

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

---

[Contractor]

**PROJECT:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**ARCHITECT:** \_\_\_\_\_

**Architect's  
Address:** \_\_\_\_\_  
\_\_\_\_\_

## TABLE OF CONTENTS

ARTICLE 1	DOCUMENTS INCORPORATED BY REFERENCE.....	1
ARTICLE 2	REPRESENTATIONS OF THE CONTRACTOR.....	1
	2.1 Generally.....	1
	2.2 Qualification Information.....	1
ARTICLE 3	CONTRACT CONSTRUCTION.....	2
	3.1 Intent and Interpretation.....	2
	3.2 Ownership.....	4
ARTICLE 4	CONTRACTOR'S PERFORMANCE.....	4
	4.1 Generally.....	4
ARTICLE 5	TIME FOR CONTRACTOR'S PERFORMANCE.....	4
	5.1 Time for Performance.....	4
	5.2 Liquidated Damages for Delay.....	5
	5.3 Substantial Completion.....	5
	5.4 Time is of the Essence.....	5
ARTICLE 6	FIXED PRICE AND CONTRACT PAYMENTS.....	5
	6.1 Contract Price.....	5
	6.2 Schedule of Values.....	5
	6.3 Payment Procedures.....	6
	6.4 Payments by Contractor.....	6
	6.5 No Acceptance of Work.....	7
	6.6 Refusal to Make Payment.....	7
	6.7 Untimely Payments.....	7
	6.8 Inspection and Payment at Substantial Completion.....	8
	6.9 Final Completion.....	8
	6.10 Final Inspection; Final Approval for Payment.....	8
	6.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion.....	8
	6.12 Conditions Precedent to Final Payment.....	8
	6.13 Final Payment.....	9
ARTICLE 7	INFORMATION AND MATERIAL SUPPLIED BY THE OWNER.....	9
	7.1 Generally.....	9
	7.2 Easements.....	9
	7.3 Contract Copies.....	9
ARTICLE 8	CEASE AND DESIST ORDER.....	9
ARTICLE 9	DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR.....	10
	9.1 Generally.....	10
	9.2 Warranty.....	11
	9.3 Schedule for Completing Work.....	11
	9.4 Storm Water Discharge Permits.....	12
ARTICLE 10	INDEMNITY.....	12
ARTICLE 11	THE PROJECT ARCHITECT.....	12
	11.1 Architect.....	12
ARTICLE 12	CLAIMS BY THE CONTRACTOR.....	13
	12.1 Generally.....	13
	12.2 Delays Generally.....	15
	12.3 Mediation.....	15

ARTICLE 13	SUBCONTRACTORS .....	16
ARTICLE 14	CHANGE ORDERS .....	16
	14.1 Generally .....	16
ARTICLE 15	DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK .....	18
	15.1 Work in Violation of Contract .....	18
	15.2 Work in Conformity with Contract .....	18
	15.3 Defective or Nonconforming Work .....	18
	15.4 Duty to Correct Defective or Nonconforming Work.....	18
	15.5 Owner's Option .....	19
ARTICLE 16	TERMINATION BY THE CONTRACTOR.....	19
ARTICLE 17	OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE.....	19
	17.1 Suspension .....	19
	17.2 Compensation .....	19
ARTICLE 18	TERMINATION BY THE OWNER .....	20
	18.1 Termination for Convenience.....	20
	18.2 Termination for Cause .....	20
	18.3 Termination Not Subject to Article 12 .....	21
ARTICLE 19	INSURANCE .....	20
ARTICLE 20	SURETY BONDS.....	21
ARTICLE 21	PROJECT RECORDS .....	21
ARTICLE 22	APPLICABLE LAW .....	22
ARTICLE 23	SUCCESSORS AND ASSIGNS .....	22
EXHIBIT A	LIST OF PLANS AND SPECIFICATIONS FOR THE PROJECT	
EXHIBIT B	LIQUIDATED DAMAGES	
EXHIBIT C	MINIMUM REQUIREMENTS FOR CONTRACTOR'S SCHEDULE OF CONSTRUCTION	
EXHIBIT D	REQUIRED INSURANCE	
EXHIBIT D - 1	ENDORSEMENT TO BUILDER'S RISK	
EXHIBIT E	IMMIGRATION AND SECURITY FORM	

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

This Contract is for the construction of a project identified as \_\_\_\_\_ (the "Project").

