AGREEMENT FOR DESIGN BUILD SERVICES

BETWEEN

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

Hereinafter referred to as the Owner

AND

Canaveral Construction Company, Inc.
3475 N US Highway 1
Mims, FL 32754

Hereinafter referred to as the Design Builder

PROJECT: Design Build Services for Canopy Covered Walkways at Relocatable Classrooms & Other Select Locations throughout the District.
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Exhibit “A”  General Conditions to the Agreement for Design Build Services

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Exhibit “C”  Guaranteed Maximum Price Amendment Form

Exhibit “D”  Hourly Rate Schedule

Exhibit “E”  Design & Permitting Schedule

Exhibit “F”  Preconstruction Services Proposal
AGREEMENT FOR DESIGN BUILD SERVICES

This AGREEMENT is made as of the date of Board Approval,

Between the Owner:  
The School Board of Brevard County, Florida  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940-6601

and the Design Builder:  
Canaveral Construction Company, Inc.  
3475 N US Highway 1  
Mims, FL 32754

For services in connection with the Project known as:

Design Build Services for Canopy Covered Walkways at Relocatable Classrooms & Other Select Locations Throughout the District.

In consideration of the mutual covenants and obligations contained herein, Owner and Design Builder agree as set forth herein:
Article 1
General Agreement Provisions

1.1 Relationship. The Design Builder accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate fully in furthering the interests of the Owner. He agrees to furnish efficient business administration, design capacity and superintendence and use his best efforts to complete to the Project referenced in this Agreement in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

1.2 Construction Team. The Design Builder, Design Builder Architect-Engineer, Project Design Criteria Professional, the Owner’s Commissioning Agent and the Owner, including their representatives, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Design Builder shall provide leadership during all project phases to the Design and Construction Team on all matters relating to design and construction. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Design Builder. The Design Build Architect-Engineer, other design professionals and consultants engaged by the Design Builder shall be persons or entities duly licensed to practice their professions in the State of Florida.

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

1.4 Contract Term. It is the intention of the Owner to establish the contract term through June 30, 2022 or as may be extended to complete the Project. Either party may terminate this Agreement as provided in Article 15 of the General Conditions to the Contract for Design Builder Services (Exhibit A).

1.5 Project Guaranteed Maximum Price Amendment. When the Construction Documents are sufficiently complete for construction of the Project, a Guaranteed Maximum Price (GMP) Amendment (Exhibit C) will be developed and submitted by the Design Builder to the Owner for approval. Should the Owner and Design Builder not reach agreement on the Guaranteed Maximum Price Amendment (Exhibit C), the Owner reserves the right to cease negotiations and perform the Work by other means at the sole discretion of the Owner.

1.6 Purchase Order. The Design Builder shall be issued Purchase Order(s) for the Project under this Agreement. The Purchase Order(s) shall be considered part of the Contract Documents.

1.7 Record Keeping and Finance Controls. Design Builder acknowledges that this Agreement is to be administered on an open book arrangement relative to Costs of the Work. Design Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as
may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Owner and Owner’s accountants shall be afforded access from time to time, upon reasonable notice, to Design Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design Builder shall preserve for a period of five (5) years after Project Final Payment.

Article 2
Contract Documents

2.1 Contract Documents. The Contract Documents are comprised of the following:

.1 This Agreement, including all Exhibits and Attachments;
.2 General Conditions to the Agreement for Design Build Services (Exhibit A);
.3 The Design Criteria Professional’s Design Criteria Documents, including those changes to the Project Design Criteria Documents proposed by the Design Builder and/or Design Build Architect-Engineer, if any, and accepted by the Owner in writing.
.4 The Preconstruction Services Proposal submitted by the Design Builder (Exhibit F).
.5 All written modifications, amendments including, as applicable, to the Project Guaranteed Maximum Price Amendment (Exhibit C) accepted by the Owner including Clarifications, Assumptions and Exclusions; Change Directives and Change Orders to this Agreement issued in accordance with the General Conditions to the Contract for Design Build Services (Exhibit A).
.6 Construction Contract Documents (Drawings and Specifications developed by the Design Build Architect-Engineer and approved by the Owner and all permitting/review authorities having jurisdiction);
.7 Owner’s “Purchase Order”;
.8 Owner’s latest edition of “Facility Design Standards”; and updates thereto as may be directed by the Owner
.9 The following Other Documents: The latest revision of all applicable local, state and national building codes and related codes such as, but not limited to; Florida Building Code, Florida Fire Prevention Code, Florida Existing Building Code, Florida Plumbing Code, Florida Mechanical Code, Florida Accessibility Code, National Electrical Code and State Requirements for Educational Facilities (SREF).

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

2.3 Contractual Relationships. The Contract documents shall not be construed to create a contractual relationship of any kind between the Owner and Design Build Architect-Engineer, Contractor or Subcontractor, or between any persons or entities other than the Owner and Design Builder, including but not limited to any consultant retained by the Owner to prepare or review the Design Criteria.

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

Article 3
Indemnification and Assignment

3.1 Indemnification. Notwithstanding anything to the contrary contained herein, the Design Builder shall indemnify and hold harmless the Owner and its officers, agents and employees from and against any, all, and every claim for, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting from (1) the Design Builder’s performance or failure to perform any of its obligations under this Agreement and (2) any claim, damage, loss or expense to any person, Owner’s property including its buildings and personal property including the loss of use resulting therefrom, bodily injury, sickness, disease, intentional acts, or death, or to injury to or destruction of non-Owner personal property including the loss of use resulting therefrom and caused by any negligent act or omission of the Design Builder, anyone directly or indirectly employed by the Design Builder or anyone for whose acts the Design Builder may be liable. The Design Builder’s requirement to indemnify and hold the Owner harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgment, and/or settlement of any complaint, claim, or legal action until the termination of all legal action.

Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

Except as otherwise set forth in this Agreement, the Design Builder and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Builder for acts or failures to act by Owner or the Owner’s Consultants. The Design Builder shall not be liable for acts or failures to act by the Owner or Owner’s Consultants.
3.2 **Assignment.** The Owner and Design Builder respectively, bind themselves, their partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Design Builder shall assign this Agreement without the written consent of the other.

**Article 4**  
**Representatives of the Parties**

4.1 **Owner’s Representatives**

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

   **Susan Hann, P.E., AICP**  
   **Assistant Superintendent**  
   **Facilities Services**  
   **2700 Judge Fran Jamieson Way**  
   **Viera, FL  32940**  
   **(321) 633-1000 Ext. 11450**  
   **hann.susan@brevardschools.org**

2. Owner designates the individual listed below as its Owner’s Project Manager to provide direct interface with the Design Builder with respect to Owner’s responsibilities for the specific Project.

   **Tim Brown**  
   **Project Manager**  
   **Facilities Services**  
   **2700 Judge Fran Jamieson Way**  
   **Viera, FL  32940**  
   **(321) 633-3580 Ext. 13060**  
   **Brown.timothy@brevardschools.org**
4.2 Design Builder’s Representatives

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

J. David Nash  
President  
3475 N US Highway 1  
Mims, FL 32754  
321.269.4011  
David@canaveralconstruction.com

.2 Design Builder designates the individual listed below as its Design Builder Representative (Project Manager/Superintendent) to provide direct interface with Owner with respect to Design Builder’s responsibilities for the specific Project.

Mike Harkcom  
VP of Operations/PM  
3475 N US Highway 1  
Mims, FL 32754  
321.269.4011  
Mike@canaveralconstruction.com
In executing this Agreement, the Design Builder represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

WITNESS:

DESIGN BUILDER:
Canaveral Construction Company, Inc.

By:

Its: J. P. Operations
Michael R. Harkcom

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 21 day of February, 2020, by Michael Harkcom, whose position is Vice President with the Design Builder, He/She is personally known to me or has produced identification.

DIRK NEUERBURG
MY COMMISSION # FF967517
EXPIRES March 03, 2020

Florida ATTEST:

Florida School Board of Brevard County,

ATTEST:

Superintendent/Secretary

By:

Misty Belford, Chairperson

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ___ day of __________, 20__, by ______________________________, whose position is ______________________________ with the School Board of Brevard County. He/She is personally known to me or has produced ______________________________ as identification.

(SEAL)

NOTARY PUBLIC

_____________________________ Typed, Printed or Stamped Name
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11.6.1. Interest

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12.3.1. Owner Project Manager’s Authority

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16.3. INITIAL DECISION
16.3.1. Owner’s Claim Review
16.3.2. Initial Review
16.3.3. Additional Data
16.3.4. Initial Reviewer Action
16.3.5. Mediation Request
16.3.6. Notification of Surety
16.4. MEDIATION
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17.1. VENUE OF FINAL DISPUTE RESOLUTION
17.1.1. Choice of Law
17.1.2. Venue
17.1.3. Action
ARTICLE 1 - GENERAL REQUIREMENTS

1.1 DEFINITIONS

.1 Additional Design Services. Additional Design Services shall consist of the professional design services agreed to be performed by Design Build Architect-Engineer approved by the Owner in connection with the Project but which are not specifically designated as Basic Services in this Exhibit A.

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

.3 Basic Design Services. Basic Design Services shall consist of the professional design services required to be performed and provided by Design Builder under this Agreement in connection with the Project.

.4 Basic Design Services Compensation. Basic Design Services Compensation shall be in accordance with Section 10.2 of this Exhibit A to be paid by Owner to Design Builder in connection with the performance of the Design Services by Design Builder.

.5 Commencement. The "Date of Commencement of the Work" is the date established in the Notice to Proceed from Owner to Design Builder. If no Notice to Proceed is issued, it will mean the effective date of the Purchase Order or such other date as may be set forth in the Agreement.

.6 Change Order. Reference Section 12.1 of this Exhibit A for Definition

.7 Claims. Reference Section 16.1 of this Exhibit A for Definition

.8 Commissioning Agent. That individual or firm engaged by the Owner to commission the project.

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

.10 Contract Sum. Contract Sum refers to the Guaranteed Maximum Price as defined in Section 10.1 of this agreement.

.11 Construction Contract Documents. "Construction Contract Documents" means all design documents provided by the Design Build Architect-Engineer and/or the Design Builder and approved by the Owner pursuant to the Contract Documents, including, without limitation, those for use in construction of the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, the Schematic Design Documents, the Design Development Documents and the Construction Documents and any Addenda or Change Orders thereto.

.12 Construction Team. The Design Builder, the Design Builder Architect-Engineer, the Project Design Criteria Professional, the Owner’s Commissioning Agent and the Owner, including their Project representatives such as the Owner’s Project Manager and the Design Builder’s Project Manager/Superintendent.

.13 Day. The term "Day" as used in the Contract Documents will mean calendar day or accumulation of calendar days unless otherwise specifically designated.
14 **Design Build Architect-Engineer.** Where applicable within the Contract Documents, the term "Design Build Architect-Engineer" shall mean a qualified, licensed design professional employed and/or having a direct contract with the Design Builder to provide the Design Services required under this Agreement.

15 **Design Builder.** The firm retained by the Owner to execute the Project meeting the requirements of Florida Statutes §287.055 (2) (h).

16 **Design Criteria Package.** Performance-based criteria documents prepared by the Owner, or by the Project Design Criteria Professional retained by the Owner, establishing the scope of work for a Design Build Project, conforming to the requirements of §287.055(2)(j) F.S. The “Design Criteria Package” may include conceptual documents, program criteria and objectives, design performance specifications, design specifications, budget requirements, schedule requirements and other Project-specific technical materials and requirements.

17 **Design Phase Services.** The preconstruction and design services more specifically defined in Article 6 of this Exhibit A to include services such as the pre-design phase, the schematic design phase, the design development phase, the construction document phase and the construction bid/award phase.

18 **Design Services.** “Design Services” means any and all architectural, engineering and design services required to be performed by the Design Build Architect-Engineer and/or Design Builder pursuant to the Contract Documents to perform the Basic Design Services and any Owner approved Additional Design Services. All labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services shall be included.

19 **Design Standards.** Most recent edition of “Owner’s Design Standards,” including any partial updates as may be directed by the Owner.

20 **Drawings.** The "Drawings" are graphic representations of the Project produced by the Design Build Architect-Engineer referenced to in Article 2 of the Agreement.

21 **Final Completion.** The "Date of Final Completion of the Work" is the date when all Work called for in the Project Contract Documents is complete and all other terms and conditions of the Contract Documents applicable to Design Builder have been fulfilled. The date of final completion shall be 30 days from the date of Substantial Completion unless stated otherwise in the Project Guaranteed Maximum Price Amendment (Exhibit C).

22 **General Conditions.** Reference Section 10.7 of this Exhibit A for Definition

23 **Guaranteed Maximum Price.** Reference Section 10.1 of this Exhibit A for Definition

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

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

26 **Preconstruction Services Proposal.** The proposal submitted to the Owner by the Design Builder that defines the scope of work and compensation for the preconstruction services, including design phase services.
27 Product Data. "Product Data" shall include, but not be limited to, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, catalog cuts and other information furnished by Design Builder or Subcontractor or an entity under contract to Design Builder or Subcontractor to illustrate a material, product, equipment, or system for some portion of the Work.

28 Project. The total of all Work as defined by the Design Criteria Package and as may be directed by the Owner.

29 Project Construction Budget. The budget established in the Design Criteria Package as may be amended by the Owner.

30 Project Design Criteria Professional. The firm retained by the Owner to provide the Design Criteria Package and to provide other services as required by Florida Statutes §287.055.

31 Project Phase. A specific segment of the Project that may be defined by school or by system such as mechanical system or building envelope system. Project Phasing may be based on funding and/or logistical constraints and will be directed by the Owner in consultation with the Design Builder.

32 Project Schedule. The Design Builder's proposed time line for execution of the Project and Project Phases to include significant milestones and time required for design, bidding, procurement, submittal review and other activities required to complete the Work.

