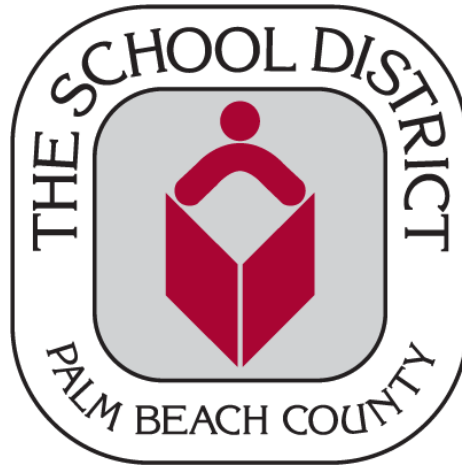


**THE SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA**



**INVITATION TO BID (ITB)**

**ITB NO.: 26-58Q**

**FOR**

**HOPE-CENTENNIAL ELEMENTARY SCHOOL – PARKING EXPANSION**

**PROJECT NO.: 0012-2402**

**BID DUE DATE:**

**MARCH 16, 2026 NO LATER THAN 2:00 P.M., EDT**

**RESPONSES MUST BE SUBMITTED ELECTRONICALLY TO:**

**BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**

The ITB document and all additional Project information published as part of the ITB document may be obtained at: **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**. **BidNet Direct** will not allow offers to be submitted after the closing date and time.

**SECTION 00002**



**PROJECT NAME: HOPE-CENTENNIAL ELEMENTARY SCHOOL – PARKING EXPANSION**

**ITB NO.: 26-58Q**

**PROJECT NO.: 0012-2402**

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## **SECTION 00030**

### **PROJECT NOTIFICATION**

#### **REQUEST FOR BIDS**

The School Board of Palm Beach County, Florida invites **Certified General Contractors or Certified Building Contractors prequalified by the School Board** pursuant to SREF Chapter 4.1 prior to the Bid Due Date to submit a Bid. To be eligible, the vendor must be prequalified for bonding capacity in the amount of the advertised Construction Budget or evidence bonding capacity in that amount prior to the Bid due date. The School District of Palm Beach County, Florida, will receive (via **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**) sealed Bids for:

**PROJECT NAME: HOPE-CENTENNIAL ELEMENTARY SCHOOL – PARKING EXPANSION**  
**PROJECT ADDRESS: 5350 STACY ST.**  
**WEST PALM BEACH, FL 33417**  
**ITB NO.: 26-58Q**  
**PROJECT NO.: 0012-2402**

#### **BIDS SHOULD BE BASED UPON THE FOLLOWING DESCRIPTION OF WORK:**

Construct new asphalt-paved parking areas located north of the School and in accordance with all approved plans and specifications.

Provide and install parking lot lighting as designed in the construction documents.

All parking lot striping, signage, and pavement markings shall be installed in accordance with the Construction Documents and in compliance with Florida Department of Transportation (FDOT) and 2023 District Master Specifications.

This project is to be delivered as a full turnkey installation. The Contractor shall provide all labor, materials, equipment, supervision, permits, and incidentals necessary to complete the project in its entirety.

All work shall be performed in accordance with applicable codes and standards, including but not limited to the Florida Building Code (2020), State Requirements for Educational Facilities (SREF), National Electrical Code (NEC), and the 2023 District Master Specifications.

#### **ADDITIONAL PROJECT INFORMATION:**

- Construction Document Files (4):
  - Hope Centennial P# 0012-2402 Civil.pdf
  - Hope Centennial P# 0012-2402 Electrical.pdf
  - Hope Centennial P# 0012-2402 Landscape.pdf
  - Hope Centennial P# 0012-2402 Survey.pdf
- Attachments File: ATTACHMENTS\_ITB\_A-K\_9.26.2025.pdf
- Required Forms File: REQUIRED RESPONSE FORMS\_ITB\_A-D\_10.26.2025.pdf
- All materials should be based on the School District Specifications, which includes an approved equal.
- The Contractor shall be responsible for the repair or replacement, including but not limited to: all surfaces, building elements, fencing, utilities, onsite and offsite elements, sidewalks, grasses, plantings, irrigation, and hardscape disturbed by and/or damaged by construction activities.

- If required, the Contractor will remove and/or modify chain link fencing, including adding gate(s), as needed for site access. Openings in the fence shall be secured at the end of each workday. Fencing is to be restored to equal or better condition upon completion of the work.
- During the school year, work can be performed after the school day is completed but the schedule will have to be coordinated with school staff as there are activities at night. All work during the summer can be completed during the day or night per the SPA/ School approval. The schedule will still have to be worked out with the school as summer activities will be happening on-site. Holidays and weekends can be day or night work however, the Contractor will still need to coordinate with school staff & SPA as activities are sometimes scheduled during these times.
- All work shall be performed in accordance with the Florida Building Code 2023, Florida Building Code 2023 8th ed, District Master Specifications, 2023, and the ANSI/AWWA C210-84 (If Applicable).
- Clean-up and disposal of all debris generated during the Project. Final inspection to ensure compliance with building codes, manufacturer specifications, and project requirements.
- **BALANCE OF LINE:** The "balance of line" shall include products and services that are not requested in this. Invitation to Bid, but are within the scope of products and services available from the awardee(s). The School District reserves the right to add these products and services to the awarded items. Additions shall be submitted as they occur. Deletions and discontinued items shall be reported by bid awarded vendor as they occur. Refer to Additional Information Document.

**ESTABLISHED PROJECT BUDGET FOR CONSTRUCTION: \$1,320,000.00**

#### **PROCUREMENT SCHEDULE**

**MANDATORY SITE INSPECTION: FEBRUARY 24, 2026 at 9:00 A.M., EST**

**QUESTIONS DUE: MARCH 2, 2026, NO LATER THAN 2:00 P.M., EST via [BidNet Direct @ www.bidnetdirect.com](https://www.bidnetdirect.com)**

**FINAL ADDENDUM ISSUED: MARCH 9, 2026 via [BidNet Direct @ www.bidnetdirect.com](https://www.bidnetdirect.com)**

**BIDS DUE: MARCH 16, 2026, NO LATER THAN 2:00 P.M., EDT via [BidNet Direct @ www.bidnetdirect.com](https://www.bidnetdirect.com)**

#### **MANDATORY SITE INSPECTION**

Each Bidder must attend a Mandatory Site Inspection at the project location to be eligible to submit a Bid. Site inspection will be held on **FEBRUARY 24, 2026** as scheduled:

**HOPE-CENTENNIAL ELEMENTARY SCHOOL  
5350 STACY ST.  
WEST PALM BEACH, FL 33417**

**MEET IN FRONT OFFICE AND SIGN IN**

**DIRECTIONS:** From 95 N/S, take Okeechobee Blvd West about 3.5 miles, make left on N Haverhill Rd., proceed .7 miles and make a right on Stacy St. School is about .5 mile on left.

#### **BID GUARANTEE**

Each Bid shall be accompanied by a Bid Guarantee in the amount of **\$66,000.00**. The Guarantee shall be in the form of either a Bid Bond or Cashier's Check payable to The School District of Palm Beach County. All Bidders must be licensed pursuant to Chapter 489 *Florida Statutes*. The successful

Bidder will be required to furnish a 100% Performance Bond. No Bid may be withdrawn after the scheduled closing for receipt of Bids for a period of 60 days. The Board or its designee reserves the right to waive minor technicalities and irregularities in all Bids.

Further, in order to protect the integrity of the Award Process, **all questions regarding this solicitation must be submitted via BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com) NO LATER THAN 2:00 P.M., EST on MARCH 2, 2026.**

**Only questions received via BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com) by the time and date specified will be answered by Addendum and posted on BidNet Direct.** David Chojnacki, Purchasing Agent is authorized only to direct the attention of prospective Bidders to various portions of the ITB so that they may read and interpret such for themselves. Neither **David Chojnacki** nor any employee of the District is authorized to interpret any portion of this ITB or give information as to the requirements of the ITB in addition to that contained in the written documents.

All questions submitted (along with their source) are subject to Public Records Laws and as such will be available for inspection upon receipt of a Public Records Request.

**The ITB document and all additional Project information published as part of the ITB document may be obtained at: BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**

### **SMALL BUSINESS ENTERPRISE (SBE) PREFERENCES**

As specified by Board Policy 6.144, the School District of Palm Beach County shall apply preferences for Small Business Enterprises (SBE) in the District's procurement process for the solicitation of Construction Services Contracts.

In order to receive consideration for SBE preference the firm(s) to be utilized by the Bidder must be Certified by the District at the time the Bid is submitted.

For more information on the District's SBE programs see School Board Policy 6.144 and the SBE Procedures Manual. The Manual and Directory of Certified SBE firms can be found at: <https://www.palmbeachschools.org/departments/small-business-development>.

### **BID PREFERENCE**

A **five percent (5%)** Bid Preference has been established for this Project. This Bid Preference will be applied to Bids submitted by firms meeting the requirements for SBE and Certified as **SMALL BUSINESS ENTERPRISE (SBE)** by the School District of Palm Beach County Office of Small Business Development (OSBD). Following the Bid opening the OSBD will verify each Bidder that meets these requirements. The Contract will be Awarded to the responsive, responsible non-certified Bidder that submits the lowest Total Bid amount meeting the established Contract Goal for SBE Participation **unless** the Total Bid amount submitted by a Bidder that is Certified as a State of Florida or School District of Palm Beach County SBE does not exceed the lowest Total Bid amount submitted by a non-certified Bidder by an amount **greater than \$50,000 or five percent (5%)** of the non-certified Bidder's Total Bid amount, whichever is less. In instances where the difference in a Certified SBEs Total Bid amount is **greater than \$50,000 or five percent (5%)**, the lowest responsive, responsible non-certified Bidder will be Awarded the Contract and the Bid Preference shall be deemed waived. In the best interest of the District, the Board, or their designee, reserves the right to reject any and all Bids and to waive any irregularity in Bids received.

### **INDUSTRY SPECIFIC CLASSIFICATIONS**

**To ensure compliance with program guidelines and intent, Bidders will receive SBE**

preference **ONLY** if their SBE classification is consistent with, and meets the standards identified in the Industry Specific Classifications and thresholds contained in School Board Policy 6.144 and the Office of Small Business Development' Procedures Manual.

**THE INDUSTRY SPECIFIC CLASSIFICATION FOR THIS SOLICITATION IS:**

- **Construction Services - Small Business Enterprises Owned Firm**

**REVENUE/SALES SIZE STANDARDS FOR INDUSTRY SPECIFIC CLASSIFICATIONS**

Any firm that has exceeded gross sales or revenues (averaged over the last three [3] years) greater than the amounts below shall not be considered eligible to participate in the School District's SBE program.