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

## **ARTICLE 1**

### **DOCUMENTS INCORPORATED BY REFERENCE**

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

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

## **ARTICLE 2**

### **REPRESENTATIONS OF THE CONTRACTOR**

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

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

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

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

2.2 **Qualification Information.** The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner with the Contractor's Bid or

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

### **ARTICLE 3**

#### **CONTRACT CONSTRUCTION**

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

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

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

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

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

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Contractor observe any conflicts, ambiguity, errors or omissions within the documents, he shall, by written notice, bring them to the Owner's and Architect's attention for decision and revision as soon as possible after originally observed and before proceeding with the affected Work. In the event of duplication or conflicts between the documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are

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

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

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

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

3.1.7.2 second, this Contract;

3.1.7.3 third, Supplemental or Special Conditions (if any);

3.1.7.4 fourth, the Specifications; and,

3.1.7.5 fifth, the Plans, with the following priority:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 4**

##### **CONTRACTOR'S PERFORMANCE**

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

4.1.1 Construction of the Project;

4.1.2 The furnishing of required surety bonds and insurance;

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

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

#### **ARTICLE 5**

##### **TIME FOR CONTRACTOR'S PERFORMANCE**

5.1 Time for Performance. The Contractor shall commence the performance of this Contract on the day the Contractor receives a written Notice to Proceed from the Architect or Owner, or such later

date as may be set forth therein, and shall diligently continue its performance to and until Final Completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before \_\_\_\_\_ . The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time".

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

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

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

## **ARTICLE 6**

### **FIXED PRICE AND CONTRACT PAYMENTS**

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

6.2 Schedule of Values. Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not front-end load its Schedule of Values by imbalancing it or by increasing any element thereof in excess of the actual cost, and any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.



6.3 Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5<sup>th</sup> day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both. Therein, the Contractor may request payment for ninety percent (90%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.

When fifty percent (50%) of the Contract Price, as it may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the Architect, the Owner shall withhold no more retainage. If, after discontinuing the retention, the Architect determines that the Work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require.

Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 hereinbelow. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien, in a form acceptable to the Owner, from Contractor and from all subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

6.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder

naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

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

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

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

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

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

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

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

6.6.7 Loss or damage caused by the Contractor;

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

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

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

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

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

6.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a listing of those matters yet to be finished. The Architect will thereupon conduct an inspection to confirm that the Work is in fact substantially complete. Upon its confirmation that the Contractor's Work is substantially complete, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Architect, through its inspection, fails to find that the Contractor's Work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Subject to the condition precedent set forth in the immediately succeeding sentence, upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in form and manner acceptable to Owner, consent(s) of surety to release retainage, together with an original current power of attorney with current certificate attached thereto.

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

6.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment.

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

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

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

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

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

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

6.13 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Paragraph 6.6 above, make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Approval for Payment. The making of final payment by the Owner shall constitute a full and final waiver of any and all claims by the Contractor except for claims (a) previously and timely made in writing by the Contractor pursuant to the requirements of Article 12 and (b) listed and identified on the Contractor's final Payment Request.

## **ARTICLE 7**

### **INFORMATION AND MATERIAL SUPPLIED BY THE OWNER**

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

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

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

## **ARTICLE 8**

### **CEASE AND DESIST ORDER**

In the event the Contractor fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to cease and desist from performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such

deficiencies, including the cost of the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

**ARTICLE 9**

**DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR**

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

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

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

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

9.1.4 The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work.

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

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

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

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

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

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

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

## 9.2 Warranty.

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

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

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

9.3.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's Schedule of Construction with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract, the Contractor shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six days a week until such time as Contractor shall have overcome the

delinquency and brought the amount of critical path Work in place into compliance with the Contractor's Schedule of Construction, all at no additional cost to the Owner. Nothing herein shall relieve the Contractor from liability for failure to timely progress the Work or any other breach of the Contract Documents.

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

## **ARTICLE 10**

### **INDEMNITY**

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Contractor's performance of this Contract, provided that such claim, liability, damage, loss, cost or expense is due to sickness, bodily injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, arising out of sickness, bodily injury, disease or death, or to loss or destruction of tangible property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, the preceding limitation concerning the sole negligence of the Owner or its officers, agents or employees shall not limit or affect any obligation of the Contractor under workers' compensation or coverage or insurance specifically relating to workers' compensation, nor any requirement that one party to this Contract purchase a project specific insurance policy, including owner's or contractor's protective insurance, builder's risk insurance, installation coverage, project management protective liability insurance, an owner controlled insurance policy, or a contractor controlled insurance policy.

