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE CONTRACTOR, MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, _____.

_____

Contractor/Subcontractor/Mechanic Materialman

By: _____

Printed Name: _____

Its:_____

Sworn and subscribed before me this _____

day of _____, 201___

_____

Notary Public

My Commission Expires:

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

CONTRACTOR AFFIDAVIT WAIVING LIEN RIGHTS

Personally appeared before me, the undersigned officer duly authorized to administer oaths, (name of the Affiant), who after being duly sworn, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit. The facts set forth herein are based upon my personal knowledge. I am a duly authorized representative of (name of the contractor) who, was in charge of the property improvement described as follows:

(describe the construction project) _____
_____
_____
_____
_____

The improvement describe above was made with respect to the property owned by (name of the record property owner), and that property is more fully identified as follows:

(describe the improved property by, at least, reference to the street address, city and county. It is recommended that the property's legal description be referenced here and attached as an exhibit to this affidavit.) _____

2. The construction improvement referenced herein now has been completed, and the agreed price or reasonable value of the labor, services, or materials furnished in connection with this improvement have been fully paid. All subcontractors, materialman, laborers and others supplying materials, labor, services or otherwise contributing in any way to the property improvement have been fully paid, and there are no unresolved claims, disputes, or unpaid bills which relate in any way to any contribution made in connection with the property improvement.

3. I represent that all contracts, bills or claims with respect to any fixture or item of personal property used in or installed as part of the property improvement have been fully paid and satisfied.

4. I acknowledge that (name of contractor) has received payment in full for all amounts due in connection with the improvement of the property described herein and hereby releases all rights to any lien on that improvement or the property so improved.

5. This Affidavit is given in compliance with the requirements of O.C.G.A. § 44-14¬361.2, and as part of a transaction involving a conveyance of title in a bona fide sale, a loan in which the improved real property is to secure repayment of the loan, or where final disbursement of the contract price is made by the owner to this general contractor.

6. On behalf of (name of contractor), I further represent that, as of the date of this Affidavit, there is no valid preliminary notice or claim of lien which affects the improved property described herein and which has not been previously cancelled, dissolved, or expired.

_____

_____

(Name of Affiant)

ON BEHALF OF (name of contractor)

Sworn to and subscribed before me

this _____ day of _____,

2_____.

_____

Notary Public

My Commission Expires: _____

EXHIBIT I
CONSTRUCTION CONTRACTOR APPLICATION FOR PAYMENT

See Attachment

EXHIBIT J
CHANGE ORDER

CHANGE ORDER NO._____ CONTRACT NO. _____

TO:_____
_____
_____

_____

DATE: _____

PROJECT NO.:_____

Under our AGREEMENT dated_____, 20___.

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of the Agreement:

Description of change(s):_____

For the (Additive) (Deductive) Sum of: _____

($_____)

Original Agreement Amount	$_____
Sum of Previous Changes	$_____
This Change Order (Add) (Deduct)	$_____
Present Agreement Amount	$_____

The time for completion shall be (increased/decreased) by _____calendar days due to this Change Order. Accordingly, the Contract Time is now_____(_____) calendar days and the Substantial Completion date is_____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted:_____, 20_____

CONSTRUCTION CONTRACTOR:

_____

By:_____

OWNER:

The School Board of DeKalb County, Georgia

By:_____

DESIGN PROFESSIONAL:

_____

By:_____

EXHIBIT J1

PROJECT CLOSEOUT CHECKLIST

DeKalb County School District	**Division 01 - General Requirements**	
	FACILITIES SERVICES – DESIGN	**DESIGN GUIDELINE**

School Name:	Architect / Engineer:
Project Name/#	Project Manager:
CM/Contractor Name:	

PROJECT CLOSEOUT CHECKLIST – LIST OF DELIVERABLES	DATE	NOTES
1. Closeout Manual (Electronic Only)		
(Separate PDF required for 1) Arch/Civil, 2) Mech/Plumb, 3) Elec, 4) Fire, 5) Kitchen)		
a. Copy of Specification Section		
b. O&M Material		
c. Copy of Warranty		
d. Spare Parts / Maintenance Stock (Exhibit D)		
e. Performance Verification / Demonstration to Owner (Exhibit E)		
2. Environmental Close Out Manual (Electronic Only)		
3. Closeout Manual: Fire (Hard Copy; include items a thru e listed above)		
4. Closeout Manual: Kitchen (Hard Copy; include items a thru e listed above)		
5. Warranties & Guarantees Manual (Hard Copies in a Binder)		
6. A/E Consolidated Punch List Sign-Off (Electronic Only)		
7. General Requirements Sign-Off		
8. As Built Drawings (Electronic Only; in Color)		
9. Certificate of Occupancy		
10. Certificate of Substantial Completion		
11. Certificate of Final Inspection		
12. Record Drawings (CAD) and Project Manuals (Electronic Only)		
13. Final DCSD Pay Application (Electronic Only; include the following 4 items)		
a. Final MWBE Form (Electronic Only)		
b. Final Release of Liens (Electronic Only)		
c. Consent of Surety (Electronic Only)		
d. Certificate of Insurance (Electronic Only)		
14. Sustainability Letter & Sustainability Scorecard (Electronic Only)		
15. OEF 564 Cost Breakdown Information (Electronic Only)		
16. GMP account reconciliation (by line item)		
17. DCSD Facilities Server Files Populated (Unused Folders Removed by Doc Control Mgr)		