- **\$13,000,000 for Construction Services**

**POSTING OF BID TABULATION / RECOMMENDATION OF AWARD**

Recommendations and Tabulations will be posted electronically with **BidNet Direct** for review by interested parties, no later than **MARCH 19, 2026**, and will remain posted for a period of 72 hours. If the ITB Tabulation with Recommended Awards is not posted by said date, a "Notice of Delay of Posting" will be posted to inform all Proposers of the new posting date.

BY: Karen M. Brill, Board Chair

ATTEST: Michael J. Burke, Superintendent

**PUBLISH DATES: FEBRUARY 2, 2026, FEBRUARY 9, 2026 and FEBRUARY 16, 2026**

**END OF SECTION**

## **SECTION 00050**

### **NOTICE TO CONTRACTORS**

#### **SMALL BUSINESS ENTERPRISE (SBE)**

A Small Business Enterprise (SBE) Contract Goal has been established for this Project. **Only firms Certified by the School Board of Palm Beach County are eligible for participation to satisfy the established Participation Requirement.**

Bidders and Subconsultants seeking to qualify as a Small Business Enterprise (SBE) shall be certified by the School Board of Palm Beach County, prior to the Bid Due Date Specified in Section 00030 of this Invitation to Bid.

#### **CERTIFICATION APPLICATION INSTRUCTIONS**

Firms seeking to apply for certification with the School Board of Palm Beach County shall submit the School Board of Palm Beach County application. The application must be approved by the School Board of Palm Beach County Office of Small Business Development will review the Certification Database to ensure SBEs are Certified with the District at the time the Bid is submitted. Vendors do not have to submit their Certification Certificate.

#### **IMPORTANT POINTS TO REMEMBER**

- 1)** The application must be submitted complete with all required supporting documentation and the firm must allow sufficient time for the application to be processed prior to the Proposal Due Date. The application may take up to 60 days after receipt of the completed application for processing.
- 2)** Please contact the Office of Small Business Development for the application or information on certification at <https://www.palmbeachschools.org/departments/small-business-development>, or by phone at (561) 681-2403 or write:

**THE SCHOOL BOARD OF PALM BEACH COUNTY**  
**Office of Small Business Development**  
**3300 Summit Boulevard**  
**West Palm Beach, Florida 33406**

- 3)** Complete the online School District SBE application.  
(<https://www.palmbeachschools.org/departments/small-business-development>)
- 4)** Complete the SBE Affidavit.

**END OF SECTION**

## **SECTION 00100**

### **INSTRUCTIONS TO BIDDERS**

#### **ARTICLE 1**

##### **1.1 BIDDER'S REPRESENTATION**

- 1.1.1** Each Bidder, by submitting a Bid, represents that they have read, understand and agree to this Invitation to Bid and have familiarized themselves with the local conditions under which the Work is to be performed. The Bidder is assumed to be familiar with all Federal, State and Local Laws, Ordinances, Rules and Regulations, that in any manner affect the Work. Public Contracting and Purchasing Process *Florida Statutes*, Sections 235.01 et seq. 287.132-.133 (Public Entity Crimes) is applicable and Florida Department of Education, Office of Educational Facilities, Florida Building Code (FBC). Ignorance on the part of the Bidder will in no way relieve them from responsibility.
- 1.1.2** The Bidder meeting the Specifications, Terms and Conditions of this Invitation to Bid and being designated as having submitted a responsive Bid shall be authorized by the Florida Department of State, a Florida licensed Contractor, and licensed to perform services in the City of their domicile and in Palm Beach County.
- 1.1.3** By submitting a Bid, the Bidder certifies that neither it, nor its Principal(s) is presently debarred, suspended, proposed for debarment and declared ineligible or voluntarily excluded from participation in this transaction by the State of Florida or Federal Government. Furthermore, Bidder certifies that it is responsible to divulge information regarding any of these actions or proposed actions with other governmental agencies.
- 1.1.4** Successful Proposer will be required to comply with applicable law as it relates to E-Verify legislation.
- 1.1.5** A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a Public Entity Crime may not submit an offer on a Contract to provide any goods or services to a Public Entity, may not submit an offer on a Contract with a Public Entity for the construction or repair of a public building or public work, may not submit an offer on leases of real property to a Public Entity, may not be awarded or perform work as a Contractor, Supplier, Subcontractor, or Awarded Bidder(s) under a Contract with any Public Entity, and may not transact business with any Public Entity in excess of the threshold amount provided in section 287.017, *Florida Statutes*, for CATEGORY TWO for a period of 36 months from the date of being placed on the Convicted Vendor List.
- 1.1.6** An Awarded CONTRACTOR or any Subcontractors shall not employ any persons with multiple felonies and/or crimes against children. The Awarded CONTRACTOR must provide documented proof of efforts to comply with this requirement. The Board may declare any non-compliance or lack of diligent effort by the Awarded CONTRACTOR to comply as a breach of Contract and immediately terminate the services of the Awarded CONTRACTOR.
- 1.1.7** All Bidders must disclose the name of any officer, director, or agent who is also an employee of the District. All Bidders must disclose the name of any District employee who owns, directly or indirectly, any interest in the Bidders' business or any of its branches. Indicate with either a statement of Conflict of Interest or Non-Conflict of



Interest and submit with your Bid.

**1.1.8** All costs incurred by the Bidder, their employees and agents in preparing a Bid, in clarifying such Bid to the satisfaction of the OWNER, in attending any Pre-Bid conference or interview, in ascertaining the conditions of the site, in entering into a Contract with the OWNER or for any other reason shall be the sole responsibility of the Bidder and will not be paid or reimbursed by the OWNER.

**1.1.9** The Bidder acknowledges the right of the OWNER to accept or reject any or all Bids and to waive any informality or irregularity in any Bid received. In addition, the Bidder recognizes the right of the OWNER to reject a Bid if the Bidder failed to furnish any required or to submit the data required by the Invitation To Bid Documents, or if the Invitation To Bid is in any way incomplete or irregular; to reject the offer of a Bidder who is not in a position to perform the Contract; and to re-advertise for other or further Bids or to accept the next responsive Bid.

As required by 1010.04(5), Fla. Stat., please be advised that the School District will not:

1. Request documentation of or consider a bidder's social, political, or ideological interests when evaluating its proposal.
2. Give preference to a bidder based on the bidder's social, political, or ideological interests.

**1.1.10** The Bidder, in submitting their offer, realizes that time is of the essence and that any delay of this Project will have a serious negative impact on the students of Palm Beach County. Therefore, the Bidder has taken due diligence to determine factors that may impact the days necessary to complete this Project. Specifically, the approval process required under *Florida Statutes* as governed by the Rules of the Department of Education, Florida State Board of Education, as well as the Permitting process required by the School District of Palm Beach County, Department of Environmental Regulation, the South Florida Water Management District, Palm Beach County and any other bodies that have jurisdiction over the land parcel for this Project.

**1.1.11** By submitting a Bid, the Bidder certifies that it has not divulged, discussed or compared its Bid with other Bidders and has not colluded with any other Bidder or parties to the Bid whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of materials. Any such violation will result in the cancellation and/or return of material (as applicable) and the removal of the Bidder from all Bid lists for the School Board of Palm Beach County.

## **1.2 BIDDING PROCEDURES**

**1.2.1** Bid Submittal shall be prepared using the **forms contained in this Invitation to Bid** and submitted in accordance with these Instructions to Bidders.

**1.2.2** A Bid is invalid if it has not been fully uploaded to **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** prior to the time and date for receipt of Bids indicated in the "Project Notification," Section 00030, or prior to any extension issued to the Bidders, by Addendum.

**1.2.3** Unless otherwise provided in any supplement to these "Instructions to Bidders," no Bidder shall modify, withdraw or cancel their Bid or any part thereof for 60 days after

the time designated for the receipt of Bids in the "Project Notification," Section 00030, or prior to any extension issued to the Bidders.

- 1.2.4** Prior to the receipt of Bids, if any Addenda are issued, it will be available on **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**.

### **1.3 BIDNET DIRECT**

- 1.** All offers must be submitted electronically to **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** including all required documents listed in the Bid (or solicitation). No other responses will be accepted, including hard copy or emailed responses.
- 2.** **BidNet Direct** supports online document tracking and completion. All documents must be viewed/accepted before the Bid Packet can be viewed and an offer can be placed.
- 3.** **The District will only consider offers that have been uploaded and submitted through BidNet Direct PRIOR to the Bid closing date and time. As with any document upload, larger documents and/or heavy user activity may result in longer upload times. Please Allow plenty of time to complete your offer.**

**4. IMPORTANT INFORMATION**

**For help filling out your offer, please visit:**

**<https://www.bidnetdirect.com/palmbeachschools>**

- In order to complete this process, you must first select "Review Response," verify the information is correct then enter your password and select "Confirm & Submit Response."
- After clicking "Confirm & Submit Response," a confirmation page loads with "Offer Received" at the top of the page. **If you do not see this confirmation, your offer was not submitted successfully.**
- If you select to receive a confirmation e-mail indicating a successful response you will receive a confirming email within five (5) minutes.

**If you DO NOT receive a confirmation that your offer has been received, please call BidNet Direct at 800-835-4603, Option 2 (Vendor Assistance). Customer Service Hours of Operation: 8 am – 8 pm.**

- 5.** If necessary, an Addendum(s) will be distributed by **BidNet Direct** to all who are known by the Construction Purchasing Department to have received a complete set of Bid documents.
- 6.** **Be advised that registering with **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** is a **FREE service.****
- 7.** Bids must be signed by an officer or employee having authority to legally bind the Bidder(s).
- 8.** Bidders should become familiar with any local conditions which may, in any manner, affect the services required. The Bidder(s) is/are required to carefully examine the ITB terms and become thoroughly familiar with any and all conditions and requirements that may in any manner affect the Work to be performed under the Contract. No

additional allowance will be made due to lack of knowledge of these conditions.