33 Shop Drawings. "Shop Drawings" shall consist of, but not be limited to, drawings, diagrams, schedules and other data prepared specifically for the Work by the Design Builder or Subcontractor or an entity under contract to Design Builder or Subcontractor to illustrate some portion of the Work.

34 Specifications. The "Specifications" are the written requirements for materials, equipment, construction systems, standards and workmanship referred to in Article 2 of the Agreement. The term "equipment" used throughout the Agreement also includes any equipment-related software.

35 Subcontractor. A "Subcontractor" is a person or entity who has a direct contract with the Design Builder to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

37 Substantial Completion. The "Date of Substantial Completion of the Work" or designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Contract Documents, so that the Owner can occupy or utilize the Work, or designated portion thereof, for the use for which it is intended. The date of Substantial Completion shall be established in the Project Guaranteed Maximum Price Amendment (Exhibit C).

38 Work. The "Work" is the process by which the construction called for in the Contract Documents is accomplished. The Work includes any and all labor, materials, equipment and services, required to design and construct the Project, all of which will be provided in full
and strict compliance with the Contract Documents. Work may be directed by the Owner in Project Phases, which may include groupings by school/facility or by system (such as mechanical or building envelope) at the sole discretion of the Owner.

1.2 CONTRACT INTERPRETATION

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

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

.3 Conflicts between Owner Approved Construction Contract Documents. The parts of the Construction Documents including, but not limited to, the Drawings and Specifications are intended to be complementary and to describe and to provide documentation for the entire Project. In the event of conflict, Drawings and Specifications take precedence over the general description of the Project unless specifically addressed in the Design Criteria Package or the Design Standards. Large-scale Drawings takes precedence over small-scale Drawings covering the same subject matter; but the Drawings will not take precedence over the Specifications nor the Specifications precedence over the Drawings. If the Drawings and Specifications are at variance with one another, Design Builder will resolve the discrepancy in the best interest of the Owner and notify Owner as provided in Sections 6.7.6 and 6.7.7 of this Exhibit A of the resolution in writing before proceeding with any part of the Work affected thereby. Owner will respond in writing within three days of notification if Owner does not agree with Design Builder resolution of discrepancy.

1.3 OWNERSHIP OF CONTRACT DOCUMENTS

.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design Builder to Owner under this Agreement (Work Product) deemed to be instruments of service and Design Builder and Owner shall retain joint ownership and property interests therein. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Builder’s or Owner’s reserved rights. Design Builder shall require language in each of its Subcontractor contracts providing for this joint ownership of all instruments of service. The Owner shall assume responsibility in connection with the use of the instruments of service without the Design Builder’s consent.

.2 Use of Documents. Notwithstanding anything in this Agreement to the contrary and without requiring the Owner to pay any additional fees, the Design Builder hereby grants the Owner a nonexclusive, irrevocable license in all of the Project Documents for the Owner’s use on this Project. The Design Builder warrants to the Owner that it has full right and authority to grant this license to the Owner. Further, the Design Builder consents to the Owner’s use of the Project Documents to complete the Project following the Design Builder’s termination for any reason or to perform additions to or remodeling or renovation of the Project.

.3 Digital Formats. If the parties intend to transmit Instruments of service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions acceptable to the Owner.
1.4 THIRD PARTY BENEFICIARY

.1 Relationship. Nothing contained in the Contract Documents shall create a contractual relationship between the Owner and any third party, however, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontracts, Purchase Orders as well as all agreements between the Design Builder and third parties related to the Project. The Design Builder shall incorporate the obligations of this Agreement into its respective subcontracts, supply agreements and Purchase Orders, specifically including the Owner’s right to unilaterally utilize design documents in the event of Termination by either party as described in Article 15 Termination or Suspension of the Contract and/or as a Right to Carry Out Work as described in Article 2.2.4 of this Exhibit A.

ARTICLE 2 - OWNER

2.1 DUTIES AND RESPONSIBILITIES

.1 Project Manager. Owner will designate a Project Manager ("Owner’s Project Manager") who will be available as required for conferences during design and at the Project Site to manage the Project on Owner’s behalf. The Project Manager, will be authorized to:

a. Act as liaison between Owner and Design Builder;
b. Provide direction in regards to Project Programming and Design;
c. Approve Design Phases on behalf of Owner;
d. Make field decisions on behalf of Owner during Construction, other than contract time or contract amount which are reserved for the School Board;
e. Inspect and approve specified details and inspect for adherence to design and completeness of details shown on Contract Documents;
f. Review submittals when requested to do so by Design Builder;
g. Review Change Orders; and
h. Coordinate with Design Builder other Contractors of Owner;

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

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

.4 Drawings. Owner will provide to Design Builder upon request any available Drawings relating to the Project. Such Drawings may include as-built documentation from previous work on the campus, record drawings from the Owner’s archives and Owner’s manuals/manufacturer’s literature of existing equipment located on campus and will be provided to Design Builder free of charge.

2.2 OWNER’S RIGHTS

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

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

3. Right to Stop Work. If Owner reasonably believes that Design Builder is failing to carry out the Work in accordance with the Contract Documents, then Owner may order the Design Builder to stop the Work, or a portion of the Work, until such time as the cause for such stop order has been eliminated. Stop orders shall be issued by Owner’s Project Manager. Owner shall incur no liability for delays occasioned by any Stop-Work Order issued in accordance with this Section.

4. Right to Carry Out Work. If Design Builder fails to prosecute the Work properly (including, but not limited to, the failure to man the Work due to labor disputes of any type) or fails to perform any provision of the Contract Documents, including, without limitation, unauthorized Project Schedule delays, Owner, after seven (7) calendar days written notice to Design Builder without correction, may, without prejudice to any other rights or remedy Owner may have, correct the deficiencies or otherwise supplement the Design Builder performance through the Owner’s own forces or through others, and may deduct the cost thereof from the payment then or thereafter due to Design Builder.

5. Right to Audit. A third party audit will be conducted following final completion of the Project and prior to final payment.

6. Owner’s Access. Owner will at all times have access to the Work.

2.3

OWNER’S RIGHT TO PERFORM WORK AND ENGAGE OTHERS

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

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

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

ARTICLE 3 – PROJECT DESIGN CRITERIA PROFESSIONAL

3.1

GENERAL

1. Project Design Criteria Professional. The Owner has retained a Project Design Criteria Professional to develop a Design Criteria Package for a Project. That person or entity is identified as the Project Design Criteria Professional throughout the Contract Documents.
3.2 PROJECT ADMINISTRATION

1 Authority. The Project Design Criteria Professional will perform select administrative duties as herein described and will assist the Owner’s representative during construction until the date the Owner approves the Final Certificate for Payment. The Project Design Criteria Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

2 Design Review. The Project Design Criteria Professional will review the Schematic Design, Design Development and Construction Document phase drawings and specifications at a level appropriate to the stage of design, or as otherwise agreed with the Owner, to become generally familiar with the design progress to determine in general if the design is being undertaken in a manner indicating it is in accordance with the Design Criteria Package and related Contract Documents. However, the Project Design Criteria Professional will not be required to undertake exhaustive research to check the design or determine the level of completion of the submittal. The Project Design Criteria Professional will not be responsible for the code compliance or engineering aspects of the design since these are solely the Design Builder’s rights and responsibilities under the Contract Documents.

3 Site Observations. The Project Design Criteria Professional will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work is in accordance with the Contract Documents. However, the Project Design Criteria Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Project Design Criteria Professional will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design Builder’s rights and responsibilities under the Contract Documents.

4 Reporting of Findings. On the basis of the design reviews and construction site visits, the Project Design Criteria Professional will keep the Owner reasonably informed about the progress and quality of the design and portion of the Work completed during construction and report to the Owner (1) known deviations from the Design Criteria Package and related Contract Documents and from the most recent schedule submitted by the Design Builder, and (2) defects and deficiencies observed in the design and construction. The Project Design Criteria Professional will not be responsible for the Design Builder’s failure to undertake the design or perform construction in accordance with the requirements of the Contract Documents. The Project Design Criteria Professional will not have control over or charge of and will not be responsible for acts or omissions of the Design Builder, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the design or construction.

5 Applications for Payment Review. Based upon the evaluation of the Design Builder’s Applications for Payment, by the Project Design Criteria Professional in conjunction with the Owner’s Project Manager, the Project Design Criteria Professional and Owner will jointly certify the amounts due the Design Builder and will issue Certificates for Payment in such amounts.

6 Submittal Review. The Project Design Criteria Professional will review and approve, or take other appropriate action upon, the Design Builder’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Project Design Criteria Professional’s action will be taken in accordance with the submittal schedule approved by the Owner, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Project Design Criteria Professional’s professional judgment to permit adequate review. Review of such submittals
is not conducted for the purpose of determining the accuracy and completeness of other
details such as dimensions and quantities, or for substantiating instructions for installation
or performance of equipment or systems, all of which remain the responsibility of the Design
Builder as required by the Contract Documents. The Project Design Criteria Professional's
review of the Design Builder’s submittals shall not relieve the Design Builder of the
obligations under Sections 7.3 and 7.1.15 of this Exhibit A. The Project Design Criteria
Professional's review shall not constitute approval of safety precautions or, unless otherwise
specifically stated by the Project Design Criteria Professional, of any construction means,
methods, techniques, sequences or procedures. The Project Design Criteria Professional’s
approval of a specific item shall not indicate approval of an assembly of which the item is a
component.

.7 Preparation of Change Orders and Construction Change Directives. The Project
Design Criteria Professional will review Change Orders and may prepare Construction
Change Directives, and may jointly with the Owner authorize minor changes in the Work
as provided in Section 12.3 of this Exhibit A. The Project Design Criteria Professional will
investigate and make determinations and recommendations regarding concealed and
unknown conditions as provided in Article 14 of this Exhibit A.

.8 Substantial Completion. The Project Design Criteria Professional jointly with the Owner
will conduct inspections to determine the date or dates of Substantial Completion and the
date of Final Completion; issue Certificates of Substantial Completion pursuant to Section
11.3 of this Exhibit A; receive and forward to the Owner, for the Owner’s review and records,
written warranties and related documents required by the Contract and assembled by the
Design Builder pursuant to Section 7.6.2 of this Exhibit A; and issue a Final Certificate for
Payment pursuant to Section 11.4 of this Exhibit A.

.9 Contract Document Performance. The Project Design Criteria Professional will interpret
and decide matters concerning performance under, and requirements of, the Contract
Documents on written request of the Owner. The Project Design Criteria Professional’s
response to such requests will be made in writing within any time limits agreed upon or
otherwise with reasonable promptness.

.10 Interpretations. Interpretations and decisions of the Project Design Criteria Professional
will be consistent with the intent of, and reasonably inferable from, the Contract Documents
and will be in writing or in the form of drawings.

.11 Requests for Information. The Design Builder will review and respond to requests for
information about the Contract Documents. The Design Builder's response to such requests
will be made in writing within any time limits agreed upon or otherwise with reasonable
promptness and will be reviewed and approved jointly by the Project Design Criteria
Professional and Owner prior to being issued. If appropriate, the Design Builder will prepare
and issue supplemental Drawings and Specifications in response to the requests for
information.

ARTICLE 4 – DESIGN BUILDER

4.1. DUTIES AND RESPONSIBILITIES

.1 License - Construction. The Design Builder shall be a licensed construction contractor
who is legally permitted to provide construction services as the prime contractor and can
obtain directly all bonds and insurance required under the Contract Documents relative to
construction. The Owner shall have the access to meet and communicate with the Design
Builder Architect-Engineer and related consultants and subconsultants who are part of the
Design Builder or a Subcontractor.
.2 **License—Design.** Design Builder and/or Design Build Architect-Engineer certifies to Owner that it is licensed, registered or certified in all required professional design disciplines to meet the requirements of Florida Statutes, Florida Department of Education (FDOE) regulations and the specific Project. If Design Builder, Design Build Architect-Engineer, or related consultants should at any time lose such license, registration or certification in any required discipline, it shall immediately notify Owner. If Owner determines that Design Builder cannot perform the professional design services required under this Agreement, it shall declare this Agreement void and be obligated to only pay for those services rendered before loss of license, registration or certification.

.3 **Availability.** Design Builder’s Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design Builder’s Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design Builder. Design Builder’s Representative may be replaced only with the mutual agreement of Owner and Design Builder.

.4 **Florida Department of Education Compliance.** Design Builder shall comply with all requirements of the Florida Department of Education (FDOE), to the end that plans and specifications shall meet or exceed the minimum standards for planning, design and construction adopted by the State Department of Education and all other applicable laws of the State of Florida. Design Builder shall comply with all directives and memoranda issued by Owner and shall incorporate them into the Project if within the terms of this Agreement.

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

.6 **Royalties, Permits & Licenses.** Design Builder will pay for any and all applicable royalties, permits, license fees and other fees necessary to avoid infringing or violating the rights of any third party. Such payments will be a Cost of the Work. Design Builder will defend all suits or claims for infringement thereof and will save Owner harmless from loss on account of all materials, equipment and processes called for by the Contract Documents.

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

.8 **Review of Contract Documents.** Design Builder will carefully study and compare the Contract Documents, materials and other information provided by the Owner pursuant to Section 2.1 of this Exhibit A, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered, or any variance from any Laws. Sizes, elevations and locations of existing facilities to which connections are to be made will be verified at the Project Site by Design Builder prior to beginning the Work.

.9 **Sufficiency of Documents.** All drawings not specifically required by the Contract Documents to be provided by Owner will be supplied by Design Builder including, but not limited to, Construction Contract Drawings, Shop Drawings and Close-Out Documents as specified herein. All Drawings and drawings not specifically required by the Contract Documents supplied by Design Builder will be subject to the provisions hereof concerning review and approval. Design Builder warrants that all Contract Documents and other
documents or materials prepared and/or provided by Design Builder or Subcontractor will be complete and functional in all respects and will set forth in sufficient detail the necessary information to properly perform the Project in accordance with commonly accepted professional standards.