## **ARTICLE 11**

### **THE PROJECT ARCHITECT**

11.1 Architect. The architect for this Project is \_\_\_\_\_ (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those

duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

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

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

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

11.1.4 The Architect shall draft proposed Change Orders;

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

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

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

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

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

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

## **ARTICLE 12**

### **CLAIMS BY THE CONTRACTOR**

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

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



to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

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

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

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

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

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

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

12.1.8 In connection with any claim by the Contractor against the Owner for money or compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost reasonably incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following claims: loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; loss of future or anticipated profits from other work; or, home office overhead. Notwithstanding the foregoing first two sentences of this Subparagraph 12.1.8, the Owner's limitation of liability shall not apply to the Owner's

liability to the Contractor, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

12.2 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the Owner upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as Owner may determine. A task is critical within the meaning of this Paragraph 12.2 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 12.1.1 above and such notice shall be given by Contractor before proceeding to execute any additional or changed Work. If the Contractor fails to give such notice, any claim for an extension of time shall be waived.

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

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

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

County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **ARTICLE 13**

#### **SUBCONTRACTORS**

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth hereinbelow. The Architect will not enter into disputes between the Contractor and any subcontractor or supplier, nor shall the Architect be called upon to settle same. Neither shall the Architect be called upon to enter into or to settle disputes between any subcontractors or suppliers.

### **ARTICLE 14**

#### **CHANGE ORDERS**

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

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

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

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

- (a) Any increase in the Contract Price must be requested by Contractor pursuant to the terms and conditions of Article 12 of this Contract, and any such request for an increase in the Contract Price shall be subject to Paragraph 14.1.5 of this Contract. The failure of Contractor to provide notice in writing to Owner and Architect in accordance with Article 12 of this Contract of any request for an increase in the Contract Price shall constitute a waiver by Contractor of any entitlement to an increase in the Contract Price;
- (b) The change in the Contract Price, if any, shall be established on the basis of, and shall be limited to, the reasonable actual costs incurred or savings achieved, as defined below, resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect costs or components. If, and to the extent, the change involves Work of one or more subcontractors, the overhead and profit component for subcontractors shall be five percent (5%) and the overhead and profit component

for the Contractor shall be five percent (5%) of the amount allocable for subcontracted Work; provided, however, that the foregoing five percent (5%) overhead and profit component for subcontractors is intended to cover all subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier subcontractors of the Contractor. If the change involves only Work of the Contractor, the component for overhead and profit shall be ten percent (10%). Any such costs or savings shall be documented in the format, and with such content and detail, as the Owner or the Architect require. As used in this Subparagraph 14.1.3(b), reasonable actual costs incurred or savings achieved means, and shall be limited to, the following:

- (i) Actual, reasonable costs of materials and the use of heavy construction equipment;
- (ii) Actual, reasonable costs of supervision and labor, plus, solely as applicable thereto, social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
- (iii) Actual, reasonable rental costs of machinery and equipment (exclusive of small tools or hand tools) whether rented from Contractor or others; and
- (iv) Actual, reasonable costs of premiums for bonds, permit fees, and sales, use or other taxes related to the Work.

All costs not set forth in the immediately preceding subsections (i) through (iv) shall be considered as overhead, including without limitation insurance other than that set forth above, travel (including transportation, meals and lodging), administrative staff, watchmen, hand tools, small power tools, incidental job burdens, engineering, drafting, and office expense (including costs of preparing Change Order proposal estimates). In no event shall any costs or savings associated with Contractor's home office overhead or other indirect costs be considered to be actual costs incurred or savings achieved resulting from a Change Order and Contractor's compensation for additional Work shall be limited strictly as set forth herein.

- (c) The Contractor shall continue to diligently perform the Work, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Subparagraph 14.1.3 above. Pending final determination of reasonable actual costs incurred or savings achieved, payments on account shall be made to Contractor in accordance with said Subparagraph 14.1.3 and Article 6 of this Contract.
- (d) If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Subparagraph 14.1.3(d) shall be made only with respect to the difference between the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to

such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Subparagraph 14.1.3(d) shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

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

14.1.5 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

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

## **ARTICLE 15**

### **DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK**

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

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

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

15.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction

from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial Work including needed maintenance instructions to Owner's personnel.

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

## **ARTICLE 16**

### **TERMINATION BY THE CONTRACTOR**

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

## **ARTICLE 17**

### **OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

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

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

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

## ARTICLE 18

### **TERMINATION BY THE OWNER**

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

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

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

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

- (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and,
- (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

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

18.2 Termination for Cause. If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete.

After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 18.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 18.1 shall apply.