9. Bids not conforming to the instructions provided herein will be subject to disqualification.
10. Any Bid may be withdrawn prior to the date and time the Bids are due.
- 1.3.1 All questions concerning the Invitation to Bid shall be submitted via **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** by the date and time specified and will be answered by Addendum. All questions submitted shall be held until such time as they are compiled and answered in the form of an Addendum, which will be released through **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**.
- 1.3.2 Questions and Answers, in the form of Addenda, as distributed by the OWNER shall become part of the Invitation to Bid. Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the Bid Documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. All Addenda will become part of the Contract Documents when the Contract is executed. As necessary, Addenda will be distributed by **BidNet Direct** to all who are known by the Construction Purchasing Department to have received a complete set of Bid Documents. All questions submitted (along with their source) and Addenda are subject to Public Records Law and as such will be available for inspection upon receipt of a Public Records Request.
- 1.3.3 To protect the integrity of the solicitation, **all questions regarding this solicitation must be submitted via BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com) NO LATER THAN 2:00 P.M. EST**, on the date specified in the Project Notification. Only questions received via **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** by the time and date specified will be answered by Addendum and posted on **BidNet Direct**. No employee of the School District is authorized to interpret any portion of this Bid or give information as to the requirements of the Bid in addition to that contained in the written documents.

#### **1.4 LOBBYING:**

From the time this solicitation is posted until the time a Decision or Intended Decision is posted, potential Bidders and employees, representatives, partners, director, officers, or other individuals acting on behalf of the Bidder, shall be prohibited from Lobbying any School District employee, member of the School Board, member of a School District Advisory Committee, or person selected to evaluate or recommend selection of the Awarded Bidder. Violation of this "Cone of Silence" shall result in rejection/disqualification of the Bidder from Award of a Contract arising out of this solicitation.

#### **1.5 INSTRUCTIONS FOR SUBMITTAL OF BID DOCUMENTS**

The Bid Shall be divided into two (2) Sections 1 and 2 and uploaded to **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)** as one (1) optimized PDF file. A Bid shall include all items listed for Section 1, otherwise the Bid shall be declared non-responsive. A Bid Should include all items specified in Section 2; however, exclusion of any of the items specified in Section 2 shall not be cause to declare the Bid non-responsive.

##### **SECTION 1: - shall contain the following items:**

1. Fully executed and manually signed Bid Summary Form (**Required Response Form A**)

2. Bid Guarantee/Bid Bond or otherwise acceptable Bid Guarantee (**Required Response Form B**)
3. Fully executed SBE Subcontractor Participation (**Required Response Form C**)
4. Disclosure of Discrimination Complaints Statement (**Required Response Form D**)

**SECTION 2: - submit the following items with Bid:**

1. Copy of current License issued by the Florida Department of Business and Professional Regulations (Pursuant to FS 1013.46(2))
2. Drug Free Workplace Certificate - **PBSD 0580 (Attachment A)**
3. Beneficial Interest and Disclosure of Ownership Affidavit - **PBSD 1997 (Attachment B)**  
**The School District is requesting this affidavit to include a list of every "person" (as defined in Section 1.01 (3), Florida Statutes, to include individuals, children, firms, syndicates, fiduciaries, corporations and all other groups and combinations) holding five percent (5%) or more of the Beneficial Interest in the disclosing entity. The Proposer must submit all supporting documentation in the name of the Proposer's entity only. Parent and/or subsidiary entities will not be acceptable.**
4. Current Certificate of Authority issued by the Florida Department of State
5. Scrutinized Companies List Certification (**Attachment J**)
6. Byrd Anti-Lobbying Amendment (**Attachment K**)

**1.6 BID SUMMARY FORM**

- 1.6.1** Bidder(s) shall use the Bid Summary Form (**Required Response Form A**) included in this Invitation to Bid, and indicate prices in the spaces provided for the Work and for the alternates, if applicable. A Bid Summary Form containing any conditions, omissions, alternates, items not called for or irregularities of any kind may be rejected by the OWNER.
- 1.6.2** Bidder(s) shall provide their full business name, and shall state whether they are an individual, corporation, partnership or other such entity. A Bid submitted by a corporation must include the legal name of the corporation followed by the name of the state of its incorporation and by the manual or electronic signature and designation of an officer, OWNER, or other person, authorized to bind the corporation. A Bid submitted by a partnership shall show the names of all partners and must be signed in the partnership's name by one (1) of the partners or by an authorized representative. In either case, the partnership signature shall be followed by the authorized signature (manual or electronic) and designation of the person signing.
- 1.6.3** In every case, the name of the person signing, and their designation shall be included. A Bid by a person who affixes to a signature the word, "President", "Secretary", "Owner" or other designation without disclosing the principal may be held to be the Bid of the individual signing. Satisfactory evidence of the authority of an officer, OWNER, attorney, or other person signing for a corporation and for an OWNER, attorney, or other signing for a partnership or an individual shall be furnished.

## **1.7 BENEFICIAL INTEREST AND DISCLOSURE OF OWNERSHIP AFFIDAVIT**

This affidavit shall include a list of every "person" (as defined in Section 1.01 (3), Florida Statutes to include individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups and combinations) holding five percent (5%) or more of the Beneficial Interest in the disclosing entity. The Beneficial Interest and Disclosure of Ownership Affidavit (**Attachment B**) must be completed, signed, notarized and returned with the Bid Documents. **The Proposer must submit all supporting documentation in the name of the Proposer's entity only. Parent and/or subsidiary entities will not be acceptable.**

## **1.8 BID GUARANTEE**

All Bids shall be guaranteed by either a Bid Bond, utilizing the Bid Bond Form (**Required Response Form B**) included in this Invitation to Bid, executed by a surety company properly licensed and qualified as specified in Section 00700, Article 13 of the Contract, cashier's check or other form of guarantee acceptable to the OWNER. The Bid Guarantee shall be in an amount not less than **\$66,000.00** and payable to the School Board of Palm Beach County, Florida. A personal check or company check of a Bidder shall not be deemed a valid Bid Guarantee. In the case where a Bid Bond is utilized as a Bid Guarantee, a Certified copy of the Power of Attorney of the bonding company must be attached to the Bid Bond. **At the time of Bid submittal, a copy of the Bid Guarantee shall be uploaded with the Bid Documents. Within three (3) OWNER business days of the Due Date, the original Bid Guarantee shall be delivered to:**

**THE SCHOOL DISTRICT OF PALM BEACH COUNTY  
Construction Purchasing Office  
3661 Interstate Park Road North, 2<sup>nd</sup> Floor  
Riviera Beach, FL 33404**

The Bid Guarantee of the successful Bidder shall be forfeited to The School Board of Palm Beach County, Florida, not as a penalty, but as liquidated damages for the cost and expense incurred should said Bidder fail to provide the required Performance and Payment Bond and Insurance Certificate or fail to comply with any other requirements set forth herein. The Bid Guarantee of the unsuccessful Bidders will be returned after approval of the Award and execution of the Contract.

## **1.9 EXAMINATION OF BIDDING DOCUMENTS**

Bidder shall examine the Invitation to Bid Documents carefully and, not later than the date established by the OWNER for final receipt of questions, shall make written request to the OWNER by email to the contact person(s) as identified in Section 00030 for interpretation or correction of any ambiguity, inconsistency or error therein which they may discover. Any interpretation or correction will be issued as an Addendum by the OWNER. Only a written interpretation or correction by Addendum shall be binding. No Bidder shall rely upon any interpretation or correction given by any other method.

## **1.10 SUBSTITUTIONS**

**1.10.1** Except as provided below, Bidder(s) represents that the Bid is based upon the materials and equipment described in the Invitation to Bid Documents.

**1.10.2** No substitution for other material and equipment will be considered unless written

request has been submitted to the OWNER for approval at least seven (7) calendar days prior to the date for receipt of Bids. Each such request shall include a complete description of the proposed substitute, the name of the material or equipment for which it is to be substituted, drawings, commodity cut sheets, performance and test data and any other data or information necessary for a complete evaluation.

- 1.10.3** If the OWNER approves any proposed substitution, such approval will be set forth in an Addendum and will be posted on **BidNet Direct**.
- 1.10.4** If any Bidder(s) is unable to procure written approval of any substitution from the OWNER prior to the opening of Bids, then they shall base their Bid Summary Form on the exact item(s) specified.
- 1.10.5** Requests for any substitutions not submitted in accordance with the above instructions shall be denied by the OWNER.

### **1.11 REJECTION OF BID SUBMITTAL**

The Bidder(s) acknowledges the right of the OWNER to reject any or all Bid Submittals and to waive any informality or irregularity in any Bid Submittal received. In addition, the Bidder recognizes the right of the OWNER to reject a Bid Submittal if the Bidder failed to furnish any required Bid Guarantee, or to submit the data required by the Bidding Documents, or if the Bid Submittal is in any way incomplete or irregular; to reject the Submittal of a Bidder who is not in a position to perform the Contract; and to re-advertise for other or further Bid Submittals or to accept the next responsive and responsible low Bid Submittal.

### **1.12 SUBMISSION OF POST-BID INFORMATION**

The Awarded Bidder shall submit the following items in proper form for approval by the OWNER prior to issuance of the Notice To Proceed:

- 1)** Subcontractor Licenses or Palm Beach County Certificate of Competency.
- 2)** Proof of a current and active Certificate of Authority issued by the Department of State authorizing the Bidder to conduct business in the State of Florida. This proof may be provided by either submitting a copy of the Letter of Authority issued by the Office of the Secretary of State or by submitting a copy of the Certificate of Status Verification which may be obtained via [www.Sunbiz.org](http://www.Sunbiz.org) - Department of State.
- 3)** List of Subcontractors (**Attachment I**)
- 4)** Fully executed and signed SBE Subcontractor Participation Letter of Intent Form (**Attachment F**)
- 5)** SBE Subconsultant/Subcontractor Participation Form (**Attachment G**)
- 6)** Evidence of acceptable certification for each SBE Subcontractor (as defined in the Article 15 of the Contract) to be utilized to meet the established Contract Goal for SBE Participation
- 7)** Certificate of Insurance indicating the coverage required in Article 11 of the Contract
- 8)** Resume of Contractor's Construction Superintendent and, if requested by the OWNER, the Assistant Superintendent engaged by the CONTRACTOR for the Work

- 9) Preliminary Construction (CPM) Schedule
  - 10) Letter certifying the percentage (%) of Work, if any, to be performed by the CONTRACTOR
  - 11) List of Hazardous Chemicals per Section 442.103, *Florida Statutes* (Section 00850, Article 1)
  - 12) Proposed Roofing Manufacturing Warranty (if applicable)
  - 13) Items specified in Paragraphs 1.12.1 and 1.12.2 below
- 1.12.1 The successful Bidder shall within five (5) OWNER business days after receiving the fully executed OWNER-CONTRACTOR Contract obtain and furnish the OWNER for approval the bonds required by the Contract Documents, which shall be procured from agents authorized to do business in the State of Florida and in such form and amounts acceptable to the OWNER.