10 Coordination. Owner may provide drawings, data, recommendations, suggestions, consultation and/or other information relating to the Project from other Consultants under separate contract with Owner. Design Builder shall coordinate and cooperate with Owner's other consultants.

11 Facility Design Standards. Design Builder shall understand and have a working knowledge of the most recent Revision/Edition of the District's Facility Design Standards which is to be acknowledged as a referenced document in the Guaranteed Maximum Price Amendment (Exhibit "C").

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

13 Document Control. Design Builder shall utilize the School Board's Master Library™ cloud-based construction management software system for Project document control. Access to the system will be provided at no charge; however, the Design Builder will be required to manage access for their Design Build team and Subcontractors. One training session will be provided to the Design Builder and their team upon request.

14 Commissioning. Construction Manager and any Subcontractors shall participate in the commissioning process as directed by the Owner and the Owner's Commissioning Agent.

4.2 TAXES

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

2 Owner Direct Purchase Program. The Design Builder recognizes that Owner is a political subdivision of the State of Florida and as such is entitled to direct purchase materials in order to save the state sales tax. Design Builder shall provide Owner with a list of items that may be eligible for sales tax savings prior to purchasing these materials. In the event Owner opts to make Owner-Direct Purchases, the project Guaranteed Maximum Price shall be reduced by the Owner-Direct Purchase with the corresponding sales-tax savings accrued in a Sales Tax Savings Account identified on the Project Schedule of Values and corresponding Application for Payment. Materials provided under this Sales Tax Savings program by the Design Builder shall be based on the actual prices quoted by the Design Builder for the materials used. The Sales Tax Savings Account shall be for the benefit of Owner only. Owner is the sole recipient of any sales tax savings and may use money
generated by the savings for reduction of the Project cost, increases in the scope of Work, or any other purpose Owner so desires without extending the schedule. If any funds remain in the Sales Tax Savings Account at the completion of the Project, the Project cost shall be reduced by Change Order to return all unused Sales Tax Savings to Owner.

4.3 LEGAL COMPLIANCE, BUILDING PERMITS, FEES AND NOTICES

.1 Application and Payment for Permits. Design Builder will apply for, obtain and pay for any and all required permits and all other required approvals, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. Certain permits, regulations, and fees may apply to the Work when such Work takes place beyond the limits of the school site or impacts property contiguous to the school site. This may include, and not be limited to utility connections, hauling and disposal of materials and debris resulting from demolition. The Design Builder shall include such cost as part of the Cost of the Work in the Guaranteed Maximum Price Amendment (Exhibit C).

.2 Variance of Contract Documents. The Design Builder and the Design Build Architect-Engineer shall insure that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, codes rules and regulations, or lawful orders of public authorities. In the event Design Builder believes that any of the Owner provided Contract Documents are in variance with applicable Laws in any respect, Design Builder will promptly notify Owner in writing and any necessary changes will be accomplished by an appropriate modification to the Contract Documents.

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

.4 Authority Having Jurisdiction. The School Board of Brevard County Florida Building Department is the jurisdiction having authority for building code compliance, unless otherwise provided in the Contract Documents. A School Board of Brevard County Building Permit is required to be issued before construction can commence, and will be furnished to the Design Builder at no cost upon compliance with permit application requirements.

4.4 PROJECT SCHEDULE

.1 Preparation. Design Builder, immediately after being awarded the Project Notice to Proceed, will prepare and submit to Owner a critical path progress schedule for the Work, hereinafter referred to as the Project Schedule or Schedule, including all Design Phases. The Project Schedule shall be prepared and provided in Microsoft Project format unless otherwise approved by the Owner.

.2 Schedule. The initial schedule shall include all phases of Design Services, Construction Services, commissioning, long-lead procurement, shop drawings, and submittals, dates of commencement, substantial completion and final completion. The Design Builder will upload the schedule to the Owner's Master Library Project account.

.3 Updates. The Schedule after being approved by Owner's Project Manager will be updated by the Design Builder monthly, or as directed by Owner based on Project term and complexity. The Design Builder will upload all updates to the Owner's Master Library Project account.

.4 Failure to Comply. If the progress of the Work does not meet the Schedule, Design Builder shall submit a revised Schedule containing the revised sequencing, durations, and/or resources necessary to complete the Work, or designated portions thereof, by the date(s) contained in the original Schedule. Such revised Schedule shall be submitted within three (3) days of a request by Owner. Failure of Design Builder to submit a revised Schedule with corrective actions sufficient to complete the Work, or designated portions thereof, by the
date(s) contained in the original Schedule, or to initiate and maintain such corrective actions, may be deemed a default by Design Builder under Article 15 of this Exhibit A for which Owner may assert any and all remedies provided for herein.

5 Overtime. The Design Builder is responsible for managing the Schedule and as such the Owner will not be liable for any resulting claims for damages, delays, extras, accelerations, compaction, disruption, lost productivity, lost efficiency, overtime, supervision, additional labor or overhead expenses. The Owner will not pay premium overtime rates to the Design Builder or Subcontractors in order to fulfill its obligation to complete the Work in accordance with the Schedule or within such other time limits as may be set forth in the Contract Documents unless approved in advance in writing, and as made necessary by circumstances beyond the control of the Design Builder, Design Build Architect-Engineer or its Subcontractors.

ARTICLE 5 – DESIGN SERVICES

5.1. DUTIES AND RESPONSIBILITIES

1 Scope of Services - General. The Basic Design Services below to be performed by Design Builder and/or Design Build Architect-Engineer consist of professional tasks which have as their objective the design, production of technical documents, and construction administration to provide Owner with a complete and properly functioning Project. The Project shall be suitable for the purposes for which it is intended, comply with all applicable codes and laws, and be completed on a timely basis within the approved construction budget.

2 Design Phases. The Basic Design Services to be provided by Design Builder and/or Design Build Architect-Engineer shall be performed in the phases described hereinafter and shall include all services customarily furnished in accordance with generally accepted industry practices for this type of professional design service consistent with the terms of this Agreement.

3 Design Compliance. Design Builder and/or Design Build Architect-Engineer shall provide all necessary documents and other services required for the Work. All Work shall be designed in accordance with: Florida School Law, Rules of Florida State Department of Education, State Requirements for Educational Facilities (SREF), Florida Building Code, Florida Fire Prevention Code, Florida Administrative Code Rule 6-2, the most recent editions of the Brevard County Public Schools Facility Design Standards and any other Owner directives regarding design standards.

5.2. PROFESSIONAL RESPONSIBILITIES & STANDARD OF CARE

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

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

.4 **Compliance.** It is the responsibility of Design Builder to make certain that all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from Federal, State and local governments.

.5 **Use of Asbestos.** It is the responsibility of Design Builder to assure that the Project Construction Documents require that no asbestos containing materials are to be incorporated in the Project. Design Builder must certify that no asbestos containing material was used in the project as a pre-condition to final payment.

.6 **Project Construction Budget.** If bids exceed the Project Construction Budget, Design Builder and/or Design Build Architect-Engineer shall, at no additional cost to Owner, assist Owner in Value Engineering or scope reductions necessary to meet the Project Construction Budget. Such assistance shall include, but shall not be limited to, participating in discussions, meetings and decisions and revising existing documents or providing additional documents as necessary to obtain pricing for and implement the Value Engineering and/or scope reductions.

### 5.3 PROJECT CONFERENCES

.1 **Requirements.** Throughout all phases of the Project, Design Builder and/or Design Build Architect-Engineer shall meet periodically with Owner, the Project Design Criteria Professional and/or the Owner’s Commissioning Agent when reasonably requested. Participants shall be as determined by Owner. Such conferences shall include but not be limited to:

.a Pre-design and design conferences.
.b Prebid and preconstruction conferences.
.c Construction progress meetings.
.d Substantial Completion, Final Completion and completion of warranty period inspections for each construction contract.

.2 **Minutes of Meetings.** Design Builder and/or Design Build Architect-Engineer will prepare and distribute utilizing the Owner’s Master Library Project account copies of minutes of design meetings pertaining to the Project to Owner’s Project Manager and all other interested parties. At least one bound volume of all minutes (design & construction) will be
5.4 DOCUMENTATION

1 Electronic Copies. Design Builder shall provide and Owner shall retain electronic copies of Drawings in AutoCAD format, and Adobe PDF format. Specifications shall be in MS Word format. Other documents to be in AutoCAD, Adobe PDF, MS Word, MS Excel, MS Access or MS Project as appropriate for information, reference and use. This documentation is in connection with Owner’s use and occupancy of the Project and for Owner’s future requirements of the Project’s facilities including without limitation any alteration or expansion in any manner Owner deems appropriate without additional compensation or fee to Design Builder.

ARTICLE 6: PROJECT DESIGN PHASES

6.1 DESIGN SEQUENCE

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

6.2. PRE-DESIGN PHASE

1 Initial Review. Design Builder shall review and advise Owner regarding the design guidelines for the project contained in the Design Criteria Package.

2 Use of Criteria & Standards. Design Builder shall become familiar with the Design Criteria Package for the Project and Owner’s Design Standards and utilize them in his Project design and specifications.

3 Initial Budget Review. Design Builder shall serve as a team member and advise on the appropriateness of the Project Construction Budget as it relates to the Design Criteria Package, Program Requirements and Design Standards. The Project Construction Budget included in the Design Criteria Package reflects the cost estimates developed in spring 2014 based on facility assessments conducted at that time. The Project is funded through the sales surtax. Funding is allocated by school/facility and by category. Implementation and expenditures are subject to review by the sales surtax Independent Citizens Oversight Committee (ICOC).

4 Owner Furnished Documents. Design Builder shall review all Owner furnished information, data and services, verify that it is correct and certify that it is acceptable for their use on the project.

6.3. SCHEMATIC DESIGN PHASE

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

2. **Progress Reviews.** Design Builder shall provide Owner periodically with copies of Schematic Design Studies for Owner's review during the Schematic Design Phase. At the end of the Schematic Design Phase Design Builder shall provide Owner with three (3) complete, signed and sealed sets of the drawings and other documents for approval by Owner.

3. **Submittal Requirements.** Documents prepared by Design Builder for final Schematic Design Phase submittal shall include drawings and a written report. The drawings are described and shall include, but not be limited to, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall include a summary of programmed versus actual square footage by room or area; such discussion of design factors, if any, as are pertinent in the opinion of Design Builder; and outline descriptions of proposed engineered systems. The Design/Build team shall prepare cost estimates in sufficient detail to assure the Owner that the project cost is within the Project Construction Budget. As a minimum, Project cost estimates must include a summary sheet that itemizes costs by the expenditure categories defined by the sales surtax program (see Exhibit B).

4. **Progress Meetings.** Design Builder shall participate as requested in meetings with Owner's staff to review the project and receive Owner's input. Design Builder shall schedule at least one schematic review meeting with the Owner and all potential controls subcontractors to discuss and confirm the controls scope of services (which may include consideration of multiple controls systems on campus) prior to bidding the controls subcontract.

5. **Presentations.** Design Builder shall make presentations as necessary to the School Board and/or its committees.

6. **Owner Approval.** Upon Owner acceptance and approval of the Schematic Design, the design concept may not be changed except by Owner approval.

6.4. **DESIGN DEVELOPMENT PHASE**

1. **General.** Design Builder shall prepare from the approved Schematic Design Studies, for further approval by Owner, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural systems, materials and such other essentials. Owner may combine the Design Development Phase with the Construction Document Phase.

2. **Progress Reviews.** Design Builder shall provide Owner periodically with copies of in-progress Design Development Documents during the Design Development Phase. At the end of the Design Development Phase Design Builder shall provide Owner with three (3) complete sets of drawings and other documents for approval by Owner.

3. **Submittal Requirements.** Design Development Documents prepared by Design Builder shall include drawings and a written report in more detail than the Schematic Design Documents and shall take into account Owner's comments on the previous submittal. The report shall include a summary of programmed versus actual square footage by room or area; such discussion of design factors, if any, as are pertinent in the opinion of Design Builder; and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts. Drawings shall include dimensioned site development plan, floor plans, elevations, and one or more typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. Design Builder shall prepare cost estimates including value engineering recommendations in sufficient detail to assure Owner that the Project cost is within the Project Construction Budget. As a minimum, Project cost estimates must include a summary sheet that itemizes costs by the expenditure categories defined by the sales surtax program (see Exhibit B).
4 **Progress Meetings.** Design Builder shall participate as requested in meetings with the Owner and shall schedule at least one schematic review meeting with the Owner and all potential controls subcontractors to review the controls submittal during the schematic design phase.

5 **Florida Power & Light Company Rebates.** During the design development phase, the Design Builder shall consult with the Owner regarding any rebates available to the District that may affect design parameters.

6.5 **CONSTRUCTION DOCUMENT PHASE**

1 **General.** Upon written authorization from Owner to proceed, Design Builder shall prepare from the approved Design Development Documents Construction Documents setting forth in detail the requirements for the construction of the entire Project or Project Phase as may be directed by the Owner. Single or multiple construction Project Phases shall be as agreed to by Owner, and the detailed drawings for each construction Project Phase shall be prepared by Design Builder with appropriate designation noted thereon. Detailed drawings shall cover all work included in the Project or designated portion thereof. Specifications shall be prepared using the Construction Specifications Institute format.

2 **Progress Reviews.** Design Builder shall provide Owner periodically with copies of in-progress Construction Documents during the Construction Documents Phase.

3 **Code Compliance.** Design Builder shall participate in such reviews and meetings as are necessary to ensure that the project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Documents which are required for issuance of all permits and legal authorization needed to construct the Project.