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

## **ARTICLE 19**

### **INSURANCE**

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

## **ARTICLE 20**

### **SURETY BONDS**

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

## **ARTICLE 21**

### **PROJECT RECORDS**

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



**ARTICLE 22**

**APPLICABLE LAW / VENUE AND JURISDICTION**

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

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

**ARTICLE 23**

**SUCCESSORS AND ASSIGNS**

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

**OWNER:**  
WALKER COUNTY BOARD OF EDUCATION

**CONTRACTOR:**  
\_\_\_\_\_

By: \_\_\_\_\_ [Seal]  
          [SIGNATURE]  
\_\_\_\_\_, Chairperson  
          [TYPED NAME & TITLE]

By: \_\_\_\_\_ [Seal]  
          [SIGNATURE]  
\_\_\_\_\_,  
          [TYPED NAME & TITLE]

By: \_\_\_\_\_ [Seal]  
          [SIGNATURE]  
\_\_\_\_\_, Superintendent  
          [TYPED NAME & TITLE]

\_\_\_\_\_  
          [ADDRESS]

Walker County Board of Education  
201 South Duke Street  
LaFayette, Georgia 30728  
  
\_\_\_\_\_  
          [DATE OF EXECUTION]

\_\_\_\_\_  
          [DATE OF EXECUTION]

***EXHIBIT "A"***

**LIST OF PLANS AND SPECIFICATIONS  
FOR THE PROJECT**

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

**EXHIBIT "B"**

**LIQUIDATED DAMAGES**

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

If The Original Contract Price Is:

Daily Liquidated Damages Shall Be:

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

**EXHIBIT "C"**

**MINIMUM REQUIREMENTS FOR CONTRACTOR'S  
SCHEDULE OF CONSTRUCTION**

PART 1 - GENERAL

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

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

## 1.2 SUBMITTALS

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

## 1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.

- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the Preliminary Schedule of Construction and Contractor's Schedule of Construction, including, but not limited to, the following:
1. Review software limitations and content and format for reports.
  2. Verify availability of qualified personnel needed to develop and update schedule.
  3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
  4. Review delivery dates for Owner-furnished products, if any.
  5. Review schedule for work of Owner's separate contracts, if any.
  6. Review time required for review of submittals and resubmittals.
  7. Review requirements for tests and inspections by independent testing and inspecting agencies.
  8. Review time required for completion and startup procedures.
  9. Review and finalize list of construction activities to be included in schedule.
  10. Review submittal requirements and procedures.
  11. Review procedures for updating schedule.

#### 1.4 COORDINATION

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

### PART 2 – PRODUCTS

#### 2.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.

1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
  2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.
  3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Contractor's Schedule of Construction with submittals schedule.
  4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
  5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
  2. Work under More Than One Contract: Include a separate activity for each contract.
  3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
  4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
  5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
  6. Work Restrictions: Show the effect of the following items on the schedule:
    - a. Coordination with existing construction.
    - b. Limitations of continued occupancies.
    - c. Uninterruptible services.
    - d. Partial occupancy before Substantial Completion.
    - e. Use of premises restrictions.
    - f. Provisions for future construction.
    - g. Seasonal variations.
    - h. Environmental control.

7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:

- a. Subcontract awards.
- b. Submittals.
- c. Purchases.
- d. Mockups.
- e. Fabrication.
- f. Sample testing.
- g. Deliveries.
- h. Installation.
- i. Tests and inspections.
- j. Adjusting.
- k. Curing.
- l. Startup and placement into final use and operation.

8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:

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

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

E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Commencement Date, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.

F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.

1. Contractor shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.

2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.

3. Total cost assigned to activities shall equal the total Contract Price.

G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using fragnets to demonstrate the effect of the proposed change on the overall project schedule.



H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.

1. Use software, version and operating system required by Owner.

## 2.2 CONTRACTOR'S SCHEDULE OF CONSTRUCTION (CPM SCHEDULE)

A. General: Prepare network diagrams using AON (activity-on-node) format.

B. Preliminary Network Diagram: Submit diagram within 7 days of date established for commencement of the Work. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.

C. CPM Schedule: Prepare Contractor's Schedule of Construction using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.

1. Submit CPM schedule within 15 days after date established for commencement of the Work.

a. Failure to include any Work item required for performance of this Contract shall not excuse Contractor from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.

3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.

4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.

D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.

1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:

a. Preparation and processing of submittals.

b. Mobilization and demobilization.

c. Purchase of materials.

d. Delivery.

e. Fabrication.

f. Utility interruptions.

g. Installation.

h. If applicable, work by Owner that may affect or be affected by Contractor's activities.

i. Testing and start up.