**NOTE: Bonds must be recorded at the Recording Department of Palm Beach County Clerk of Circuit Court.** Proof of recordation must be submitted within five (5) OWNER business days to the Construction Purchasing Department. One (1) set of originals with bond numbers shown is required.

- 1.12.2 If, at any time, the OWNER shall deem the surety or sureties to be unsatisfactory or if a bond is deemed inadequate by the OWNER, the CONTRACTOR shall, at no expense to the OWNER and within five (5) OWNER business days after receipt of written notice by the OWNER, furnish an additional bond or bonds in such form and amount and with a surety acceptable to the OWNER. The failure of the CONTRACTOR to furnish such bonds in a timely manner shall not delay the commencement of the Contract Time nor shall be a cause for an extension of the Contract Time however; no Work shall proceed prior to issuance of a Notice to Proceed.
- 1.12.3 Prior to the Award of the Bid, the Bidder shall be required to establish to the satisfaction of the OWNER, the reliability and responsibility of the proposed Subcontractors to furnish and perform the Work described in the sections of the specifications pertaining to such proposed Subcontractor's respective trades. The OWNER will notify the Bidder in writing if the OWNER, after due investigation, has reasonable and substantial objection to any person or organization on such list. If the OWNER or Architect has a reasonable and substantial objection to any person or organization on such list, and refuses in writing to accept such person or organization the Bidder may, at their option, withdraw the bid without forfeiture of the Bid Guarantee, notwithstanding anything to the contrary contained in Section 00100, Paragraph 1.3.2. If the Bidder submits an acceptable substitute with an increase in the Bid price to cover the difference in cost occasioned by such substitution, the OWNER may disqualify the Bidder unless the Bidder agrees to, in writing, no increase in the Total Bid amount. Subcontractors and other persons and organizations proposed by the Bidder and accepted by the OWNER and the Architect, must be used on the Work for which they were proposed and accepted and shall not be changed except with the written approval of the OWNER and Architect.

### **1.13 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- 1.13.1 The successful Bidder shall be required to furnish a Performance Bond and Labor and

Material Payment Bond in the amount of 100% of the Contract amount as set forth in the Project Advertisement.

**1.13.2** All required premiums shall be paid for by the successful Bidder and the amount of the premium shall be included in the Base Bid Price of the Bid Summary Form.

**1.13.3** The Notice to Proceed shall not be issued until these bonds have been received in proper form. Any delay in providing these bonds to the OWNER shall not be cause for an extension of Contract Time to achieve Substantial Completion.

#### **1.14 TIME**

Time of completion is of the essence and a Bidder may be deemed non-responsive if the time offered is excessive.

#### **1.15 DETERMINATION OF BID**

The method of determining the lowest Bid Submittal from a Bidder shall be the Total Bid amount(s) listed on the Bid Summary, which are accepted by the OWNER and acceptance by the Office of Small Business Development. Alternates, if applicable, may be considered for acceptance by the OWNER in its sole and unfettered discretion and acceptance by the Office of Small Business Development.

#### **1.16 BID PREFERENCE**

**1.16.1** A **five percent (5%)** Bid Preference has been established for this Project. This Bid Preference will be applied to Bids submitted by firms meeting the requirements for SBE and Certified as **SMALL BUSINESS ENTERPRISE (SBE)** by the School District of Palm Beach County Office of Small Business Development (OSBD). Following the Bid opening the OSBD will verify each Bidder that meets these requirements. The Contract will be Awarded to the responsive, responsible non-certified Bidder that submits the lowest Total Bid Amount meeting the Established Contract Goal for SBE Participation **unless** the Total Bid Amount submitted by a Bidder that is Certified as a State of Florida or School District of Palm Beach County SBE does not exceed the lowest Total Bid Amount submitted by a non-certified Bidder by an amount **greater than \$50,000 or five percent (5%)** of the non-certified Bidder's Total Bid Amount, whichever is less. In instances where the difference in a Certified SBEs Total Bid Amount is **greater than \$50,000 or five percent (5%)**, the lowest responsive, responsible non-certified Bidder will be Awarded the Contract and the Bid Preference shall be deemed waived. In the best interest of the District, the Board, or their designee, reserves the right to reject any and all Bids and to waive any irregularity in Bids received.

**1.16.2** In the event the original Awardee cannot fulfill the obligations of their Bid, the Board, or their designee, reserves the right to Award the Project to the next lowest responsive, responsible Bidder. The next lowest Bidder's price must remain the same as originally Bid and must remain firm for the duration of the Contract. Award of the Project made as a result of this Bid shall conform to Board Policy.

#### **1.17 IDENTICAL TIE BIDS**

A specified in Section 287.087, *Florida Statutes*, tie Bid preference shall be awarded to Bidders with Drug Free Workplace Programs. Whenever two or more Bidders are equal with regard to price, quality, and service a Bidder that certifies that it has implemented a Drug Free



Workplace Program shall be given preference in the Award Process. In the event two or more Bidders submit Drug Free Workplace Certifications preference shall be awarded in the following order:

- 1) an SBE firm Certified with the School District
- 2) the Bidder with the lowest dollar value of Contract Award within the 36 months prior to the date of the Bid opening.
- 3) If the tie continues, a Representative of the Construction Purchasing Department will flip a coin to break the tie. The Bidder's company name closest to the letter "A" will always be assigned heads in the coin toss.

#### **1.18 NOTICE OF INTENDED DECISION**

The OWNER shall provide notice of its decision or intended decision concerning an Invitation to Bid Solicitation or an Award as follows:

- a) Notice of a decision or intended decision shall be given by posting the Tabulation on **BidNet Direct**.
- b) The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in 120.57(5) (b), *Florida Statutes*, shall constitute a waiver of proceedings under Chapter 120, *Florida Statutes*."

#### **1.19 PROTEST PROCEDURES**

- 1.19.1** The Invitation to Bid Documents will be available for review via **BidNet Direct @ [www.bidnetdirect.com](http://www.bidnetdirect.com)**. Any person that is adversely affected with respect to the Invitation to Bid Documents shall file a Notice of Protest in writing within 72 hours after the receipt of the Invitation to Bid Documents, and SHALL FILE A FORMAL WRITTEN PROTEST WITHIN 10 DAYS AFTER THE DATE THEY FILED THE NOTICE OF PROTEST. If a Bidder wishes to protest the Recommended Award, they must do so in strict accordance with the procedures outlined in FS 120.57(3). Failure to file a protest within the time prescribed in Section 120.57(3), *Florida Statutes*, or failure to post a protest security at the time of filing the formal written protest will constitute a waiver of proceedings under Chapter 120, *Florida Statutes*.

**All Notices of Protest and Formal Written Protests shall be submitted to:**

**Darci Garbacz, C.P.M., Director of Purchasing  
3300 Forest Hill Blvd., Suite A-323  
West Palm Beach, FL 33406**

- 1.19.2** In accordance with Section 255.0516, *Florida Statutes*, "Bid Protests by Educational Boards", with respect to State Contracts and Bids, pursuant to competitive bidding, whether under Chapter 235, *Florida Statutes*, relating to educational facilities, or under this chapter, relating to public buildings, if a school board, a community college board of trustees, or the Board of Regents uses procedures pursuant to Chapter 120, *Florida Statutes*, for Bid protests the board will require the protestor to post a bond at the time of filing the written protest amounting to:

- 1) \$5,000 or one percent (1%) of the lowest accepted Bid, whichever is greater, for Projects with an estimated cost of construction of \$500,000 or more

**2) Five percent (5%) of the lowest accepted Bid for all other Projects**

**NOTE:** Use of the budget amount in lieu of the lowest acceptable Bid will be used for determining the amount of security for protest of the Invitation to Bid documents.

- 1.19.3** The bond shall be conditioned upon the payment of all costs that may be adjudged against the protester in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, a cashier's check, certified bank check, bank certified company check or money order will be acceptable form of security.
- 1.19.4** Failure to file a Notice of Protest or failure to file a formal written protest or to post the bond or other security required within the time prescribed in 120.57 (5) (b) *Florida Statutes*, shall constitute a waiver of proceedings under Chapter 120, *Florida Statutes*.
- 1.19.5** Upon receipt of a Notice of Protest which has been timely filed, the OWNER shall stop the Solicitation process or the Award Process until the subject of the protest is resolved by final OWNER action, unless the OWNER sets forth in writing particular facts and circumstances which require the continuance of the Solicitation process or the Contract Award Process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.
- 1.19.6** The OWNER, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven (7) days of receipt of a formal written protest.
- 1.19.7** If the subject of a protest is not resolved by mutual agreement within seven (7) days of receipt of the formal written protest and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to *Florida Statutes* 120.57(2). If the hearing is not requested in the Notice of Bid Protest, it shall be waived. The informal hearing shall be conducted in the presence of the Director of Purchasing, as the Superintendent's designee, the legal staff, and any other witnesses deemed appropriate. The protesting party may be present with assistance of counsel and any witnesses they deem appropriate, however, failure to have counsel or witnesses present shall not invalidate the hearing.

**END OF SECTION**

**SECTION 00700**

**GENERAL CONDITIONS**

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## **SECTION 00700**

### **GENERAL CONDITIONS OF THE CONTRACT**

#### **ARTICLE 1**

##### **CONTRACT DOCUMENTS**

###### **1.1 THE CONTRACT**

This Contract represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. The Contract may be amended or modified only by a modification as defined in Section 00510, Article 1, Paragraph 1.2. The OWNER shall be entitled to performance of obligations intended for his benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the OWNER and any Subcontractor or Sub-Subcontractor.

###### **1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS**

The OWNER-CONTRACTOR Contract shall be executed in not less than triplicate by the OWNER and CONTRACTOR.

- 1.2.1** By executing the OWNER-CONTRACTOR Contract, the CONTRACTOR represents that he has visited the Site, familiarized himself with the local conditions under which the Work is to be performed and correlated his observations with the requirements of the Contract Documents.
- 1.2.2** CONTRACTOR also acknowledges he has familiarized himself with all pertinent local conditions including but not limited to the local labor market, utilities and other governmental regulations relating to the job site.
- 1.2.3** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.4** The CONTRACTOR represents and warrants that they have the requisite skill and experience to design and build the Project and represents and warrants that the drawings and specifications will be complete and constructible, without change, and that all drawings have been coordinated with each other to ensure proper and sufficient space for installation and maintenance of equipment and complete operation of all systems.
- 1.2.5** The organization of the Specifications into divisions, sections and articles, and the arrangement of drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

## **ARTICLE 2**

### **OWNER**

#### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

The OWNER shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the Site of the Project and a legal description of the Site.

Information or services under the OWNER'S control shall be furnished by the OWNER with reasonable promptness to avoid delay in the orderly progress of the Work.