4 **Submittal Requirements.** Design Builder shall prepare final Construction Documents and Bid Documents, including final Specifications for all authorized work on the Project and shall incorporate in those final documents the comments and any modifications and changes desired by Owner and any modifications required for compliance with applicable codes, regulations, standards, the approved program, and prior written approvals and instructions of Owner. The resulting final Construction Document submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, meeting all the requirements of the most recent edition of SREF – State Requirements for Educational Facilities without any significant addenda or further clarification required. Three (3) sets of documents, marked “100% Review” shall be submitted to Owner for review and approval. Upon approval of these documents by Owner, Design Builder shall submit the following signed and sealed sets of documents marked “Issued for Permit and Bid”: three (3) to Owner/SBCC Permitting and Inspection Department. Upon request, Design Builder shall provide three (3) additional copies of these documents for distribution by the Owner. Design Builder shall be responsible for the coordination of all drawings and design documents relating to Design Builder’s design and use on the project, regardless of whether such drawings and documents are prepared or performed by Design Builder or by others.

5 **FISH Input Form.** Design Builder shall complete and submit the most recent edition of Brevard Public School’s “FISH Input Form” in electronic format to Owner.

6 **Product Approval Numbers.** Design Builder shall include State of Florida Product Approval Numbers for all applicable specified products.

7 **Florida Power & Light Company Rebates.** Design Builder will provide a list of all equipment eligible for any rebates from Florida Power & Light Company

8 **Furniture & Equipment (F & E) Layouts.** If applicable, Design Builder shall provide furniture and equipment layouts as requested by Owner including but not limited to the following spaces: Classrooms, Science Rooms, Media Center, Cafeteria, Kitchen and Administration Area.
.9 **Color Selection.** If applicable, Design Builder shall provide interior color selection options for review and approval by Owner.

.10 **Early Bid Items.** Design Builder shall prepare separate construction documents to allow early bid of long-lead time items identified by Design Builder and agreed to by Owner. These documents shall provide for complete coordination and integration of these items into the project.

.11 **Estimate.** Design Builder shall prepare cost estimates in CSI format including value engineering recommendations in sufficient detail to assure Owner that the project cost is within the Project Construction Budget. Coordinate the documents to identify specific Bid Packages for Owner and/or Project Design Criteria Professional review and approval. In addition, the Project cost estimates must include a summary sheet that itemizes costs by the expenditure categories defined by the sales surtax program (see Exhibit B).

### 6.6 CONSTRUCTION BID/AWARD PHASE

.1 **General.** After receiving written authorization from Owner, Design Builder shall conduct the Construction Bid Phase. There may be more than one Construction Bid Phase, depending upon the Project Phasing.

.2 **Bidding and Advertisement.** Assess conditions in the construction market in an effort to identify factors that will or may affect costs and time for completing the Project. Generate bidder interest from the local market place and identify and reasonably encourage bidding competition. Solicit, advertise, accept, review, and, based on approvals by the Owner, award bids to qualified subcontractors, based on the bid packages identified. The Design Builder will contract with all subcontractors, material suppliers and equipment suppliers necessary for the proposed construction works.

.3 **Addenda.** Design Builder shall prepare such clarifications and addenda to the bidding documents as may be required. Design Builder will provide these to Owner for review prior to issuance to all holders of bid documents.

.4 **Pre-Bid Conference.** Owner may request Pre-Bid Conferences with prospective bidders to review the Project requirements. Design Builder shall provide knowledgeable representative, including representatives of its subconsultants, to participate in these conferences to explain and clarify Bidding Documents. Within a reasonable time after the Pre-Bid Conference, Design Builder shall deliver to Owner, if needed, a final Addendum.

.5 **Re-Bidding & Re-Design.** Should first bidding or negotiation produce prices in excess of the approved Project Construction Budget, Design Builder shall conduct such re-bidding and re-design, at no additional expense to Owner, as may be necessary to obtain price(s) within the approved Project Construction Budget or price(s) acceptable to Owner. Owner will assist in re-design decisions. All re-design must be approved by Owner.

.6 **Re-Bidding Time.** Should Design Builder re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to Owner.

.7 **Bid Document Distribution.** Design Builder shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. In addition to the bidders, documents shall be issued to all required code authorities, plan room services, and others, as Owner designates.

.8 **Buy-Out Report.** Provide to the Owner along with the Guaranteed Maximum Price Amendment (Exhibit C) a buy-out report, a summary indicating all subcontractor bids received, scope sheets for each bid package and a preliminary Construction Schedule.
.9 Owner Approval of Subcontractors. Design Builder shall advise Owner in all decisions as to the acceptability of Subcontractors and other persons and organizations proposed by Design Builder for various portions of the work.

6.7. CONSTRUCTION PHASE

.1 General. The Construction Phase for each portion of the Project shall begin upon approval of the Guaranteed Maximum Price (Exhibit C) by Owner and issuing of the Notice to Proceed to the Design Builder and will terminate when the Final Completion payment is made by Owner. The Design Builder will upload all Project documentation to the Owner's Master Library Project account.

.2 Construction Prior to GMP. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by the Owner in writing, the Design Builder shall commence to construct those portions of the Work designated by the Owner even though the Guaranteed Maximum Price and/or Contract Time for the entire Work has not been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid the Design Builder and the performance time for such portion of the Work.

.3 Permitting. Coordinate and prepare permitting applications and Agency submittal documents as required for the Project.

.4 Owner Direct Purchases. Design Builder will develop and implement procedures to accommodate Owner Direct Purchases so that Owner can take advantage of Owner's tax exempt status for all materials and equipment exceeding $5,000.00. This includes identification, tracking and coordination with Subcontractors. Design Builder will estimate the Owner Direct Purchases at the time the Guaranteed Maximum Price is submitted, so that the amount can be deducted from the Purchase Order to the Design Builder.

.5 Shop Drawing Approval. Design Builder and the Design Build Architect-Engineer shall review and approve shop drawings, samples and other submissions for conformance with the design concept of the Project and for compliance with the Contract Documents and stamp as “Approved” prior to submittal of such documents to Owner's Project Manager and/or Project Design Criteria Professional for review. The review of submittals shall be accomplished by Design Builder within ten (10) calendar days from date of receipt except when authorized by Owner.

.6 Approval Procedures. Owner's Project Manager and/or Project Design Criteria Professional shall review and process all shop drawings, catalog submissions, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time in a timely manner.

.7 Contract Document Interpretations. Design Builder and/or Design Build Architect-Engineer shall render to Owner, within two (2) working days, unless otherwise authorized by Owner, interpretations of requirements of the Contract Documents. Design Builder shall make all interpretations consistent with the intent as is reasonably inferable from the Contract Documents. Design Builder shall coordinate and cooperate with Owner's Project Manager and/or Project Design Criteria Professional regarding matters relating to artistic effect relative to the intent of the Contract Documents.

.8 Errors, Omissions or Conflicts. Should errors, omissions or conflicts in the Drawings, Specifications or other Contract Documents by Design Builder be discovered, Design Builder will prepare and submit to Owner for approval, within two (2) working days, unless otherwise authorized by Owner, such amendments or supplementary documents and provide consultants as may be required, for which Design Builder shall make no additional charges to Owner.

.9 Design Professional Inspections. Design Build Architect-Engineer shall visit the Project Site as may be necessary to review the progress and quality of the work and to determine if the work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, Design Build Architect-Engineer shall take the appropriate steps to guard Owner against defects and deficiencies in the work. If Design Builder observes any
work that does not conform to the Contract Documents, Design Builder shall immediately make an oral and written report of all such observations to Owner.

.10 Field Reports. Design Build Architect-Engineer shall prepare and submit a report on each visit, submitted to Owner within three (3) working days of the visit.

.11 Application for Payment. Based upon observations at the site and upon the Design Builder’s applications for payment, Owner’s Project Manager and/or the Project Design Criteria Professional shall jointly determine the amount owing to the Design Builder, pursuant to the terms of the Agreement between Owner and Design/Builder. Owner’s Project Manager and/or Project Design Criteria Professional shall sign the Certificate of Payment prior to the time it is transmitted to Owner. Owner’s Project Manager and/or Project Design Criteria Professional signing of a Certificate of Payment shall constitute a representation by Owner’s Project Manager and/or Project Design Criteria Professional based upon observations at the site and the data comprising the Application for Payment that the work has progressed to the point indicated, that to the best of their knowledge, information and belief, the quality of the work appears to be in accordance with the Contract Documents (subject to: an evaluation of the work for conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Design Builder is entitled to payment in the amount certified.

.12 Monthly Reporting. Design Builder shall provide to the Owner, a Monthly Project Report providing an accurate assessment of the current status of the Project and cost accounting indicating the status of the subcontract buyouts, contingency expenses, project expenses, accounts payable, forecasted and conformed Owner expense changes, and forecasted savings within the Guaranteed Maximum Price.

.13 Non-Conforming Work. If, in accordance with its duty, Design Builder advises Owner of non-conforming work, Design Builder shall confirm the non-conformance in writing to Owner within two (2) days of observation.

.14 Occupancy Approval. Design Builder shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.

.15 Substantial Completion. When Owner agrees that the work or portions of the work are substantially complete, Design Builder shall inspect the work and submit to Owner a punch lists of the work which is not in conformance with the Contract Documents. Owner’s Project Manager and/or Project Design Criteria Professional will review the punch lists and augment as necessary.

.16 As-Built Drawings. Owner’s Project Manager and/or Project Design Criteria Professional shall ensure Design Builder’s as-builts are up to date during the monthly application for payment review. Upon completion of the project, Design Builder shall revise his electronic documents to show significant changes in the work made during the construction process, based on neatly and clearly marked-up contract drawings, prints, and other data and the applicable Addenda, Clarifications, and Change Orders which occurred during the Project. Design Builder shall furnish two (2) 24” x 36” printed sets and one electronic (.PDF format) set of as-built drawings to Owner, which are clearly marked “AS-BUILT DRAWINGS”.

.17 Owner Training. Design Builder shall be responsible to ensure that instruction is provided in the operation of any equipment or system such as initial start-up, testing, adjusting and balancing.

.18 Validation of Systems. Design Builder shall observe and review test data of the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications. This information shall be presented, in writing, to the Commissioning Agent. The presented document must list any and all deficiencies and a correction plan, including schedule, prior to the start of commissioning. It is the sole responsibility of the Design Builder to work with and correct all
deficiencies either noted in the above mentioned document or discovered during the commissioning process.

19 Maintenance and Operating Manuals. Design Builder shall review the maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection required by the Construction Documents and forward all approved copies to Owner for use by Owner. Design Builder shall conduct such observations as necessary to ensure all material and equipment warranties are in compliance with applicable specifications. These manuals shall then be submitted to the Commissioning Agent for review and approval by the Owner prior to the commencement of the commissioning process.

20 Final Completion Inspections. Design Builder shall conduct comprehensive Final Completion inspections for the project, or each Phase thereof, at the request of Owner. Owner’s Project manager and/or Project Design Criteria Professional and/or Commissioning Agent shall accompany Design Builder on the Final Completion inspections.

21 Final Pay Application. Upon correction of the deficiency reports (punch lists), completion of the third party audit and acceptance of all other close-out submittals and certificates of the Design Builder, Owner’s Project Manager and/or Project Design Criteria Professional shall review the Application for Final Payment and, upon approval, forward it to Owner for execution.

6.8. POST CONSTRUCTION PHASE

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

6.9 ADDITIONAL DESIGN SERVICES COMPENSATION.

1 General. Prior to any Additional Design Services performed by Design Builder hereunder, Design Builder and Owner shall negotiate a lump sum or hourly rate equitable adjustment to the Basic Design Services Compensation based upon the Hourly Rate Schedule (Exhibit D) to this Agreement.

2 Compensation. Payments for Additional Design Services to Design Builder shall be made monthly upon presentation of Design Builder's statement of design services, fully supported by invoices, time cards, and other documentation as requested by Owner. Design Builder expressly waives any right to payment for any Additional Design Services rendered if Design Builder does not receive prior written approval from the Owner and if such services are not billed as Additional Design Services within sixty (60) days following their rendition.

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

ARTICLE 7 – CONSTRUCTION SERVICES

7.1 DUTIES AND RESPONSIBILITIES - GENERAL

1 Construction Means and Methods. Design Builder will be solely responsible for all construction means, methods and techniques of performing the Work, including but not limited to, safety precautions and Project Site safety in the areas where Design Builder is performing the Work and related areas impacted by the Work.
2 **Inspection of Project Site.** Design Builder represents and warrants that it will inspect the Project Site and all surfaces, areas or structure(s) related to the Work, prior to performance of the Work, and immediately notify Owner in writing of any deficiencies that would adversely affect the Project. By commencing Work, Design Builder accepts full responsibility of all surfaces, areas or structure(s) on which Work has begun, except to the extent that such deficiencies are concealed prior to the start of Work.

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

4 **Daily Log.** The Design Builder will maintain a daily jobsite log to record the progress of the Project. The daily log will be available to the Owner at the Project Site and will be uploaded by the Design Builder to the Owner's Master Library Project account daily and transmitted to the Construction Team. The Design Builder shall maintain a log of daily activities, including manpower records, weather, delays, major decisions, percentage of completion, etc., and require the same of Subcontractors. The Design Builder shall maintain and shall upload to the Owner's Master Library account as necessary to remain current a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.

5 **Purchase.** Design Builder will purchase or otherwise arrange for and will pay for all materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities or services required for the complete and workmanlike performance of the Work, including but not limited to, temporary and permanent structures whether or not incorporated or to be incorporated into the Work. Notwithstanding the above, Owner will, where applicable and agreed to by Owner and Design Builder, provide temporary water and electricity at the Project Site during the course of the Work.