2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
  3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the Contract Time.
  4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
    - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or subcontractor and the Work or activity.
  2. Description of activity.
  3. Principal events of activity.
  4. Immediate preceding and succeeding activities.
  5. Early and late start dates.
  6. Early and late finish dates.
  7. Activity duration in workdays.
  8. Total float or slack time.
  9. Average size of workforce.
  10. Dollar value of activity (coordinated with the Schedule of Values).
- F. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
  2. Changes in early and late start dates.
  3. Changes in early and late finish dates.
  4. Changes in activity durations in workdays.
  5. Changes in the critical path.
  6. Changes in total float or slack time.
  7. Changes in the Contract Time.

- G. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
  2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
  3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
  4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
    - a. In both value summary lists, tabulate "actual percent complete" and "cumulative value completed" with total at bottom.
    - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

### PART 3 - EXECUTION

#### 3.1 CONTRACTOR'S SCHEDULE OF CONSTRUCTION

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
1. In-House Option: Owner may waive the requirement to retain a consultant if Contractor employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
  2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.
- B. Contractor's Schedule of Construction Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
  2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
  3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Contractor with a need-to-know.
1. Post copies in Project meeting rooms and temporary field offices.

2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

END OF EXHIBIT "C"

## **EXHIBIT "D"**

### **REQUIRED INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Commercial Umbrella

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

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

2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
4. Umbrella coverage for such additional insureds shall apply as primary before any other

insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the Walker County School District and Architect.

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

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

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

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

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

(9) Contractor shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Contractor and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the insurable value thereof covering fire, theft, extended coverage, vandalism and malicious mischief. There shall be attached to and made a part of the insurance policy for Builder's Risk an endorsement of the Insurance Company as shown on Exhibit "D-1" attached hereto.

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

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

**EXHIBIT D - 1**

**ENDORSEMENT TO BUILDER'S RISK**

Attached to and forming part of Policy No. \_\_\_\_\_ of the \_\_\_\_\_ Insurance Company, issued at its \_\_\_\_\_, \_\_\_\_\_ Agency.

In consideration of the premium for which the policy is written and proper rate adjustment when applicable, the insurance company agrees as follows:

- (1) The insurance company consents and agrees that furniture and equipment may be delivered to the insured premises and installed in place, ready for use, and said delivery and installation of furniture and equipment shall in no way diminish, change, alter or otherwise affect the coverage and protection afforded the insured under said policy.
- (2) The insurance company consents and agrees that insured premises may be occupied, and said occupation shall in no way diminish, change, alter or otherwise affect the coverage and protection afforded the insured under said policy. The insured shall give notice to insurance company of any partial occupancy.
- (3) The insurance company recognizes the right of the Owner of the insured premises to perform other Work in connection with construction operations insured under this policy and agrees that performance of other work by the said Owner, by agents of the said Owner, or by Contractors employed by said Owner, shall in no way diminish, change, alter or otherwise affect protection afforded under said policy.
- (4) The insurance company agrees that this policy shall not be canceled, changed, allowed to lapse or to expire until thirty (30) days after the Owner has received written notice thereof as evidenced by return receipt of registered letter.

The foregoing insurance provisions have been incorporated into by reference and are hereby made a part of insurance Policy No. \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_.

Name of Company

Authorized Signature

DISPOSITIONS: Policy to be deposited with Architect prior to commencement of Work.



**EXHIBIT "E"**  
**IMMIGRATION AND SECURITY FORM**

A. In order to insure compliance with the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act O.C.G.A. § 13-10-90 et. seq., Contractor must certify compliance by initialing one of the sections below:

\_\_\_\_\_ Contractor has 500 or more employees and Contractor warrants that Contractor has complied with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at <https://www.vis-dhs.com/EmployerRegistration> and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

\_\_\_\_\_ Contractor has 100-499 employees and Contractor warrants that no later than July 1, 2008, Contractor will register at <https://vis-dhs.com/EmployerRegistration> to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

\_\_\_\_\_ Contractor has 99 or fewer employees and Contractor warrants that no later than July 1, 2009, Contractor will register at <https://vis-dhs.com/EmployerRegistration> to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

B. Contractor warrants that Contractor has included a similar provision in all written agreements with any subcontractors engaged to perform services under its Contract(s) with the Walker County Board of Education.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By signing above you are certifying that the representations made herein are true and correct.

Firm Name: \_\_\_\_\_

Street/Mailing Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Sworn to and subscribed before me

This \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

**CONTRACTOR AFFIDAVIT**

By executing the affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of \_\_\_\_\_ (name of public employer) has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

BY: \_\_\_\_\_  
Authorized Officer of Agent  
(Contractor Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**SUBCONTRACTOR AFFIDAVIT**

By executing the affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of \_\_\_\_\_ (name of public employer) has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

BY: \_\_\_\_\_  
Authorized Officer of Agent  
(Subcontractor Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).