The foregoing is in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Work by OWNER or by Separate CONTRACTOR'S, Payment and Completion, and Insurance.

## **ARTICLE 3**

### **CONTRACTOR**

#### **3.1 REVIEW OF CONTRACT DOCUMENTS**

The CONTRACTOR shall carefully study and compare the Contract Documents and shall at once report to the OWNER any error, inconsistency, or omission he may discover. If the CONTRACTOR performs any design, manufacture or construction activity knowing that it involves a recognized error, inconsistency or omission in the Contract Documents, the CONTRACTOR shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable cost for correction.

The CONTRACTOR shall perform no portion of the Work at any time without Contract Documents or where required approved Shop Drawings, Product Data or Samples for such portion of the Work.

## **ARTICLE 4**

### **TIME**

#### **4.1 DEFINITION**

Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as specified in the Contract including authorized adjustments thereto.

The Contract Time will begin the date of issuance of the Notice to Proceed by the OWNER.

Work on the Site will not commence until the Certificates of Insurance and bonds are received and approved by the OWNER, however, the CONTRACTOR'S delay in providing such Certificates of Insurance and bonds and other such requirements shall not be reason for granting of an extension of time. The CONTRACTOR shall carry the Work forward expeditiously with adequate forces and achieve Substantial Completion within the Contract Time.

The Final Completion Date of the Project is the date established by the Bid unless amended by consent of the OWNER.

The Date of Substantial Completion of the Work is the date certified by the OWNER when construction is sufficiently complete in accordance with the Contract Documents, so the OWNER can occupy or utilize the Project for its intended purpose. All warranties and guarantees shall begin the next day.

The term "Day" as used in the Contract Documents shall mean Calendar Day unless otherwise specifically designated.

#### **4.2 PROGRESS AND COMPLETION**

All time limits stated in the Contract Documents are of the essence to the Contract.

The CONTRACTOR shall begin the Work on the date of commencement as defined in Article 3 of the Contract and shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time.

CONTRACTOR'S request for Substantial Completion Inspection to establish a Punch List shall mean that all Work is complete and properly installed. If, at this time, the OWNER indicates that the job is not ready or is incomplete, the inspection will be cancelled and rescheduled. Re-inspection costs for Board Appointed Architect/Engineer visitations will be borne by the CONTRACTOR.

### **ARTICLE 5**

#### **GENERAL REQUIREMENTS**

- 5.1** The CONTRACTOR represents that the CONTRACTOR, Subcontractors, and material and equipment suppliers have compared the architectural, structural, mechanical, electrical, plumbing, civil and site drawings and specifications and have compared and reviewed all general and specific details on the drawings and that all patent conflicts, discrepancies, errors and omissions have been either corrected or clarified prior to execution of this Contract.

The use of the facility by the OWNER prior to the Work being fully performed or paid for does not constitute Substantial Completion or waiver by the OWNER to demand strict compliance with the Terms and Provisions of the Contract Documents.

Prior to beginning the Work, the CONTRACTOR shall obtain and furnish the OWNER the bonds and Insurance Policies and other such requirements as are required, which shall be procured from Agents authorized to do business in the State of Florida and in such form and amounts acceptable to the OWNER. If at any time the OWNER shall deem the surety or sureties to be unsatisfactory or if a bond is deemed inadequate by the OWNER, the CONTRACTOR shall, at no expense to the OWNER and within five (5) OWNER business days after receipt of written notice by the OWNER, furnish an additional bond or bonds in such form and amount and with a surety acceptable to the OWNER. The failure of the CONTRACTOR to furnish such bonds and insurance policies in a timely manner shall not delay the commencement of the Contract Time nor shall be a cause for an extension of the Contract Time and shall fully comply with Project Plans and Specifications.

The School Board of Palm Beach County, Florida encourages Contractors and Subcontractors to hire employees who are educated and skilled in their respective trades so as to ensure quality workmanship in connection with the Project. Such workmanship and quality should be of the highest standards in the industry or trade in which the Contractor, Subcontractor, and employee are employed.

## **5.2 LEGAL REQUIREMENTS**

It shall be the responsibility of the Bidder to be knowledgeable of all federal, state, county and local laws, ordinances, rules and regulations and Board Policies that in any manner affect the items covered herein. Specifically, the Bidder shall adhere to Board Policies 3.12 and 3.13 with respect to any criminal arrests and convictions, and is on notice that any employees failing the employee screening under Chapter 435, *Florida Statutes*, are precluded from performing services to the District. The Bidder's failure to comply with these requirements may, at the sole discretion of the Board, result in the immediate termination of the Contract. Lack of knowledge of these requirements will, in no way, constitute relief from this responsibility.

## **5.3 ACCESSIBILITY AND COOPERATION WITH THE INSPECTOR GENERAL AND STAFF**

Pursuant to School Board Policy 1.092, Awarded Bidder(s) agrees and understands that the School District's Office of Inspector General (IG) shall have immediate, complete, and unrestricted access to all financial and performance-related records, papers, books, documents, information, writings, drawings, graphs, photographs, processes, data or data compilations, computer hard drives, emails, instant messages, services, and property or equipment purchased in whole or in part with School Board funds ("Information and Records"). Awarded Bidder(s) shall furnish the Inspector General with all Information and Records requested for the purpose of conducting an investigation or audit, as well as provide the Inspector General with reasonable assistance in locating assets and obtaining Information and Records that are in the possession, custody, or control of Awarded Bidder(s) or its employees, agents, or Subcontractor.

Awarded Bidder(s) understands, acknowledges, and agrees to abide by applicable portions of School Board Policy 1.092. Such policy is located at: <https://www.boarddocs.com/>.

The IG may require a meeting with Awarded Bidder(s) when the investigation or audit relating to the Contract is near completion. Awarded Bidder(s) must agree to maintain the confidentiality of the preliminary/draft report and the information contained therein pursuant to section 119.0713(2), *Florida Statutes*, and shall enter into a written confidentiality agreement for the period until the investigation or audit is completed. Awarded Bidder(s)'s failure to enter such written confidentiality agreement shall be deemed to constitute Awarded Bidder(s)'s waiver of the opportunity to respond to the investigation or audit preliminary report, and the investigation or audit shall be completed without Awarded Bidder(s)'s response.

## **5.4 DEBARMENT**

The OWNER shall have the authority to debar a person/corporation for cause for consideration or award of future contracts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

## **5.5 COMMERCIAL NONDISCRIMINATION**

It is the policy of the School Board of Palm Beach County not to accept Bids from, nor to engage in business with, any business firm that has discriminated on the basis of race, gender, gender identity or expression, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.

## **5.6 ANTI-COLLUSION**

By submitting a Bid, the Bidder certifies that it has not divulged discussed or compared its Bid with other Bidders and has not colluded with any other Bidder or parties to a Bid whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of materials. Any such violation will result in the cancellation and/or return of materials (as applicable) and the removal of the Bidder from all Bid lists for the School Board of Palm Beach County, Florida.

## **5.7 CONTRACT DISCLOSURE REQUIREMENTS**

Upon the filing of a complaint against awarded CONTRACTOR pursuant to Palm Beach County School Board Policy 6.144 - Commercial Nondiscrimination, awarded CONTRACTOR agrees to provide any and all materials and documents requested by the OWNER and to fully cooperate in any investigation conducted by the OWNER pursuant to Policy 6.144. CONTRACTOR further understands and agrees that violation of this clause may be considered is a material breach of the Contract and may result in contract termination, debarment, and other sanctions.

## **5.8 PUBLIC RECORDS EXEMPTION**

For purposes of this paragraph, "competitive solicitation" means the process of requesting and receiving sealed Bids or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

Sealed Bids, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the agency provides notice of an intended decision or until 30 days after opening the Bids, or final replies, whichever is earlier.

If an agency rejects all Bids or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected Bids, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the agency provides notice of an intended decision concerning the reissued competitive solicitation. A Bid or reply is not exempt for longer than 12 months after the initial agency notice rejecting all Bids, Proposals, or replies.

## **5.9 EXEMPTION FROM PUBLIC DISCLOSURE**

**Upon receipt, all submittals become Public Records and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes.**

By submitting its Bid, Bidder understands and waives any claim of confidentiality, including Trade Secrets, to its pricing and/or cost of service related submittals.

Any firm that intends to assert that certain materials are exempt from public disclosure under Chapter 119, *Florida Statutes*, must submit the documents in a separate bound document or file labeled "Name of Firm, Attachment to Proposal Package, RFP#, Confidential Matter." In addition, the firm must identify the specific statute that authorizes the exemption from Chapter 119, *Florida Statutes*. CD or DVDs included in a submittal must also comply with this requirement and the firm must separate any CD or DVDs claimed to be confidential.

**Any claim of confidentiality on materials that the firm asserts to be exempt and placed elsewhere in the submittal will be considered waived by the firm upon submission, upon opening.**



The School District will provide Bidder with prompt notice by phone and/or email of any request for Public Records in which that Bidder has claimed an exemption information being a Trade Secret so that the Bidder may seek, at its sole expense, an appropriate protective order from a court of competent jurisdiction. In the event the Bidder elects not to seek an appropriate protective order or is unable to obtain such an order within no later than 10 business days following receipt of notice, the Bidder agrees and consents that the School District shall be permitted to respond to the Public Records Request with the response not being deemed a breach by the School Board of its obligations under the Contract or the *Florida Statutes* governing Trade Secret exemptions. The Bidder would then be waiving any rights relating to Trade Secrets under Florida law. Bidder agrees to defend, indemnify, and hold harmless the School District and School Board and the School District's officers, employees, School Board members, and agents, against any loss, damages, judgments, attorneys' fees or costs incurred by School Board as a result of the School District's providing the records in response to the Public Records Request or withholding them based on Bidder's assertion of the Trade Secret exemption.

The indemnification provisions survive the School Board's Award of the Contract and remain as long as the Trade Secret data is in the possession of the School Board.

#### **5.10 ASSIGNMENT OF CONTRACT AND/OR PAYMENT**

The Bidder shall not enter into subcontracts, or assign, transfer, convey, sublet, or otherwise dispose of the ensuing Contract, or any or all of its rights, title or interest herein, or its power to execute such Contract to any person, company, or corporation without prior written consent of the District. The Bidder will be prohibited from publishing or releasing any information related to the requested services without the prior written permission of the District. All reports and other documents resulting from the ensuing Contract will remain the sole property of the District.