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

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

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

9 **Hazardous or Toxic Materials.** No asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials will be specified or used in the Work, including, but not limited to, building materials, production processes and equipment, and utilities and other support processes and equipment. Design Builder will communicate and enforce this prohibition with its Subcontractors and will immediately bring any observed violation(s) to Owner's attention. At the Date of Final Completion of the Work, Design Builder will provide to Owner a written certification confirming that no asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials were specified or used in the Work.
.10 Limits of Operations. Design Builder will confine its apparatus, equipment, storage of materials and operation of the workmen to the limits indicated by local ordinances, permits, or by direction of Owner, and will not unreasonably encumber the Project Site with materials or equipment. The Design Builder acknowledges that construction operations will be restricted when school is in session and that the Design Builder will not be permitted to impact student learning.

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

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

.13 Salvage of Materials. Prior to starting construction, the Owner will designate any materials and/or equipment to be salvaged by the Owner. The Design Builder will remove the materials and/or equipment and place in an area, on site, as directed by the Owner.

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

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

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

.17 Certificates of Inspection. All required certificates of inspection, testing or approval will be obtained by Design Builder and promptly delivered to Owner and/or the Project Design Criteria Professional.

7.2 DESIGN BUILDER’S PROJECT SITE SUPERVISION

.1 Approval. Design Builder will at all times, or at an alternative schedule with prior approval by Owner, maintain a competent representative on the Project Site at all times during performance of the Work in the form of either a Project Manager or Site Superintendent, as approved by the Owner, to receive instructions and to act with authority for Design Builder.

.2 Identification. The Design Builder shall furnish in writing to the Owner and/or the Project Design Criteria Professional the name and qualifications of the Project Manager and/or Site Superintendent.

.3 Change. Design Builder’s Project Manager and/or Site Superintendent will not be changed without the consent of Owner, except where Design Builder’s Project Manager and/or Site Superintendent proves to be unsatisfactory to Design Builder or ceases to be in Design Builder’s employ.

7.3 SHOP DRAWINGS, REQUESTS FOR INFORMATION AND OTHER SUBMITTALS

.1 Review by Design Builder. All Submittals will be reviewed, stamped with Design Builder’s approval and submitted to Owner and/or the Project Design Criteria Professional within Ten (10) days of receipt by Design Builder.
.2 Consequences of Approval. Design Builder’s approval of a Submittal represents that Design Builder and the Design Build Architect-Engineer has determined and verified all materials, field measurements quantities, and field construction criteria related to the Submittal, or will do so, and that Design Builder has checked and coordinated the information contained within such Submittal with the requirements of the Work and of the Owner approved Contract Documents.

.3 Liability for Errors. Design Builder will not be relieved from responsibility for errors or omissions in Submittals by Owner’s and/or, if applicable, the Project Design Criteria Professional’s approval of the Submittals.

.4 Revisions. With regard to all resubmitted Submittals, Design Builder will in writing direct specific attention to revisions or other deviations which are different from or in addition to those required by Owner and/or the Project Design Criteria Professional on previous Submittals.

.5 Work Requiring Submittals. Design Builder will perform no Work requiring a Submittal until such Submittal is submitted and No Exceptions Taken by Owner and/or the Project Design Criteria Professional. Any such Work performed without Architect-Engineer’s approval will be at Design Builder’s sole risk.

.6 No Substitution. No substitution of materials, equipment, articles or processes required specifically identified in the Contract Documents will be made without written approval of Owner's Project Manager.

.7 Approvals. Samples of materials and mock-ups will be submitted for approval when specified in the Contract Documents and as identified in the Project Schedule.

.8 Equipment Manuals. Design Builder will furnish to Owner and Commissioning Agent no later than fourteen (14) days prior to the date of Substantial Completion two (2) manual copies and one (1) electronic copy of schematic diagrams covering installations of all electrical, mechanical and building automation controls, operating instructions and maintenance recommendations for all machinery, equipment and systems purchased by Design Builder and installed in the Project. The manuals shall be reviewed by the Owner or Owner’s representative and one (1) copy will be returned to the Design Builder within five (5) working days. The Design Builder shall then submit up to five (5) manual copies and one (1) electronic copy of the corrected manual to the Owner. The maintenance and operating instructions will be included within the equipment manuals and will state all information necessary for Owner to operate, use, maintain and service the equipment fully and efficiently. The Work will not be accepted for Substantial Completion until Owner has received such equipment manuals covering such Work.

.9 Parts List. Design Builder will provide no later than the date of Substantial Completion a printed parts list for all items subject to replacement for all machinery, equipment and systems purchased by Design Builder and installed in the Project. The District may require the Design Builder to tag certain parts with inventory control bar codes or QR codes at the District’s discretion.

.10 Start-up of Systems. Design Builder will be responsible for start-up of all systems and equipment and will have made sufficient allowances in the Contract Sum to cover time and personnel to perform a complete commissioning process as specified and to cover contingencies arising out of the start-up of individual systems, equipment and the total facility. Design Builder will comply fully with each manufacturer’s specifications and instructions. Systems and equipment specified to be furnished with manufacturer’s supervision of start-up will be placed in operation only under such supervision.

.11 Document Control. Design Builder shall utilize the School Board’s Master Library™ cloud-based construction management software system for Project document control, including all document submittals referenced in Section 7.3.1 through 7.3.10 of this Exhibit A. The Owner will establish a Project website on [http://www.masterlibrary.com](http://www.masterlibrary.com). The Design Builder will be given a user account with administrative capabilities to allow the creation of as many accounts as needed for the project. Accounts will be needed for all Construction Team
members. Each user of the system will be required to have a unique e-mail address.

The website provides the following functionality using web based electronic forms:

1. Meeting Minutes
2. RFIs
3. Daily Reports
4. Transmittals
5. Submittals
6. Field Observations
7. Punch Lists
8. Project Correspondence
9. Memos
10. Field Orders
11. Change Orders/Proposals
12. File Storage

Use of the website will be mandatory for the Design Builder, unless directed otherwise by the Owner. The Design Builder shall use the website for the routine tasks including, but not necessarily limited to:

1. Generate RFIs.
2. Enter and track soft copy Submittals, MSDS’s O&M Manuals etc.
3. Respond to Field Orders.
4. Provide Proposals.
5. Transmit daily progress reports (including Design Builder workforce and Subcontractor work forces, forecasts, issues encountered, etc.).
6. Enter and update Project activities (schedule).
7. Generate emails/correspondence.
8. Acknowledge receipt/comment on routine correspondence.
9. Transmit test reports.
10. Transmit applications for payment (as directed by Owner).
11. Transmit record documents.
12. Transmit closeout documents, etc.

7.4. CLEANING UP

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

.2 Owner Right to Clean Up. If for any reason, Design Builder or any Subcontractor fails to completely clean up and remove its waste materials, rubbish and other materials at the Project Site to a level acceptable to the Owner, Owner may do so and the cost thereof will be charged to Design Builder, through a deduction from the final pay application.

7.5 RECORDS, DOCUMENTATION, NOTIFICATIONS

.1 Records Maintained at Project Site. Design Builder will maintain at the Project Site copies of records of all documents relating to the Project, including all contracts, Submittals, permits, a current marked set of working Drawings and Specifications, including as-builts to facilitate the preparation of record drawings, subcontracts, orders for materials, equipment
and/or supplies and governmental, commercial and technical standards and specifications. Based on consultation with the Project Manager, the Design Builder shall keep and provide an appropriately quantified list of all tagged and non-tagged assets removed or installed during the project. At a time prior to Substantial Completion, Design Builder will deliver duplicates of such documents to Owner.

.2 Accounting Records. Design Builder will maintain cost accounting records relating to the Work in accordance with generally accepted accounting principles. Owner will have access to Design Builder’s accounting records at all reasonable times and Design Builder agrees to make such changes to its system of keeping these records as Owner may reasonably request in writing. A third party audit will be conducted utilizing the referenced records and documentation in this Section.

.3 Progress Records. Design Builder will keep detailed records of the progress of the Project during all stages of construction in accordance with the Specifications and this Agreement. Design Builder will also maintain a daily log of all events occurring on the Project Site or connected with the progress of the Project, a log pertaining to all Requests for Information (RFI) submittals and a log for Contingency Use Request (CUR) submittals. Copies of the progress records and logs will be submitted monthly to Owner.

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

.5 Preservation of Records. Design Builder will preserve such records for a period of five (5) years after final payment. Owner will have access to and the right to conduct examinations and audits of all such records at any time during such period. At the expiration of such period, Design Builder, if requested by Owner, will turn over such records to Owner to be kept for such time as necessary for reproduction prior to return.

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

.7 Communication Procedures. Before the Work begins, complete procedures for communications between and among Owner, and/or the Project Design Criteria Professional and Design Builder will be established to the satisfaction of Owner. In addition to maintaining records at the Project Site, the Design Builder should expect to utilize the Owner’s Master Library Project account as a primary communication tool among the Construction Team.

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

a. The release or substantial threat of release of a hazardous substance;
b. The discovery of materials, substances of unknown origins on or under the Site;
c. The discovery of any underground storage tank;
d. And/or similar occurrences;

Then Design Builder or Subcontractor or such employee of Design Builder or Subcontractor will immediately notify Owner's Project Manager in writing.

7.6 WARRANTY OF WORK

.1 Obligation to Correct Within One Year. Design Builder will, at no expense to Owner, correct any of the Work found to be defective or not in accordance with the Contract Documents at any time within one (1) year (or, in the case of items as to which a longer warranty period is set forth in the Specifications, within such longer period) after the Date of Substantial Completion of the Project Work. In any event, the warranty herein expressed
will not be sole and exclusive and is additional to any other warranty express or implied. All such work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project.

.2 Warranty of Materials, Equipment and Software. Warranties issued by Design Builder and the manufacturers of machinery and materials, equipment and/or supplies, and software purchased by Design Builder for use in the Project will:

a. Be collected by Design Builder, indexed and bound;
b. Be submitted to Owner no later than seven (7) days prior to the Date of Substantial Completion of the Work; and
c. Be issued or assignable by their terms to Owner and in the latter case will be transferred to Owner.
d. Will commence on the date of the Project's Substantial Completion.

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

.4 Default or Breach of Warranty. Failure of Design Builder to perform in accordance with any of the warranties in this Article will be considered a default or breach by Design Builder hereunder and give rise to a right of termination for cause and the exercise of any and all other rights and remedies available to Owner under Article 15 of this Exhibit A and by Law.

ARTICLE 8 - SUBCONTRACTORS

8.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

.1 List of Subcontractors/Sub-subcontractors. The Design Builder, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work at a time agreed upon by the Owner. The Owner may reply within 14 days to the Design Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

.2 Reasonable Objection. The Design Builder shall not contract with a proposed person or entity to whom the Owner has made reasonable objection. The Design Builder shall not be required to contract with anyone to whom the Design Builder has made reasonable objection. If the Owner has reasonable objection to a person or entity proposed by the Design Builder, the Design Builder shall propose another to whom the Owner has no reasonable objection.

.3 Substitution. The Design Builder shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

8.2 SUBCONTRACTUAL RELATIONS

.1 Subcontract Requirements. By appropriate written agreement, the Design Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design Builder by terms of the Contract Documents, and to assume toward the Design Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Design Builder, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Design Builder that the Design Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design Builder shall require each Subcontractor to enter into similar agreements with
Sub-subcontractors. The Design Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractor are required to comply with Section 13 Protections of Persons and Property of this Exhibit A. Subcontractors shall be similarly required to make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

8.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

.1 Assignability. Each subcontract agreement for a portion of the Work is assigned by the Design Builder to the Owner, provided that

a. Assignment is effective only after termination of the Contract by the Owner for either cause or convenience pursuant to Article 15 of this Exhibit A and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Design Builder in writing; and

b. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

c. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Design Builder’s rights and obligations under the subcontract.

.2 Suspended Work. Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor’s compensation shall be equitably adjusted for increases in direct costs resulting from the suspension and that are not due to any breach of contract or negligence of the Subcontractor or its employees.

.3 Successor. Upon such assignment to the Owner under this Section 8.3 of this Exhibit A, the Owner may further assign the subcontract to a successor Design Builder or other entity.

.4 Duties. Any assignment made under this section shall not relieve the Design Builder of its duties and responsibilities under this Contract nor shall any assignment be deemed a waiver by the Owner of any action or claims which it could assert against the Design Builder.

8.4 OWNER PAYMENTS TO SUBCONTRACTORS

.1 Default. In case of any default hereunder by the Design Builder, that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the payments to the Design Builder.

.2 Payment Obligation. Nothing contained herein shall create any obligation by the Owner to make any payments to any Subcontractor and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 9 – CONTRACT TIME

9.1 REQUIREMENTS

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

.2 Start and Expeditious Completion. Design Builder will begin the Work per the Project Notice to Proceed, provide adequate staffing for the Design phases and man the Project Site with adequate forces during Construction to achieve the Date of Substantial Completion of the Work and Date of Final Completion of the Work within the Schedule identified in the Guaranteed Maximum Price Amendment (Exhibit C). The Design and Permitting Schedule is identified in the attached Exhibit E (to be provided by the Design Builder).

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

9.2 DELAYS AND EXTENSIONS OF TIME

.1 Delays. If the Design Builder is materially delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Project Design Criteria Professional, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes not caused by wrongful or unlawful acts of Design Builder, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design Builder control; or by other causes that the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.

.2 Exclusive Remedy. Except as provided in Section 14.1.1 (concealed conditions) of this Exhibit A, an extension of time as defined above, shall be the Design Builder’s exclusive remedy in the event of such a delay, no matter how or by whom caused. Design Builder further specifically acknowledges that it shall have no claim for increase in the Contract Sum, Design Builder’s Construction Fee, use of Contingency, or damages of any kind because of any delays whatsoever to all or any part of the Work whether foreseen or unforeseen, and whether caused by any person’s hindrance or active interference. Claims relating to time shall be made in accordance with applicable provisions of Article 16.

.3 Owner FFE Delivery. If applicable, the Owner will schedule furniture and equipment deliveries based on the construction schedule. The Design Builder shall be responsible for all costs to the Owner for storage, double handling, re-shipping, and extended general conditions costs of delayed furniture and equipment installations due to the Design Builder’s not meeting schedule completion dates.