Construction Manager / General Contractor Date

Architect of Record Date

SPLOST IV Project Manager (*PM Team's Closeout Manager to initial*) Date

Facilities Project Manager, Planning & Design (*Planning /Archives Team Member to initial*) Date

SPLOST IV Program Director, Construction Date

Chief Operations Officer, DeKalb County School District Date

EXHIBIT K
MASTER PROJECT SCHEDULE MILESTONES

See Attachment

EXHIBIT L
CONSTRUCTION CONTRACTOR'S STAFFING SCHEDULE

STAFF NAME	STAFF POSITION

EXHIBIT L1
PRE-CONSTRUCTION PHASE SERVICES REIMBURSABLE

EXPENSE PROPOSAL

See Attachment

EXHIBIT M

GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR

AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR FOR _____ AGREEMENT NO. _____

Pursuant to Sections 4.B and 7.A of the Construction Management Agreement ("Agreement"), dated_____, between The School Board of DeKalb County, Georgia ("**Owner**") and _____ _____ ("**Construction Contractor**"), with respect to the construction of Owner's _____ ("**Project**"), Owner and Construction Contractor hereby agree to amend and modify the Agreement by this Amendment No. 1 and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below. All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement, unless otherwise noted.

ARTICLE 1

SCOPE OF WORK

The scope of the Work consists of the construction of a _____ _____, in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through____below, which are hereby incorporated into and made a part of the Amendment by this reference:

Attachment No.	Description	Pages	Date
List of Drawings, Specifications and Addendums			
1.	Allowances	_____ through _____	_____
2.	Assumptions and Clarifications	_____ through _____	_____
3.	Completion Schedule	_____ through _____	_____
4.	Schedule of Values	_____ through _____	_____
5.	List of Itemized General Conditions	_____ through _____	_____
6.	List of Subcontractors and Major Suppliers	_____ through _____	_____
7.	Alternates	_____ through _____	_____

ARTICLE 2

GUARANTEED MAXIMUM PRICE

2.1 Construction Contractor's Guaranteed Maximum Price ("**GMP**") for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement and the Construction Management Fee as defined in Section 4 of the Agreement, is _____ _____ ($_____).

2.2 The Construction Management Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of _____ ($_____), said lump sum amount is included within the above noted GMP.

2.3 The general condition expenses for the entire Work anticipated on this Project are hereby established as a lump sum amount of _____ ($_____), said lump sum amount is included within the above noted GMP ("General Conditions Expenses"). The items included as General Condition Expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No._____. Except as said lump sum amount for General Condition Expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted lump sum amount and Construction Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above lump sum amount. There shall be no additional General Conditions Expenses payable to Construction Contractor on the first Five Hundred Thousand and No/100 Dollars ($500,000.00) of Change Order or Construction Change Directive Work (i.e. the lump sum amount specified in this Subsection includes consideration for up to $500,000.00 of Change Order and/or Construction Change Directive Work). Further, there shall be no mark-up for a subcontractor's General Conditions expenses on the first One Hundred Thousand and No/100 Dollars ($100,000.00) of Change Order and Construction Change Directive Work to be performed by such subcontractor.

2.4 Monthly installment payment of the Construction Management Fee and the General Condition Expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.5 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of_____and __/100 Dollars ($_____) ("**Owner's Contingency**"). Owner's Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction

Contractor shall not proceed with any portion of the Work which it intends to charge against the Owner's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion of the Work which is to be charged against the Owner's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Owner's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Owner's Contingency expenditures. Further, the work that is the subject of any Owner's Contingency expenditures shall be deemed part of the Work. The GMP shall be reduced by unused Owner's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion of any unused Owner's Contingency.

2.6 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed_____and /100 Dollars ($_____) ("**Contractor's Contingency**"). Construction Contractor shall not proceed with any portion of the Work which it intends to charge against the Contractor's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion of Work which is to be charged against the Contractor's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Contractor's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Contractor's Contingency expenditures. Further, the work that is the subject of any Owner's Contingency expenditures shall be deemed part of the Work. The GMP shall be reduced by unused Contractor's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion of any unused Contractor's Contingency. Construction Contractor shall be entitled to an increase in the Construction Management Fee in the amount of____% of the Cost of the Work charged against the Contractor's Contingency.

2.7 The parties have agreed to establish an allowance within the GMP for _____ in the amount of_____and /100 Dollars ($_____). Construction Contractor shall not proceed with any portion of the Work associated with the aforesaid allowance ("**Allowance Work**") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments_____through. Unless otherwise provided in the Contract Documents: (a) allowances amounts shall cover the cost to Construction Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; (b) Construction Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances, unless otherwise stated in the allowance; and (c) whenever costs are more than or less than allowances, the GMP shall be adjusted accordingly by Change Order.