**END OF SECTION**

## **SECTION 00850**

### **SPECIAL CONDITIONS**

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## **SECTION 00850**

### **SPECIAL CONDITIONS**

#### **ARTICLE 1**

#### **ENVIRONMENTAL CONCERNS**

##### **1.1 HAZARDOUS CHEMICALS**

The CONTRACTOR and their Subcontractor(s) shall submit a written inventory of all hazardous chemicals, pursuant to the U.S. Occupation Safety and Health Administration (OSHA) Hazard Communication Standard (HCS), Title 29 CFR Part 1910.12009(g) known to be used on this Project at Commencement of Award. Said list must be sent electronically to the Architect at least five (5) days prior to the commencement of construction, and for additional substance, prior to usage on site.

**Said notification shall contain the following:**

- 1)** The name of the substance to be used,
- 2)** Where the substance is to be used; and
- 3)** When the substance will be used.
- 4)** The CONTRACTOR must also attach to the notification a copy of all Safety Data Sheets (S.D.S.) as defined in the HCS, Title 29 CFR Part 1910.12009(g). for each hazardous chemical to be used.
- 5)** All hazardous chemicals must be labeled at all times as required by HCS.
- 6)** All flammable materials must be stores in an OSHA approved flammable storage cabinets.
- 7)** An emergency chemical spill kit along with emergency phone contact list must be kept by each chemical storage area.

##### **1.2 HAZARDOUS WASTE**

The CONTRACTOR and their Subcontractor(s) are responsible for the proper storage, handling and disposal of hazardous wastes as defined by the Resource Conservation and Recovery Act (RCRA), 40 CFR Part 261, Subpart C and Subpart D generated at a school site during construction or maintenance activities. The majority of District owned properties have an associated Environmental Protection Agency Hazardous Waste ID (EPA ID) Number which must be used when shipping hazardous waste offsite. Site specific numbers may be obtained through the Environmental & Conservation Services office (ECS). ECS must be notified of all types and amounts of hazardous waste prior to disposal from any District owned properties.

The Construction Manager must notify the Architect of their intent to generate, store and remove hazardous waste from a site. Any costs including, but not limited to, fines, disposal and clean up incurred by the OWNER to comply with the proper storage and disposal of hazardous waste shall be withheld from Final Payment to the CONTRACTOR.

### **1.3 UNIVERSAL WASTE**

The CONTRACTOR is responsible for the proper, storage, handling and disposal arrangements of Universal Waste as defined by 62-730.185 FAC and 62-37 FAC and Palm Beach County School District Bulletin "Recycling of Mercury Containing Devices and Lamps".

### **1.4 PETROLEUM**

Petroleum containers larger than 55 gallons, including, but not limited to, 55 gallon drums and portable storage tanks must be stored in impervious secondary containment capable of **containing 110% of the contents if stored outside and 100% if stored inside.**

### **1.5 SPILL PREVENTION AND RESPONSE**

**1.5.1** Hazardous chemicals, hazardous waste, petroleum and other hazardous materials may not be stored within 50 feet of a water body or storm-drain.

**1.5.2** Spill kits must be located in areas where hazardous chemicals, hazardous waste, petroleum and other hazardous materials are stored and designated employees must be trained in its use.

**1.5.3** Emergency numbers posted in chemical storage areas.

**1.5.4** All discharges to the environment on District owned property must be reported as soon as practical to ECS (561-684-5154) or School Police (561-434-8700). ECS is responsible for reporting all required spill notifications to regulatory authorities, not representatives of the Construction Company, nor their Subcontractor(s).

**1.5.5** All vendor employees handling and using hazardous chemicals and or petroleum products shall be familiar with procedures to contain and clean up any releases of the chemicals.

### **1.6 ASBESTOS**

**1.6.1** Any maintenance, construction, renovation, demolition, or other alteration of an educational facility and other ancillary facilities must be cleared through the School District's Environmental and Conservation Services Office (ECS) to preclude disturbance of asbestos-containing materials. Failure to obtain proper clearance will subject the CONTRACTOR to all expenses incurred in decontaminating the facility and such fines or penalties associated with the same.

**1.6.2** Neither the CONTRACTOR nor their Subcontractors shall use or substitute building materials which contain asbestos for any component of an educational facility. Contractors will be held liable for the cost of removing any asbestos-containing building materials (ACBM) and reinstallation of non-asbestos building materials should subsequent sampling of materials reveal the presence of more than one percent (1%) asbestos.

**1.6.3** The CONTRACTOR engaged in removal of bituminous resinous asbestos containing roofing materials (BRACRM) shall be either:

- a.** A "State of Florida Licensed Roofing Contractor" in accordance with Sections 455.301 - 455.309, *Florida Statutes*, and shall employ and have present on-site an English speaking supervisor who has attended a Roofing Supervisor course

and an Asbestos Worker course, during all BRACRM removal and related activities. These courses must be approved by the Asbestos Oversight Program Team or,

- b. A "State of Florida Licensed Asbestos Contractor" in accordance with Sections 455.301 - 455.309, *Florida Statutes*.

- 1.6.4 Copies of "Certificate of Attendance" of all on-site supervisors for Supervisor course and Asbestos Worker course in accordance with *Florida Statutes* 469.01 et seq. shall be submitted.

## **1.7 WELL-FIELD PROTECTION**

- 1.7.1 The Architect, the CONTRACTOR and their Subcontractor(s) are responsible for compliance with Palm Beach County, Unified Land Development Code, Article 14 when building in a wellfield zone.
- 1.7.2 The Architect is responsible for ensuring that chemical storage rooms, chiller yards, central receiving areas, generator rooms, cafeterias (cafeteriums) are not located within Zone 1 Wellfield areas. Any of these rooms located in Zones 2 or 3 must be equipped with secondary containment impervious to the chemicals being stored.
- 1.7.3 The CONTRACTOR and their Subcontractor(s) are responsible for assuring compliance with Palm Beach County's Wellfield Protection Ordinance's Best Management Practices for The Construction Industry (Palm Beach County, Unified Land Development Code, Article 14, Appendix 3) where applicable.
- 1.7.4 The CONTRACTOR shall be responsible for assuring that each Subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any regulated substances. For instance, handling regulated substances in the proximity of ground water, surface water or wetlands may be improper.
- 1.7.5 If any regulated substances are stored on the construction site during the construction process, they shall be stored in a location and manner, which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing regulated substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
- 1.7.6 Each CONTRACTOR shall familiarize himself with the **Material Safety Data Sheet (MSDS)** supplied with each material containing a regulated substance and shall be familiar with procedures required to contain and clean up any releases of the regulated substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
- 1.7.7 Upon completion of construction, all unused and waste regulated substances and containment systems shall be removed from the construction site by the responsible CONTRACTOR and shall be disposed of in a proper manner as prescribed by law.

**1.7.8** All new or replacement installation of sanitary sewer mains in Zone 1 or Zone 2 of a public drinking water wellfield shall be constructed to force main standards in compliance with Palm Beach County, Unified Land Development Code, Article 14.

## **1.8 LEAD - PLUMBING/PAINT**

All potable water plumbing fixtures, including faucets, valves, bubblers, water coolers, ice machines and related lines and solder, must be supplied with a manufacturer's certification that these materials do not contain lead. In the interest of protecting the students and staff, this is more restrictive than the EPA allowance of eight percent (8%) lead in plumbing fixtures.

All paints used in school facilities must not contain any A manufacturer's must be provided.

Any lead paint removal in the District must conform with all applicable guidelines as stated in: "Lead Based Paint Interim Guidelines for Hazardous Identification and Abatement in Public and Indian Housing", September 1990 and "Construction Standard for Lead Paint 29CFR1926.62".

## **1.9 USE OF TOXIC OR HAZARDOUS MATERIALS DURING OCCUPIED TIMES**

The CONTRACTOR shall not use any toxic or hazardous chemicals during occupied times that will expose PBC School District students and staff to any danger. This includes, but is not limited to the use of hot asphalt, paints, pesticides, adhesives, including plastic roofing cement, single-ply roofing adhesives, asphalt primer, sealants, solvents, gasoline and aluminum roofing coatings or glues. These products could be used if conditions preclude exposure to students and staff. The CONTRACTOR must take this into consideration when planning their work schedule around school operating hours as necessary.

## **1.10 MERCURY CONTAINING DEVICES BALLAST AND BATTERY MANAGEMENT**

### **1.10.1 REMODELING AND RENOVATIONS.**

Prior to remodeling or demolition, the number of lighting fixtures with fluorescent tubes and oil containing ballasts, thermostats, and switches requiring removal will be determined by the CONTRACTOR.

**1.10.2** The CONTRACTOR shall determine the appropriate number of empty crates for ballast storage and disposal prior to removal from the fixtures and notify ECS. ECS will deliver the containers and remove them when notified by the by the CONTRACTOR. Crates may only be filled halfway.

**1.10.3** The CONTRACTOR shall determine the appropriate number of cardboard boxes for fluorescent light bulb storage and disposal and request the amount from the current School District recycler prior to removal from the fixtures by the CONTRACTOR.

**1.10.4** The CONTRACTOR shall determine the appropriate number of crates for batteries from emergency lighting fixtures and other sources and request this amount from ECS. ECS will deliver the containers and remove them when notified by the Project Manager.

**1.10.5** All affected items shall be removed by CONTRACTOR. This shall occur before Project Commencement. The Project Manager will assure that CONTRACTOR conforms to Contract Specifications for safe handling, storing and/or disposing of any non-electronic ballasts mercury-containing device and batteries, coordinating the disposal

with ECS.

**1.10.6** The CONTRACTOR shall place all items (discussed above) in appropriate containers and will notify the Facility/Project Manager when finished. The light bulb Recycling CONTRACTOR will then be contacted by Project Manager for off-site recycling of the lightbulbs. Small quantities of less than ten fluorescent tube recycling boxes shall be stored on site to be picked up by ECS until a pick up can be arranged. Small quantities of mercury switches, mercury thermostats and non-electronic ballasts of less than one drum will be transported to the closest area maintenance location until a pick up by the District's recycler or disposal firm can be arranged.

**1.10.7** Facility/Project Manager will sign Shipping Statements from Recycling Contractor and forward the documents to ECS.

**1.11 RESTRICTION AGAINST CONSTRUCTION ACTIVITY WHICH GENERATES TOXIC OR HAZARDOUS MATERIALS DURING OCCUPIED SCHOOL HOURS**

The CONTRACTOR shall not perform any construction activity during occupied school hours which generates toxic or hazardous materials. Such activity includes, but is not limited to cutting, drilling, coring, removal, or other disturbance of existing materials which may contain, or which are known to contain fiberglass, lead, lead containing paint, coal tar pitch or asphalt.