9.3 FORCE MAJEURE

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

.2 Persistence of Force Majeure. If an act or event of force majeure continues for fifteen (15) consecutive days or longer, Owner will have the right to immediately terminate the Agreement upon written notice to Design Builder in accordance with Article 15 of this Exhibit A.
ARTICLE 10 – CONTRACT PRICE

10.1 GUARANTEED MAXIMUM PRICE (GMP)

.1 Guaranteed Maximum Price. The Guaranteed Maximum Price, including authorized adjustments thereto, is the compensation or total (or maximum, as the case may be) amount payable by Owner to Design Builder for the performance of the Work under the Project Contract Documents as identified in the Project Guaranteed Maximum Price Amendment (Exhibit C). The Guaranteed Maximum Price shall include the cost of Design, the Design Builder Fee and the Cost of the Work (General Conditions, Subcontracted Costs and other Direct Costs) as defined herein.

a. Commissioning. The construction manager shall estimate the costs to commission the project (including subcontractor costs) as a component of the Guaranteed Maximum Price. The owner will issue a separate purchase order for the construction manager’s commissioning services and a separate purchase order for the balance of the Guaranteed Maximum Price. Construction manager’s commissioning services may extend beyond the final completion and final payment of the balance of the project.

.2 Truth-in-Negotiation. The Design Builder certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of execution of each Project of which this certificate is a part. The original price and any additions thereto shall be adjusted to exclude any sums by which the Owner determines the Project amount was increased due to inaccurate, incomplete or non-current wage rates, labor burden rates and other factual unit costs (including wage rates and labor burden rates that include amounts that are not considered reimbursable under the terms of the Agreement) and that such original Project adjustments shall be made within one year following the end of the Agreement.

10.2 DESIGN BUILDER’S DESIGN PHASE SERVICES

.1 Compensation. The Design Builder shall receive the not to exceed “Design Phase Fee” for all Design Phase Services, including, but not limited to, preparing the Construction Documents, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with the Owner during the various design phases, and preparing cost estimates and schedules, as described in the Project Design Phase Proposal (Exhibit F). Said amount shall be paid in accordance with a schedule submitted by the Design Builder, and reviewed and approved by the Owner.

.2 Format. The proposed Design Phase Compensation shall be set forth in writing in a format acceptable to Owner for approval and upon acceptance made a part of this Agreement by the issuing of a Purchase Order and by reference hereto.

.3 Design Scope Commencement. The Design Phase shall commence upon the issuance of a Notice to Proceed, Purchase order, and approval of the Project Design Phase Proposal (Exhibit F) by the Owner.

10.3 DESIGN BUILDER’S CONSTRUCTION PHASE FEE - GENERAL

.1 Lump Sum Fee. The Construction Phase Fee shall be a Lump Sum and shall include those items identified in Section 10.4 of this Exhibit A.

.2 Format. The Construction Phase Fee shall be set forth in the Guaranteed Maximum Price Amendment (Exhibit C) for approval and upon acceptance made a part of this Agreement by the issuing of a Purchase Order and by reference hereto.

10.4 DESIGN BUILDER’S CONSTRUCTION PHASE FEE - ELEMENTS

.1 Home/Branch Office Staff Expenses. The cost of its home or branch office employees or consultants not at the Project Sites, including the cost of all pension contributions, hospitalizations, staff bonuses, vacations, medical insurance assessments or taxes for such
items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

2 Home/Branch Office Expenses. General operating expenses of the Design Builder's principal and branch offices other than the field office.

3 Capital Expenses. Any part of the Design Builder's capital expenses, including interest on the Design Builder's capital employed for the Work.

4 Overhead and Profit. Overhead, profit, or general expenses of any kind, except as may be expressly included in Section 10.8 Cost of the Work of this Exhibit A.

5 Travel. All travel and per diem costs of Design Builder's employees and consultants, except as may be expressly included in Section 10.8 Cost of the Work of this Exhibit A.

6 Estimating. The cost of estimating services which may be required to determine the Design Phase Fee and during the Construction Phase in locations other than the Project Site.

7 Miscellaneous Principal/Branch Office Expenses. Expenses incurred at principal or branch offices such as long distance telephone calls, postage, office supplies, and similar items in connection with the Work, except as may be expressly included in Section 10.8 Cost of the Work of this Exhibit A.

8 Warranty Period. All costs incurred during the warranty period after construction.

9 Audit. All costs incurred during the post-construction audit.

10.5 ADJUSTMENT IN THE CONSTRUCTION PHASE FEE

1 Fee Increase. The Design Builder shall not be entitled to additional Fee for delays in the Work caused by the Owner. The Design Builder shall receive additional General Conditions for verifiable increased expenses if delays in the Work caused by the Owner result in a delay of the Final Completion Date, as determined by a qualified schedule analysis.

10.6 CONSTRUCTION PHASE FEE

1 Fee to be Negotiated. The Design Builder’s Construction Phase Fee shall be negotiated for each Phase of the Project based on the duration and complexity. The fee shall be based on a percent of the Cost of Work less contingency and less reimbursables at cost (Reference Article 10.8.3).

2. Fee on Contingency. The Design Builder’s Construction Phase Fee rate established in Article 10.6.1 will be applied to the contingency as it is used.


10.7 GENERAL CONDITIONS

1 General Condition Costs. The items identified as General Condition costs shall be directly related to the Project and be proposed by the Design Builder in the Guaranteed Maximum Price Amendment (Exhibit C) for approval by the Owner. The General Condition costs may include at the discretion of the Owner, but not be limited to, Design Builder’s direct labor and supervisory/administrative personnel engaged in the performance of the Work at the Project Site, job trailer and utilities, staff vehicles and fuel, cell phones, temporary utilities, select office furniture, security provisions, safety items, temporary toilets, permanent utility connection fees, barriers, select equipment rental, cleaning and dumpsters, insurance and bonds. The General Condition Costs upon acceptance will be made a part of this Agreement by the issuing of a Purchase Order and reference.

The General Condition costs shall be a Not to Exceed Sum and shall include select items identified as part of the Cost of the Work in Section 10.8 of this Exhibit A. The specific items comprising the General Conditions shall be detailed to the extent required by the Owner for evaluation and be an attachment to the Guaranteed Maximum Price Amendment (Exhibit C). A third party will audit the Cost of the Work and related General Condition costs prior to Final Payment.
10.8 COST OF THE WORK

1 Cost of the Work. The term Cost of the Work shall mean costs, both General Condition and direct construction costs, reasonably incurred by the Design Builder in the proper performance of the Work.

2 Components. The Cost of the Work shall include only the following:

a. Wages of direct employees of Design Builder performing the Work (including Design Build Architect-Engineer Staff for Construction Administration) at the Site or, with Owner's agreement in writing, at locations off the Site. Wages for off-site accounting staff may be considered a component of the Cost of the Work for hours worked relative to Project-specific cost accounting only. The Owner will not reimburse components of Labor Burden that are not normal and appropriate. Normal and appropriate components include actual costs of Payroll Taxes (FICA, SUTA, FUTA), Insurance (health, life, dental, disability), Retirement Plan, Workers Compensation (blended rates are not acceptable - reimbursement will be based on the actual rate for each person charging to the project and shall include modifier and discounts). Individual labor burden rates may exceed 40% with prior written approval of the Owner; however in no cases shall the aggregate labor burden for all employees exceed 40%. Labor burden components which will not be reimbursed include, but are not limited to, bonuses, profit sharing costs, club dues, auto, training/seminars, uniforms, and administrative support. The cost for those employees performing Design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, at the discretion of the Owner, those rates set forth in the Hourly Rate Schedule (Exhibit D).

b. Payments properly made by Design Builder to Subcontractors (including Design Build Architect-Engineer for Construction Administration) for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors. The cost for those employees performing Design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, at the discretion of the Owner, those rates set forth in the Hourly Rate Schedule (Exhibit D).

c. Wages or salaries of Design Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site with the prior written approval of the Owner.

d. Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

e. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

f. Costs of removal of debris and waste from the Project Site.

g. The reasonable costs and expenses incurred in establishing, operating and demolishing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

h. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design Builder at the Site, whether rented from Design Builder or others, and incurred in the performance of the Work.

i. Premiums for insurance and bonds required by this Agreement. Owner will not reimburse components of General Liability or Professional Liability Insurance that are not direct costs of insurance for the Project. If any component of insurance premiums is self-insured, the cost must be based on actual costs or actuarially determined estimates. The Design Builder will need to disclose such to the Owner, and provide the basis upon which such costs are allocated to the Project. Components that will not be reimbursed include, but are not limited to, reserves for deductibles, coverage not related
to the Project (pollution insurance, kidnap & ransom insurance, director's liability insurance, others as determined by Owner) and administration. Design Builder shall disclose if they are self-insuring any portion of their reimbursable insurance costs.

j. All fuel and utility costs incurred in the performance of the Work.

k. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work (except where sales tax is credited to Owner).

l. Costs for permits, royalties, licenses, tests and inspections incurred by Design Builder as a requirement of the Contract Documents.

m. Deposits which are lost, except to the extent caused by Design Builder's negligence.

n. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

o. Vehicle costs to be limited to reasonable lease, maintenance, gas and insurance expenses as determined by Owner.

p. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

3. Reimbursables at Cost. The following items will not be subject to any percentage markup (fee) for overhead and profit:

   a. Sales and use taxes (except where sales tax is credited to Owner under Agreement);
   b. Performance and labor and material payment bond premiums;
   c. Permit fees; and
   d. Insurance premiums.

4. Preconstruction Audit. At either the Owner's or the Design Builders' request, the Owner will perform a preconstruction audit of rates anticipated to be components of the Cost of the Work to establish agreed upon rates prior to commencement of the Project.

10.9 NON-REIMBURSABLE COSTS

1. Components. The following shall be excluded from the Cost of the Work and are recognized in this Agreement as part of the Design Builder's Fee:

   a. Overhead and general expenses, except as provided for in Section 10.8 of this Exhibit A, or which may be recoverable for changes to the Work.
   b. Costs incurred by Design Builder in repairing or correcting defective, damaged or non-conforming Work, unless such defects, damage or non-conformances are not caused by the Design Builder, Sub-Contractors or Suppliers.
   c. Costs associated with Design Builder's staff bonuses, profit sharing, incentive compensation, staff training, uniforms, warranty costs and unsupported costs.
   d. Any costs not specifically and expressly described in Section 10.8 of this Exhibit A.
   e. Software expenses unless specific to the Project and previously approved by Owner.
   f. Rental of Design Builder owned equipment and tools unless previously approved by Owner.
   g. Costs associated with the pre- and post-construction audit of Design Builders' costs and rates.
   h. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
10.10 THE GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT

.1 GMP Established Upon Approval of Project. Design Builder guarantees that it shall not exceed the GMP as identified in the Guaranteed Maximum Price Amendment (Exhibit C) for the Project. Design Builder does not guarantee any specific line item provided as part of the GMP, but will provide a line item reconciliation at the conclusion of the Project, at the time of the submission of the Final Payment Application, reconciling the final Schedule of Values to the Design Builder’s final job cost detail by line item. The Design Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as the basis for the GMP for each specific Project shall be identified in Exhibit C.

a. Sales Surtax Projects. The Guaranteed Maximum Price for any projects wholly or partially funded with Sales Surtax shall include an itemized GMP by sales surtax group and category and by any alternative funding sources with each Application for Payment. The Design Builder may not mix funding resources among sales surtax groups (Security, Educational Technology and Facility Renewal) and may not mix sales surtax and non-sales surtax resources. The GMP for each group and for non-sales surtax funding sources cannot be exceeded by the Design Builder.

.2 Contingency. Design Builder shall include in the GMP an agreed upon sum as the Contingency, which is included for the purpose of defraying the risks associated with cost estimates based on incomplete construction documents, estimating errors, code compliance issues, and unforeseen circumstances relating to the procurement of Trade Contracts. Upon completion of the Construction Documents, or a portion thereof, Design Builder shall obtain bids for the Work. If Trade Contracts are executed below the applicable line items in the GMP, the surplus will be added to the Contingency; if Trade Contracts are executed above the applicable line item in the GMP, the deficiency will be taken from the Contingency. However, such events shall not be cause to increase or decrease the GMP. Design Builder shall execute 100% of the Trade Contracts within forty-five (45) days upon receipt of Owner approval of the Guaranteed Maximum Price Amendment (Exhibit C) and related Notice to Proceed. If 100% of the Trade Contracts have not been executed within forty-five (45) days, maximum allowances agreeable to Owner shall be established for those portions of the Work for which Trade Contracts have not been executed. Upon request by Design Builder and approval by Owner, the Contingency may be used for design errors and omissions, scope gaps in the Trade Contracts and unforeseen conditions in the Work. Owner may use the Contingency to increase the scope of Work if the increased Work will not cause the schedule to be extended or the GMP to be exceeded. Use of the Contingency shall increase Design Builder fees but not General Conditions. If any funds remain in the Contingency at the completion of the Project, the GMP shall be reduced by Change Order to return all unused Contingency to the Owner.

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

.4 Final GMP. At the completion of the Project, the Final GMP shall not include unused Contingency, Sales Tax Savings, or Owner-direct purchases.

ARTICLE 11 – PAYMENTS

11.1 APPLICATION FOR PAYMENT

.1 Schedule of Values. Before submitting its first Application for Payment to Owner and/or Project Design Criteria Professional, Design Builder will submit a Schedule of Values based upon the Project Guaranteed Maximum Price Amendment (Exhibit C) allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Schedule of Values, unless objected
to by Owner or Project Design Criteria Professional, will be used as the basis for Design Builder's Application for Payment. The Schedule of Values shall include a sales surtax summary form (Exhibit B) to correlate expenditures with the approved sales surtax categories.