2.8 Pursuant to Subsection 12.3 of Exhibit A to the Agreement, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in this Amendment to be exceeded by more than_____and /100 Dollars ($_____), then Construction Contractor shall be entitled to an increase in the Construction Management Fee in the amount of_and /100 Dollars (_____%) of the amount exceeding the sum of _____and /100 Dollars ($_____) plus that original GMP amount.

2.9 Construction Contractor recognizes that the Contract includes work for trench excavation in excess of five feet deep. Construction Contractor acknowledges the requirements set forth by all federal, state and local requirements. Construction Contractor certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Contractor agrees to comply with all such required trench safety standards.

2.10.1 The amount of _____and /100 Dollars ($_____) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.

2.10 At the completion of the Work, should the actual amount of "General Requirements" expenses be less than the amount included therefor in the Schedule of Values approved by Owner, the resulting "savings" shall accrue to the benefit of Owner and a deductive Change Order or Construction Change Directive shall be issued reducing the GMP by the amount of such savings. For the avoidance of doubt, any savings obtained General Requirements expenses may not be moved to contingency or be used to offset cost overruns in other items within the GMP. Further, the line item for General Requirements expenses in the Schedule of Values constitutes a separate guaranteed maximum price for such expenses and any overruns in General Requirements expenses shall be borne by Construction Contractor without reimbursement from Owner.

2.11 By executing this Amendment and furnishing Owner with a GMP based on a detailed Schedule of Values and a Master Project Schedule, Construction Contractor represents and warrants that the Contract Documents, including the Construction Documents, as well as other materials, and information furnished Construction Contractor as of the date of this Amendment have described the scope, construction requirements, and design intent of the Work in detail sufficient to enable Construction Contractor to establish firmly the GMP, Contract Time and the Project Schedule. To the extent that the Construction Documents are anticipated to require further development, Construction Contractor has provided in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom.

2.12 Savings will be computed as of the date of final completion of the Work and shall consist of the difference between (i) the Guaranteed Maximum Price (as it may be adjusted in accordance with the terms of the Contract Documents) and (ii) the total aggregate sum of the Cost of the Work plus the Construction Management Fee paid by Owner shall accrue to the sole benefit of Owner.

ARTICLE 3

CONTRACT TIME

3.1 The Construction Phase Commencement Date for the Work is_____. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is_____(_____) days ("**Contract Time**"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS_____.

3.2 Pursuant to the Agreement, the parties have established liquidated damage rates for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Contractor's responsibility to substantially complete the Work within the Contract Time as stated herein and finally complete the Work within the time prescribed in the Contract. Accordingly, the liquidated damage rates established in the Agreement shall be assessed against Construction Contractor for each calendar day Construction Contractor fails to achieve Substantial Completion of the Work within the Contract Time or final completion of the Work within the time prescribed in the Contract.

ARTICLE 4

MISCELLANEOUS

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. All terms not specifically defined herein shall have the meaning ascribed to them in the Agreement. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Contractor agree that the terms of this Amendment shall prevail and control. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Owner	Construction Contractor
By:_____	By: _____
Its:_____	Its: _____
Date:_____	Date:_____
Attest:_____	Attest:_____

<u>Attachment 1</u>

List of Drawings, Specifications and Addendums

See Attachment

<u>Attachment 2</u>
Allowances

See Attachment

<u>Attachment 3</u>
Assumptions and Clarifications

See Attachment

Attachment 4
Completion Schedule

See Attachment

<u>Attachment 5</u>
Schedule of Values

See Attachment

<u>Attachment 6</u>

Itemized General Conditions Expenses

See Attachment

Attachment 7

List of Sub-Contractors and Major Suppliers

See Attachment

<u>Attachment 8</u>
Alternates

See Attachment

EXHIBIT N

CERTIFICATE OF INSURANCE FORM

See Attachment

EXHIBIT O

SCHOOL CALENDARS

See Attachment

EXHIBIT A

Project Name: CM @ Risk:
Livsey ES and Toney ES HVAC Systems Replacement and Renovations
RFQu 24-752-011

		COMPLIANCE					INITIAL SCREENING						INTERVIEW AND PRESENTATION					
		CERTIFICATE GEORGIA SECRETARY OF STATE	TYPE OF BUSINESS	REQUIRED VALID LICENSE-GC	FINANCIAL CAPABILITIES AND COST CONTROL MEASURES FINANCIAL STATEMENT/BONDING CAPACITY	LITIGATION/INSURANCE/CONVICTIONS	SUCCESSFUL RELATED BUILDING EXPERIENCE	PROPOSED PROJECT STAFF AND THEIR FUNCTIONS	PROJECT APPROACH	CURRENT WORKLOAD	EQUITABLE DISTRIBUTION	**TOTAL INITIAL SCREENING**	REFERENCES	OVERALL APPROACH, METHODOLOGY & KNOWLEDGE OF THE SITE	PROJECT TEAM	COST CONTROL	PROJECT SCHEDULING	**TOTAL INTERVIEW AND PRESENTATION**
APPLICANTS	**POINTS AVAILABLE**						**30**	**25**	**15**	**10**	**15**	**100**	**10**	**35**	**15**	**20**	**20**	**100**
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