**1.12 USE OF MATERIALS DURING OCCUPIED SCHOOL HOURS**

The use of materials and performance activities referenced under Paragraphs 1.9 and 1.11 shall be restricted to days/hours during which the school facility is unoccupied by students and staff. Refer to the calendar included in this Project Manual to determine the days/hours when the school facility will be unoccupied by students and staff.

At the discretion of the School District of Palm Beach County representatives, some of the restrictions referenced under Paragraphs 1.9 and 1.11 may be waived if conditions preclude exposure of students and staff.

**1.13 COORDINATION WITH LOCAL LAWS**

Nothing in this section shall act to alter the effect of restrictions imposed by local government zoning laws and ordinances. The CONTRACTOR and Architect shall be responsible to discover such local governmental zoning laws and ordinances, to restrict their construction activities in order to comply with same and to account for such restrictions of construction activities when planning this Work Schedule.

**1.14 CONTRACTOR EXTENSION OF TIME**

The CONTRACTOR shall not be entitled to any extension of the Contract Time for delays resulting from the restrictions.

**ARTICLE 2**

**SAFETY CONCERNS (RISK MANAGEMENT RESPONSIBILITY)**

**2.1 TRENCH SAFETY ACT (WHEN APPLICABLE)**

The CONTRACTOR shall comply with the Trench Safety Act, Chapters 90-96, *Florida Statutes*, and the Occupational Safety and Health Administration Standard 29 CFR 1926.650, subpart

P. The CONTRACTOR shall be required to design a Trench Safety System and provide the OWNER with the following information should trench excavation be in excess of five (5) feet.

**The Bid submitted by the CONTRACTOR to perform such excavation shall include:**

- 1) A reference to the trench safety standards that will be in effect during the period of construction of the Work.
- 2) Written assurance by the CONTRACTOR performing the trench excavation that such CONTRACTOR will comply with the applicable trench safety standards.
- 3) A separate item identifying the cost of compliance with the applicable trench safety standards.

**A Contractor performing trench excavation shall:**

- a) As a minimum, comply with the excavation safety standards which are applicable to the Work.
- b) Adhere to special shoring requirements, if any, of the State or other political subdivision which may be applicable to such Work.
- c) If any geotechnical information is available from the OWNER, the CONTRACTOR, or otherwise, the Contractor performing trench excavation shall consider this information in the CONTRACTOR'S design of the trench safety system which will be employed on the Work. This paragraph shall not require the OWNER to obtain geotechnical information.
- d) The separate item identifying the cost of compliance with Trench Safety standards shall be based on the linear feet or cubic yards of trench to be excavated. The separate item for special shoring requirements, if any, shall be based on the square feet of shoring used. Every separate item shall indicate the specific method of compliance as well as the cost of that method.
- e) The CONTRACTOR shall prepare a form containing the costs required and submit this form within five (5) OWNER business days.

**2.2 CODE OF FEDERAL REGULATIONS, LABOR-29 PART 1926 LATEST REVISION**

The CONTRACTOR shall adhere to all pertinent rules and regulations including, but not limited to, Code of Federal Regulation, Labor - 29, Part 1926, (Latest Revision).

**2.3 DECLARATION OF ALCOHOL AND DRUG FREE ZONE (RISK MANAGEMENT RESPONSIBILITY)**

Article 10.2 of the Contract requires the CONTRACTOR to take reasonable precautions for safety of the Work. To enhance the safety of the site, the CONTRACTOR shall prohibit all alcoholic beverages and drugs therefrom.

The CONTRACTOR shall post signage indicating that the Job Site is an "Alcohol and Drug Free Construction Site" and such acts are prohibited by the Contract with the OWNER.

**ARTICLE 3**



**SMALL BUSINESS ENTERPRISE (SBE)**  
**SUBCONTRACTOR PARTICIPATION (GOALS) REQUIREMENTS**

**3.1 POLICY**

It is the policy of the School District of Palm Beach County that Small Business Enterprises (SBE) have the maximum practical opportunity to participate in the competitive process of supplying goods and services to the District. To that end, the Palm Beach County School Board enacted Policy 6.144. They are incorporated in this solicitation. Compliance with the requirements shall result in a Bidder being deemed responsive. The provisions of 6.144 that are amended and are applicable to this solicitation shall have precedence in the event of any conflict as required by School Board Policy 6.144:

- a) The SBE Procedure Manual is incorporated by reference and the CONTRACTOR'S failure to comply with any of its requirements will be considered a Breach of Contract.
- b) The CONTRACTOR shall maintain and submit to the District all relevant records and information necessary to document compliance with Policy 6.144. The District has the right to inspect such records.
- c) Bidders, who meet the established Goals or exercise sufficient Good Faith Efforts to do so, as provided in Policy 6.144 and the SBE Procedures Manual, will be deemed to be responsive and responsible to SBE requirements. The Contract Award shall be made to the lowest responsive, responsible Bidder/Bidder meeting the SBE subcontracting Goals for the Contract/Project, when that Bidder's price does not exceed the lowest Bidder's price by an amount greater than the dollar or percentage amount set by the Goal Setting Committee per Policy 6.144(8) (a).

**3.2 DEFINITIONS**

The following terms shall have the listed meanings. These definitions shall not apply outside of this Section where inconsistent with those listed elsewhere in the Invitation to Bid Document.

**3.2.1 DIRECTOR OF OFFICE OF SMALL BUSINESS DEVELOPMENT (OSBD)**

The employee of the School Board of Palm Beach County responsible for the coordination, implementation, establishing procedures for monitoring and evaluating SBE program performance and Compliance.

**3.2.2 DIRECTOR OF PURCHASING DEPARTMENT**

The employee of the School Board of Palm Beach County, the School Board's designated Administrator of the Contract; responsible for the purchase of commodities and contractual services for the District in compliance with *Florida Statutes*, State Board of Education Rules, and Board Policy.

**3.2.3 GOAL SETTING COMMITTEE**

A Committee established under the auspices of the Office of Small Business Development (OSBD) with the responsibility of reviewing the Contract Bid and ITB documents and determining the appropriate type and scope of industry specific remedial programs to be applied to the Contract. This Committee is comprised of professional and senior-level representatives from the following departments of the School District:

- a) Department of Purchasing

- b) Office of Small Business Development
- c) Department of Facilities Management
- d) Department of the General Counsel

#### **3.2.4 PROJECT MANAGER**

An employee of the School Board of Palm Beach County assigned to this project.

#### **3.2.5 SMALL BUSINESS ENTERPRISES (SBE)**

Any business firm that is Certified by the District's Office of Small Business Development (OSBD) at the time the of Bid submittal as having an average annual gross sales and an average number of full-time employees over the last three (3) years that are less than 50% of the small business size standards as most recently defined by the U.S. Small Business Administration for the business firm's relevant industry. In addition, such Certified SBE firm must have received less than \$15,000,000 in contract payments from District Projects or Contracts in the fiscal year preceding this Bid. Certified SBE firms must also be domiciled in Tri-County Florida which consists of Palm Beach County, Broward County and Miami-Dade County.

#### **3.2.6 SUBCONSULTANT**

A person or entity who has a direct contract with the Prime Bidder to perform a portion of the Work.

### **3.3 GOOD FAITH EFFORTS AND COMPLIANCE**

Compliance and Good Faith Efforts-Contractors submitting Bids to provide goods and services to the District shall exercise good-faith efforts to comply with the Participation Goals for the contract as established under this program. Any act or omission by the District shall not relieve the CONTRACTOR of this responsibility. The District reserves the right to reject any Bid deemed non-responsive for failing to meet these requirements (and the Board also reserves the right to reject any Bids from Bidders who have previously failed to perform properly under a contract with the Board, whether by omission or by commission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty).

- a) Bidders shall provide the District with all documentation required in the Invitation to Bid or ITB regarding SBE participation and Good Faith Efforts. The documents shall include a list of all Subcontractors, including Certified SBE Subcontractors, who will be used on the Contract.
- b) The CONTRACTOR'S Bid must include evidence of Good Faith Efforts to achieve the Established Project Goal. The District shall consider, at a minimum, the following criteria in determining Good Faith Efforts (although this list is not intended to be exclusive or exhaustive, and the District will look not only at the different kinds of efforts the CONTRACTOR has made, but also at the quality, quantity, intensity, and timeliness of those efforts):
  - 1) attendance at the Pre-Bid conference, if held;
  - 2) the Specific Work the CONTRACTOR intended to subcontract;
  - 3) whether and when the CONTRACTOR provided written notice to all Certified SBEs listed as District SBEs who perform the type of Work to be subcontracted,

and their level of interest in the Contract and obtaining information for the review and inspection of Contract Plans and Specifications;

- 4)** whether the CONTRACTOR selected feasible portions of Work to be performed by SBEs including, where appropriate, de-bundling contracts or combining elements of Work into feasible units (the ability of the CONTRACTOR to perform the Work with its own workforce will not in itself excuse a CONTRACTOR from making positive efforts to meet Contract Goals);
- 5)** whether the CONTRACTOR has utilized SBE Subcontractors on other District Contracts within the past six months;
- 6)** whether the CONTRACTOR advertised in general circulation, trade association, and/or small-business-focused media concerning the subcontracting opportunities;
- 7)** whether the CONTRACTOR followed up initial solicitations of interest by contacting SBE to determine with certainty whether the SBEs were interested;
- 8)** whether the CONTRACTOR provided interested SBE's assistance in reviewing the Contract plans and specifications;
- 9)** whether the CONTRACTOR offered to assist interested SBE firms in obtaining required bonding, lines of credit, or insurance if such assistance was necessary;
- 10)** whether the CONTRACTOR effectively used the services of available local, state, and federal SBE assistance offices, and other organizations that provide assistance in the recruitment and placement of SBEs;
- 11)** whether the Prime CONTRACTOR or vendor is actively participating in a mentoring program, which will contribute to the development of SBE CONTRACTOR'S or vendors;
- 12)** whether the CONTRACTOR considered all quotes received from SBEs (and the CONTRACTOR shall provide an explanation of why the SBE quotes were not accepted for use in the Contract. Receipt of a lower quote from a non-SBE or non-SBE will not in itself excuse a CONTRACTOR from making positive efforts to meet Contract Goals);
- 13)** whether the CONTRACTOR negotiated in Good Faith with interested SBEs, not rejecting SBEs as unqualified without sound reasons based on a thorough investigation of their capabilities; and
- 14)** whether the CONTRACTOR'S efforts were merely pro forma and, given all relevant circumstances, could not reasonably be expected to provide sufficient SBE Participation to meet the Goals.
- 15)** The department responsible for letting the Contract shall forward the Contract Documents relative to SBE participation to the OSBD within the time prescribed in the document, which time shall not exceed 31 business days after Bid opening and must be prior to Commencement of the Contract/Project.
- 16)** If an SBE Subcontractor listed in CONTRACTOR'S Bid becomes decertified after submission of Bids, but prior to the Award of the Contract, the OSBD shall

require the CONTRACTOR to attain the SBE Goal with another Certified SBE within a specific reasonable time frame.