.2 Itemized Application for Payment. Design Builder will submit to Owner on the twenty-fifth (25th) day of each month beginning with the first month after approval of the Project Guaranteed Maximum Price Amendment (Exhibit C) and related Notice to proceed an itemized Application for Payment, in compliance with the approved Schedule of Values, notarized if required, supported by such data substantiating Design Builder's right to payment as Owner may require, but in each case less the total of payments previously made, and less amounts properly withheld. The forms to be utilized shall be the Owner's established Application and Certificate for Payment and related Continuation Sheet.

a. Sales Surtax Projects. Any projects wholly or partially funded with Sales Surtax shall include an itemized summary of costs by sales surtax group and category and by any alternative funding sources with each Application for Payment. The Design Builder may not mix funding resources among sales surtax groups (Security, Educational Technology and Facility Renewal) and may not mix sales surtax and non-sales surtax resources.

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

.4 Materials at Project Site. Payments will be made on account of materials or equipment not yet incorporated in the Work but delivered, suitably stored and protected at the Project Site.

.5 Materials Off Project Site. Payments will not be made for materials or equipment stored for the Project at some other location.

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

.7 Payment. After review of the Application for Payment, Owner will make payment within twenty-five (25) Days after approval or, if Owner does not agree with the Application for Payment, it will promptly so notify Design Builder in writing. Owner will withhold payment for only those items in dispute; undisputed items will be paid in accordance with the Agreement. If Owner fails to pay Design Builder undisputed amounts when such amounts are due, Design Builder may, upon ten (10) days written notice to Owner, suspend performance of the Work on the unpaid Work or portion(s) thereof until payment has been received. Final payment is subject to completion of the post-construction audit.

.8 Change Orders. Application for Payments will show agreed upon Change Orders as separate itemized line items for payment, including the percent of completion of the Change Order, the amounts of previous Application for Payments, retainage and payments for the Change Order.

.9 Payment to Subcontractors. Upon receipt of payment from Owner, Design Builder will promptly pay each Subcontractor (provided such Subcontractor has not been paid previously) as required by Section 287.0585, F.S. within seven (7) working days from receipt the amount to which said Subcontractor is entitled out of the amount paid to Design Builder on the account of such Subcontractor's work. Before the project is fifty (50) percent complete, Design Builder shall retain ten (10) percent of the amount due Subcontractors. After fifty (50) percent completion of the construction services purchased pursuant to the Agreement, and if the Owner has agreed to a reduction in retainage, the Design Builder may elect, with Owner's approval, to withhold retainage from payments to its subcontractors.
at a rate higher than five (5) percent. The specific amount to be withheld must be
determined by a case-by-case basis and must be based on the Design Builder’s
assessment of the subcontractor’s past performance, the likelihood that such performance
will continue, and the subcontractor’s ability to rely on other safeguards. The Design Builder
shall notify the Owner and subcontractor, in writing, of its determination to withhold more
than five (5) percent of the progress payment and the reasons for making that determination,
and the Design Builder may not request the release of such retained funds from the Owner.

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

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

12 Claims. If Design Builder and Owner cannot agree on a revised amount, Design Builder
may submit a Claim.

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

14 Payment for Commissioning. The owner will issue a separate purchase order for the
construction manager’s commissioning services. The construction manager and owner
may agree to audit and close the project, excepting the construction manager’s
commissioning services. The commissioning services purchase order may be invoiced
monthly based on the percent of the commissioning services completed.

11.2 RETAINAGE ON PROGRESS PAYMENTS

1 Initial Retainage Amount. Owner shall withhold from each progress payment made to the
Design Builder ten (10) percent of the payment as retainage until fifty (50) percent
completion of services. After fifty (50) percent completion the Owner may reduce to five (5)
percent the amount of retainage withheld from each subsequent progress payment made
to the Design Builder at the Owner’s sole discretion. Fifty (50) percent completion shall be
determined as the point at which the Owner has expended fifty (50) percent of the total cost
of the Construction Services purchased as identified in the Agreement together with all costs
associated with existing change orders and other additions or modifications for the
Construction Services provided for in the contract. Retainage shall not be held on Owner
Direct Purchases.

2 Proposed Retainage Reduction. After fifty (50) percent completion of the Construction
Services the Design Builder may present to the Owner a payment request for up to one-half
of the retainage held by the Owner for consideration. Such request shall include a Consent
of Surety from the Design Builder’s Surety Company. The Owner shall either promptly make
payment to the Design Builder or notify the Design Builder of the intent to continue the
withholding of 10% retainage and requirement for resubmittal of the payment request if
included in a Monthly Pay Application. If the Owner’s retainage payment under this
subsection is attributable to the labor, services, or materials supplied by one or more
subcontractors or suppliers the Design Builder shall timely remit payment of such retainage
to those subcontractors and suppliers.
3. Owner's Right to Reduce Retainage. The Owner may release at any point all, or any portion of any retainage withheld which is attributable to the labor, services, or materials supplied by the Design Builder or by one or more subcontractors or suppliers. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers the Design Builder shall timely remit payment of such retainage to those subcontractors and suppliers.

11.3 SUBSTANTIAL COMPLETION

.1 Notification. As soon as Design Builder considers that the Work, or a designated portion thereof which Owner has previously indicated Owner will accept, is Substantially Complete, Design Builder will prepare for submission to Owner and/or Project Design Criteria Professional a notice that Design Builder believes that the Work is Substantially Complete, which will include a punch list of items to be completed or corrected ("Punch List").

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

.3 Inspection. Owner and/or Project Design Criteria Professional will then inspect the Work or designated portion thereof to determine if Substantial Completion of the Work has been achieved, as defined in the Contract Documents, and to verify the accuracy and completeness of the Punch List.

.4 Certificate of Substantial Completion. If Owner and/or Project Design Criteria Professional agrees with Design Builder that the Substantial Completion of the Work has been met, Design Builder will then prepare a "Certificate of Substantial Completion" which will set forth the Date of Substantial Completion of the Work, will state the responsibilities of Owner and Design Builder for security, maintenance, heat, utilities, damage to the Work, and insurance, and will fix the time within which Design Builder will complete the items on the Punch List.

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

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

11.4 FINAL PAYMENT

.1 Final Invoice. When Design Builder believes that the Work is ready for Final Inspection and acceptance, Design Builder will prepare the draft Final Pay Application and send it to Owner and/or Project Design Criteria Professional along with Design Builder's statement that, in its opinion, the Work is complete.

a. Audit. Owner will submit the draft Final Invoice to its third party auditor. Design Builder will cooperate with the Owner's third party auditor to reconcile any discrepancies prior to final payment by the Owner. Design Builder will submit the Final Invoice to the Owner following completion of the audit.

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

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

a. A sworn or notarized affidavit that all payrolls, bills for materials and equipment, all
charges by Design Builders and Subcontractors and other indebtedness connected with the Work for which Owner and its property might in any way be responsible, have been paid or otherwise satisfied;

b. Consent to final payment by Design Builder’s Surety Company; and

c. All other data required by Owner establishing payment or satisfaction of all such obligations, including, but not limited to, close-out documentation, receipts, releases, and waivers of lien arising out of and required under the Agreement.

d. All other data required by the third party auditor.

4 Final Payment. Owner will pay the final invoice in accordance with Section 11.1.7 of this Exhibit A. Final payment received by Design Builder will be held in trust for the benefit of all Subcontractors and others claiming a right to payment from Design Builder out of the Contract Sum. Design Builder agrees that Design Builder will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.

. a Commissioning. Final payment may be made while the commissioning services purchase order remains open provided all other conditions for final payment are met.

5 Certificate of Final Inspection. Prior to release of final payment, the Certificate of Final Inspection (Florida Department of Education document OEF 209) as prepared by the Design Builder and signed by the Building Official and will require approval by the School Board.

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

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

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

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

11.5 PROJECT MANAGEMENT INFORMATION SYSTEM

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

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

a. Costs Status Report - states the budget, estimate, and base commitment (awarded contract and purchase orders) for any change given or budget item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the Work.

b. A Payment Status Report - showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained amount, and the balance remaining. A summary of this report shall accompany each pay request.
c. Owner Direct Purchases - showing Owner direct purchase commitments, payments, sales tax savings, balance to be paid, deductive change order reference and pay application line reference.

11.6 INTEREST

.1 Interest. Any monies not paid when due to either party under this Agreement shall not bear interest except as may be required by Section 218.70 et. seq., Florida Statutes, The Florida Prompt Payment Act.

ARTICLE 12 – CHANGES IN THE WORK

12.1 CHANGE ORDER

.1 Change Order. A Change Order is a written order to Design Builder, signed by Owner, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or an adjustment in the Project Schedule. No change in the Contract Sum or the Project Schedule will be effective unless a Change Order has been signed by Owner. Design Builder, when requested by owner, shall prepare Change Order documentation, including that required by the most recent edition of SREF – State Requirements of Educational Facilities, Owner’s Policies and the Agreement.

12.2 OWNER ORDERED CHANGES

.1 Owner Ordered Changes. Without invalidating the Agreement, Owner may order changes in the Work within the general scope of the Agreement, inclusive of additions, deletions or other revisions, with the Contract Sum and/or the Project Schedule being adjusted accordingly, if necessary.

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

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

12.3 MINOR CHANGES TO THE WORK

.1 Owner Project Manager’s Authority. The Owner’s Project Manager has the authority to order minor changes in the Work not involving adjustments in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Owner and shall be binding on the Owner and Design Builder. Owner authorized use of contingency is considered a minor change to the Work.

12.4 ADJUSTMENTS TO CONTRACT SUM

.1 Cost/Credit for Changes. The Adjustments to the Contract Sum resulting from a change in the Work will be determined in one or more of the following ways, as selected by Owner:

a. By mutual acceptance of a lump sum itemized and supported with sufficient data to permit evaluation;

b. By unit prices stated in the Contract Documents or subsequently agreed upon with an Owner established not-to-exceed limit; or

c. By time and material supported by invoices and daily time records with an Owner established not-to-exceed limit.
.2 Calculation of Adjustments to the Contract Sum. Adjustments to the Contract Sum shall be calculated in accordance with Article 10.8 Cost of the Work and Article 10.9 Non-Reimbursable Costs.

.a Subcontractor Mark Up:

1. For each Subcontractor or Sub-subcontractor involved, for any Work performed by that Contractor's own forces, maximum of ten percent (10%) of the cost.
2. For each Subcontractor, for Work performed by their Sub-subcontractor, maximum of five percent (5%) of the amount due the Sub-subcontractor.
3. The total cumulative markup on all subcontractor Changes in the Work shall not exceed 15%.

.b Design Builder Fee:

The Design Builder’s Fee for Adjustments to the Contract Sum

1. For the Design Builder, for any Work performed by the Design Builder’s own forces, maximum of five percent (5%) of the cost.
2. For the Design Builder, for any Work performed by his Subcontractor, maximum of five percent (5%) of the amount due the Subcontractor.
3. In the event the cumulative Adjustments to the Contract Sum exceed 25% of the original Guaranteed Maximum Price, the Design Builder's Fee may be subject to renegotiation.

ARTICLE 13 - PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PROGRAMS

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

.b Safety Officer. A responsible member of Design Builder’s organization will be designated in writing as Design Builder’s safety officer for each Project. This person’s duties will include, but will not be limited to, compliance with Section 7.1.1 of this Exhibit A and, if this person is not the Design Builder's Project Manager, then this person will report directly to Design Builder's Project Manager.

13.2 SAFETY OBLIGATIONS

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

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

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

4 Hazardous Activities. If the Work involves any hazardous activities or the use or storage of hazardous materials or equipment, Design Builder and Subcontractors will fully coordinate with Owner exercise the utmost care and will carry on such activities under the supervision of properly qualified and licensed personnel. The use of explosives while undertaking any Project is prohibited.

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

13.3 SCHOOL SECURITY

1 Occupied Campuses. Design Builder acknowledges and understands that the goods and services contemplated by this Agreement that are delivered to or performed on school grounds, which may at various times be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the schools; protect students and staff, and otherwise comply with applicable law, the Design Builder agrees to the provisions of this Section and agrees that the failure of the respondent to comply with any of these provisions may result in the termination of this Agreement by the Owner.

2 Unauthorized Aliens. The Owner considers the employment of unauthorized aliens by the Design Builder, or any of the sub-contractors, a violation of the Immigration and Naturalization Act. The Design Builder shall certify that no unauthorized aliens are working on the Project Site at any time. If it is determined that an unauthorized alien is working on the Project, the Design Builder shall immediately take all steps necessary to remove such unauthorized alien from the property and the project.

3 Possession of Firearms. In accordance with §790.115 Florida Statutes, the possession of firearms will not be tolerated on School District property. No person, who has a firearm in their vehicle, may park their vehicle on the Owner’s property. Furthermore, no person may possess or bring a firearm on the Owner’s property. If any employee/independent contractor of the Design Builder, or any of its sub-contractors, is found to have brought a firearm(s) on to the Owner’s property, said employee/ independent contractor of the Design Builder shall be immediately removed and terminated from the project by the Design Builder.

If sub-contractor fails to terminate said employee/ independent contractor of the Design Builder, the Design Builder shall terminate its agreement with the sub-contractor. If the Design Builder fails to terminate said employee/ independent contractor of the Design Builder or fails to terminate the agreement with sub-contractor who fails to terminate said employee/ independent contractor of the Design Builder, the Owner may terminate this Agreement. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder-actuated construction nails and fasteners are excluded from this definition.

4 Criminal Acts. Employment on the project by the Design Builder, or any of its subcontractors, of any employee, or independent contractor of the Design Builder, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the Project Site, the Design Builder agrees to take all steps necessary to remove such person from the project. The Owner shall have the right to terminate this Agreement if the Design Builder does not comply with this provision.

5 Possession/Use/Under the Influence of Mind Altering Substances. Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by the
Design Builder’s employee/ independent contractor of the Design Builder or its sub-contractor’s employees/ independent contractor of the sub-contractor, will not be tolerated on the Owner’s property. If any employee/independent contractor of the Design Builder is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the Owner’s property, said employee/independent contractor of the Design Builder shall be removed and terminated from the project by the Design Builder. If a sub-contractor fails to terminate said employee/independent contractor of the sub-contractor, the agreement with the sub-contractor for the project shall be terminated by the Design Builder. If the Design Builder fails to terminate said employee/independent contractor of the Design Builder or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor of the sub-contractor, the Owner may terminate this Agreement.

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

7. The Jessica Lunsford Act. Florida Statutes require that all persons or entities entering into Agreements with the School Boards/School Districts who may have personnel who will be on school grounds when students may be present, or who will have contact with students, shall comply with the Level 2 Screening requirements of the Statute and School District Standards. Design Builder shall, at his expense, ensure that all of Design Builder’s employees and the employees of Design Builder’s subcontractors meet the background screening requirements of Section 1012.465 Florida Statute (Jessica Lunsford Act). Any individual who fails to meet the screening requirements shall not be allowed on school grounds. Design Builder’s failure to comply with this requirement will constitute a material breach of the Agreement.

13.4 LIABILITY INSURANCE

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

   a. Claims under the State of Florida workers’ or workmen’s compensation act, including disability benefit and other similar employee benefit acts (with Workmen’s Compensation and Employer’s Liability Insurance in amounts necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work);

   b. Claims for damages because of bodily injury, sickness or disease, or death of his employees; Design Builder will require his Subcontractors provide Workers’ Compensation Insurance for all of its employees;

   c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

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

   e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the loss of use resulting therefrom; and

   f. Claims for damages because of bodily injury or death of any person or tangible property damage due to errors and/or omissions on the part of the Design Builder or Subcontractor for the design of systems, products and procedures required for the execution of the Work.
g. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle furnished by Design Builder.

2 Primary Designation. To the extent necessary to provide coverage under Design Builder’s insurance for the liabilities assumed by Design Builder under the Indemnity provisions of this Agreement, the insurance required by this Section 13.4.1 (a) (b) (c) (d) (e) (f) (g) shall be primary and non-contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those required by this agreement.

3 Tort Liabilities. The insurance required by Section 13.4.1(a) (b) (c) (d) (e) (f) (g) shall include written contractual liability insurance to cover the tort liabilities assumed by the Design Builder under the provisions of Article 3 of the Agreement and this shall be so noted on Design Builder’s Certificate of Insurance.

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

a. Workers’ Compensation including Occupation Disease and Employer’s Liability Insurance.
   (1) Statutory - Amount and coverage as required by Chapter 440, Florida Statutes.
   (2) Employer’s Liability Each accident/disease Per Occurrence - $500,000.00.
   (3) Employer’s Liability General Aggregate - $1,000,000.00.
   (4) Applicable Federal (e.g. Longshoreman’s Statutory).

b. Commercial General Liability Insurance (the policy may including Premises Operation; Independent Design Builder’s Protective; Product Liability and Completed Operations coverage; Broad Form Property Damage; Written Contractual Liability; Aggregate Limit Per Project Endorsement. If the commercial general liability policy does not include all of the coverage’s listed in this section a separate policy must be in place to include all of the items listed in this section). Evidence of the coverage required in this section must be fully described and explained on the Design Builders Certificate of insurance as required in Section 13.4.5 and 13.4.7 of this Exhibit A.

   (1) Negligence including Bodily Injury Liability and Property Damage
       $1,000,000 Per Occurrence
       $2,000,000 General Aggregate

   (2) Product Liability and/or Completed Operations Insurance
       $1,000,000 Negligence including Bodily Injury and Property Damage
       $2,000,000 Products – Completed Operation Aggregate

   (3) Personal Injury with Employment Exclusion deleted
       $1,000,000 Per Occurrence
       $2,000,000 General Aggregate

   (4) Regarding Completed Operations and Products Liability, continue Coverage in force for one year after completion of the Work.

   (5) Regarding Property Damage, include Broad Form Property Damage, Remove “X”, “C”, or “U” exclusions as applicable (explosion, collapse, underground property damage).

c. Comprehensive Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles - with limits stated below, or greater if required by law.

   (1) Negligence including Bodily Injury and Property Damage
       $500,000 Per Claim
       $1,000,000 Per Occurrence

   (2) Combined Single Limit (each Accident)
       $1,000,000.00 Each Accident

d. Professional Liability Insurance (Errors and Omissions):
(1) Maximum Limits For Services, Goods, Projects that will not exceed $1,000,000.00 in values over a year shall be:
   Per Claim $ 250,000
   Per Occurrence $ 500,000
(2) For services, goods, or projects that will exceed $1,000,000 in values over a year shall be:
   Each claim $1,000,000.00
   Annual Aggregate $2,000,000.00
Professional liability coverage must be maintained for a two-year period following completion of the contract.

e. Umbrella Excess Liability
   (1) $2,000,000.00 over primary insurance, subject to aggregate limits where applicable
   (2) $2,000,000.00 retention for self-insured hazards, per occurrence.

Timing & Cancellation. Certificates of insurance acceptable to Owner shall be filed with Owner within five (5) days after Owner's approval of the award. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice, by registered mail, has been given to Owner.

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

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

13.5 PROPERTY INSURANCE

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

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

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

13.6 EFFECT OF SUBMISSIONS OF CERTIFICATIONS

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

13.7 FAILURE OF COMPLIANCE

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

13.8 LICENSED INSURANCE COMPANIES

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

13.9 PAYMENT AND PERFORMANCE BONDS

.1 Bonding Requirements. In accordance with the provisions of Section 255.05, Florida Statutes, Design Builder shall provide to Owner a 100% Performance Bond and a 100% Labor and Material Payment Bond, each in an amount not less than the total construction cost and inclusive of the construction fee. Bonds must be submitted with the Guaranteed Maximum Price amendment and approved prior to commencement of the Construction Phase Work on the Project. The bond form shall be AIA A-311. To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

a. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write Surety bonds in the State of Florida.
b. The Surety Company shall have a currently valid Certificate of Authority, issued by the United States Department of Treasury under Sections 9304 and 9308 of Title 31 of the United States Codes.
c. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

ARTICLE 14 – UNCOVERING AND CORRECTION OF WORK

14.1 CONCEALED CONDITIONS

.1 Adjustment of Contract Sum or Contract Time. If during and in the performance of the Work, Design Builder encounters concealed conditions it believes are at variance with the conditions indicated in the Contract Documents or if Design Builder encounters unknown physical conditions of an unusual nature which differ materially from those depicted in the Contract Document, the Contract Sum or Contract Time may be equitably adjusted by Change Order upon claim by either party made in writing under the provisions and
requirements of Article 16 of this Exhibit A.

14.2 UNCOVERING OF WORK

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

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

14.3 CORRECTING DEFECTIVE WORK

.1 Correction. All Work rejected by Owner and/or Project Design Criteria Professional as defective or failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion of the Work or Date of Final Completion of the Work will be promptly corrected by Design Builder.

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

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

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

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

14.4 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

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

ARTICLE 15 - TERMINATION OR SUSPENSION OF THE CONTRACT

15.1 TERMINATION BY THE DESIGN BUILDER

.1 Time Frame and Reasons. The Design Builder may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design Builder or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or
entities performing portions of the Work under direct or indirect contract with the Design Builder, for any of the following reasons:

a. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
b. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
c. Because the Owner and/or Project Design Criteria Professional has not issued a Certificate for Payment and has not notified the Design Builder of the reason for withholding certification as provided in Section 11.1.7 of this Exhibit A, or because the Owner has not made a required payment on a Certificate for Payment within the time stated in the Contract Documents.

2 Terminations. The Design Builder may terminate the Contract if, through no act or fault of the Design Builder or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

3 Time. If one of the reasons described in Section 15.1.1 or 15.1.2 of this Exhibit A exists, the Design Builder may, upon seven days’ written notice to the Owner and Architect-Engineer, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit for the percentage/portion of work properly performed, and costs incurred by reason of such termination.

4 Suspension of Work. If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Design Builder or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Design Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Design Builder may, upon seven additional days’ written notice to the Owner and/or Project Design Criteria Professional, terminate the Contract and recover from the Owner as provided in Section 15.1.3 of this Exhibit A.

15.2 TERMINATION BY THE OWNER FOR CAUSE

1 Time Frame and Reasons. The Owner may terminate the Contract if the Design Builder:

a. Refuses or fails to supply enough properly skilled workers or proper materials;
b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Design Builder and the Subcontractors;
c. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
d. Otherwise is guilty of material breach of a provision of the Contract Documents, which may include failure to comply with the Project Schedule, failure to provide adequate supervision, failure to maintain a safe Project Site and/or non-compliance with Article 13 Protection of Persons and Property of this Exhibit A.

2 Owner's Rights. When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

a. Exclude the Design Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
b. Accept assignment of subcontracts pursuant to Section 8.3 of this Exhibit A; and
c. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design Builder, the Owner shall furnish to the Design Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.
d. Accept Design Builder's proposed remedy to immediately correct any material breach
of a provision of the Contract Documents.

3 Payment. When the Owner terminates the Contract for one of the reasons stated in Section 15.2.1 of this Exhibit A, the Design Builder shall not be entitled to receive further payment until the Work is finished.

4 Balance. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect-Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be retained by the Owner. If such costs and damages exceed the unpaid balance, the Design Builder shall pay the difference to the Owner. The amount to be paid to the Owner shall survive termination of the Contract. The Owner's costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs, including, but not limited to, the loss of use of the Project incurred by the Owner because of the termination of the Design Builder as stated herein.

15.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

1 Owner's Right to Suspend. The Owner may, without cause, order the Design Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

2 Cost and Time Modifications. The Cost of the Work as defined in the Guaranteed Maximum Price Amendment (Exhibit C) and Contract Time shall be adjusted for verified increases in the cost and time caused by suspension, delay or interruption as described in Section 15.3.1 of this Exhibit A. Adjustment of the Cost of the Work shall not include an increase to the Design Builder's Fee unless scope changes arise. No adjustment shall be made to the extent:
   a. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design Builder is responsible; or
   b. That an equitable adjustment is made or denied under another provision of the Contract.

15.4 TERMINATION BY THE OWNER FOR CONVENIENCE

1 Owner's Right to Terminate. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

2 Design Builder's Action. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design Builder shall:
   a. Cease operations as directed by the Owner in the notice;
   b. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
   c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3 Design Builder Payment. In case of such termination for the Owner's convenience, the Design Builder shall be entitled to receive payment for Work executed, and costs actually and reasonably incurred by reason of such termination, but not for General Conditions, Cost of the Work or Design Builder Fee (as a percentage remaining incomplete) on the Work not performed.

ARTICLE 16 - CLAIMS AND DISPUTES

16.1 CLAIMS

1 Claim. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Design Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.
.2 **Notice of Claim.** Claims by either the Owner or Design Builder must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The timely giving of written notice shall be a condition precedent to any entitlement to adjustment in the Contract Time or the Contract Sum. All Claims must be submitted as a Request for Change Order with adequate detail and supporting documentation. Design Builder agrees that Owner shall not be liable for any claims that the Design Builder fails to submit as a Request for Change order as provided in this section.

.3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 15 of this Exhibit A, the Design Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents for that Work which is not in dispute.

.4 **Claims for Additional Cost.** If the Design Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

16.2 **CLAIMS FOR ADDITIONAL TIME**

.1 **Notice.** If the Design Builder wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

.2 **Weather.** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions at the Project Site were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

16.3 **INITIAL DECISION**

.1 **Owner's Claim Review.** The Project Design Criteria Professional shall be the Initial Reviewer of Claims submitted by the Owner or Design Builder. In the event the Project Design Criteria Professional is not available or appropriate, the Owner shall provide an Initial Review of all Claims submitted by the Design Builder. An Initial Decision by the Initial Reviewer shall be required as a condition precedent to Mediation of all Claims between the Owner and Design Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been submitted in the proper format with no action having been taken by the Initial Reviewer.

.2 **Initial Review.** The Initial Reviewer will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the Claimant that the Initial Reviewer is unable to resolve the Claim due to lack of sufficient information to evaluate the merits of the Claim.

.3 **Additional Data.** If additional supporting data is requested, the party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise when the response or supporting data will be furnished or (3) advise that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Reviewer will either reject or approve the Claim in whole or in part.

.4 **Initial Reviewer Action.** The Initial Reviewer will render a non-binding Initial Decision approving or rejecting the Claim. This Initial Decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any recommended change in the Contract Sum or Contract Time or both.
.5 **Mediation Request.** Either party may, within 30 days from the date of an Initial Decision, request in writing that the other party file for mediation within 60 days of the Initial Decision.

.6 **Notification of Surety.** In the event of a Claim against the Design Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

16.4 **MEDIATION**

.1 **Mediation Requirements.** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Section 11.4.9 of this Exhibit A or Section 3.1 of the Agreement shall be subject to mediation as a condition precedent to court proceedings.

.2 **Endeavor to Mediate.** The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

.3 **Shared Costs.** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**ARTICLE 17 - FINAL DISPUTE RESOLUTION**

17.1 **VENUE OF FINAL DISPUTE RESOLUTION**

.1 **Choice of Law.** This Agreement shall be governed by the laws of the State of Florida.

.2 **Venue.** Exclusive venue for any dispute arising under this Agreement shall be in Brevard County, Florida.

.3 **Action.** In the event the Owner and Design Builder fail to resolve a dispute through mediation as provided in Article 16 of this Exhibit A, either party may file an action in the appropriate Court of the 18th Judicial Circuit In and For Brevard County, Florida, to enforce this Agreement. THE PARTIES, INCLUDING THE DESIGN BUILDER'S SURETY, WAIVE VENUE AND JURISDICTION OF ANY FEDERAL COURT AND EXPRESSLY WAIVE TRIAL BY JURY.

**END OF EXHIBIT A**