- 17)** If an SBE Subcontractor for any reason no longer remains associated with the Contract after Award of the Contract, that SBE shall be replaced with another Certified SBE unless OSBD grants written approval to the contrary.

**18) B2GNow COMPLIANCE REPORTING SYSTEM**

The SCHOOL BOARD maintains an electronic contract compliance system known as the B2GNow Compliance Reporting System. The B2GNow Reporting System replaces the SCHOOL BOARD'S Professional and Construction Services Utilization report, Form **PBSD 1528** and Partial Release of Claims and Waiver of Lien and/or Verification of Payment, Form **PBSD 1620**. Paper copies of Form **PBSD 1528** and Form **PBSD 1620** will not be accepted. This Contract is subject to compliance tracking and CONTRACTOR shall use the B2GNow secure web-based system to submit Project Specific information including, but not limited to, monthly payments and progress reports on all Subconsultants and Subcontractors.

CONTRACTOR understands that all Subconsultants and/or Subcontractors are also required to utilize the B2GNow Reporting System to manage their contact information and Project Specific records, respond to any noted instructions and/or information requests. CONTRACTOR agrees to advise all of its Subconsultants and/or Subcontractors in writing of the requirement to submit all Contract compliance-related data electronically to the B2GNow Reporting System. CONTRACTOR further agrees and understands it is responsible for ensuring all Subconsultants and/or Subcontractors have uploaded all requested items via the B2GNow Reporting System.

CONTRACTOR understands its contact information and that of its Subconsultants and/or Subcontractor must remain accurate and up-to-date in the B2GNow Reporting System and agrees to timely notify SCHOOL BOARD of any changes to its contact information or that of a Subconsultant and/or Subcontractor. From time to time, the SCHOOL BOARD may require additional information from the CONTRACTOR and/or its Subconsultants/Subcontractors and CONTRACTOR agrees that it will provide such information, within five (5) business days via the B2GNow Reporting System. CONTRACTOR understands its obligations hereunder are continuing and shall survive the expiration or termination of the Contract.

Information concerning access of the B2GNow Reporting System will be provided to CONTRACTOR by the Office of Small Business Development. The B2GNow Reporting System is web-based and can be accessed at the following Internet address: <https://www.palmbeachschools.org/doing-business-with-the-district/small-business>. The CONTRACTOR shall contact the Office of Small Business Development to register for training and support for the B2GNow Reporting System. CONTRACTOR agrees to advise all of its Subconsultants and/or Subcontractors in writing of their obligation to contact the Office of Small Business Development to register for training and support for the B2GNow Reporting System. For information request and questions, contact the Office of Small Business Development (561-681-2403).

**3.4 RECOMMENDATIONS FOR MEETING GOALS**

Meeting the Goal or making Good Faith Efforts to do so is a condition of being Awarded this Contract. The listing of a SBE Subcontractor by a CONTRACTOR shall constitute a representation by the CONTRACTOR that such entity is qualified, willing and available, and a commitment by the CONTRACTOR that, upon Board approval of the Amendment of the Contract, he/she will enter into subcontracts in an amount as set forth in the SBE Subconsultant/Subcontractor & Vendor Participation Services Form **PBSD 1526 (Attachment G)**, subject to the terms of the Contract Documents.

### **3.5 COUNTING SBE SUBCONTRACTOR PARTICIPATION TOWARD CONTRACT GOAL**

**SBE Subconsultant participation shall be counted toward meeting the Goal as follows:**

- 1)** Once the School Board of Palm Beach County, Florida has determined a firm to be an eligible SBE Subconsultant, the Total Dollar Value of the Contract Awarded to the SBE Subconsultant is counted toward the Goal, except as limited by paragraph (2) through (4), below.
- 2)** The School Board of Palm Beach County, Florida will count toward the Goal a portion of the Total Dollar Value of a Contract with a Joint Venture equal to the percentage of the ownership and control of the SBE Subconsultant partner in the Joint Venture.
- 3)** The School Board of Palm Beach County, Florida shall count toward the Goal only expenditures to SBE Subconsultants that perform a useful function when he is responsible for execution of a distinct element of Work of a Contract and carrying out his responsibilities by actually performing and supervising the Work involved.
- 4)** Consistent with normal industry practices, an SBE Subconsultant may enter into subcontracts. If such an entity subcontracts a significantly greater portion of the Work of the Contract than would be expected on the basis of normal industry practices to non-SBE Subconsultants, the entity shall be presumed not to be acceptable as an SBE Subconsultant.

### **3.6 RESPONSIBILITIES AFTER CONTRACT AWARD**

**3.6.1** All Contractors hereby assure that they will meet the SBE participation percentages submitted in their respective Bids with the Subconsultants and Subcontractors on Form **PBSD 1526 (Attachment G)** and at the dollar values specified. CONTRACTOR agrees to provide any additional information requested by the District to substantiate SBE participation.

**3.6.2** Form **PBSD 1621** Final Release and Verification of Payment (**Attachment H**) including retainage, shall be provided prior to the District's payment to the CONTRACTOR of final retainage. The Final Release and Verification of Payment Form **PBSD 1621 (Attachment H)** is to be executed by the SBE firm to verify receipt of payment. This form must reflect the current payment information. Failure to provide accurate information shall delay payment. A sample report and the instruction submittal will be available to the CONTRACTOR at the Preconstruction Conference or from the Office of Small Business Development. The application for payment **will not** be processed without Form **PBSD 1621 (Attachment H)**.

### **3.7 INDUSTRY-SPECIFIC REMEDIAL REQUIREMENTS**

Bidders who list Subcontractors as participants in their Bids will complete the SBE Participation Letter of Intent Form **PBSD 1525 (Attachment F)** and SBE Subconsultant/Subcontractor & Vendor Participation Services Form **PBSD 1526 (Attachment G)**. Form **PBSD 1526 (Attachment G)**.

### **INDUSTRY SPECIFIC CLASSIFICATIONS**

To ensure compliance with program guidelines and intent, Bidders, Bidders will receive SBE preference **ONLY** if their SBE classification is consistent with, and meets the standards identified in the Industry Specific Classifications and thresholds contained in School Board Policy 6.144 and the Office of Small Business Development' Procedures Manual.

#### **THE INDUSTRY SPECIFIC CLASSIFICATION FOR THIS SOLICITATION IS:**

- **Construction Services - Small Business Enterprises**

#### **Revenue/Sales Size Standards for Industry Specific Classifications:**

Any firm that has exceeded gross sales or revenues (averaged over the last three (3) years) greater than the amounts below shall not be considered eligible to participate in the School District's SBE program.

- **\$13,000,000 for Construction Services**

**The Small Business Development Committee has determined that the following Terms and Conditions of SBE industry-specific remedial programs shall apply to this ITB and resulting contract:**

Based upon availability analysis of current data collected from registered vendors of the School District, the proportion of all construction services firms that are Certified SBEs, as defined in Paragraph 4.7 herein, and that are ready, willing, and able to perform the type of Work required to be performed under this Contract is estimated to be **15%**. This percentage represents the SBE Subcontractor Participation Goal for this Contract.

### **SBE PREFERENCE – SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION**

There is a **five percent (5%)** Bid Preference for this Project. Pursuant to Board Policy 6.144, Award Recommendations shall make appropriate adjustments to pricing when considering solicitations from a State of Florida or District Certified Small Business Enterprise (SBE) if the Bid price does not exceed the lowest Bidder's price by an amount greater than **\$50,000 or five percent (5%)**, whichever is less. In instances where the Certified SBEs price difference is greater than **\$50,000 or five percent (5%)**, the lowest responsive, responsible Bidder will be Awarded the Contract and the Goals shall be deemed waived. The requirements to qualify for the SBE are to be Certified either by the State of Florida or the School District of Palm Beach County. The District does not recognize any other certifications. Graduation (as described in Board Policy 6.144) from the District SBE Certification Program shall void certification by the State of Florida, if a vendor has exceeded the revenue/sales size standards for their industry specific classification for the previous three (3) year period. **See Article 3, SBE GOAL, SMALL BUSINESS ENTERPRISE, for complete detail.** For District certification go to <https://www.palmbeachschools.org/doing-business-with-the-district/small-business> website and complete the SBE Certification Application.

### **CONTRACT GOAL**

The stated Goal is to have **15%** of the Work under the Contract performed by qualified **SMALL BUSINESS ENTERPRISE (SBE)** Subcontractors. This established Contract Goal shall include all Addendums and Contract modifications.

All determinations of compliance or non-compliance of the Bidder with the requirements of this Provision, and of the appropriate consequences of noncompliance, shall be made by the School Board of Palm Beach County, Florida, as provided herein. All such determinations shall be final and binding.

### **SBE BIDDERS**

A Bidder who is an SBE Certified Bidder may, subject to compliance with the applicable requirements, achieve the stated Goal by performing with his own forces work with a value equal to the percentage Goal.

#### **Unavailable - An SBE Subcontractor is unavailable to do Specific Work if:**

- a) He/She has been "timely" informed of the terms and specifications of the Contract and declines to submit needed to intelligently formulate a Bid to do such Work or to decline an opportunity to do so, but Timely informed is defined as being informed with sufficient time and information to formulate and submit a realistic Bid. Bidders should document Contract Times and Dates.
- b) He/She does not intend, or is unable to make a Bid because of lack of interest, inability to meet the reasonable and ordinary demands connected with doing such Work, unwillingness inability to meet the specifications for such Work, unwillingness inability to work on this Project or in this geographic area or such other reason as is determined by the School Board of Palm Beach County to be sufficient.

### **3.8 BID REQUIREMENTS AND PROCEDURES PRIOR TO CONTRACT AWARD**

**Pre-Award Submittals** - As a condition of Contract Award, the Bidder shall submit to the OWNER the following documents (**utilizing copies of OWNER provided standard forms**) concerning SBE Bidder and Subcontractor participation in the Contract:

- 1) **Letter of Intent – SBE Subcontractor Participation** – A letter, to the Bidder from each prospective Certified SBE Subcontractor that has agreed to participate in the Project, stating Trade Items, and dollar amounts (**PBSD 1525**). **Each Form PBSD 1525 must be notarized.**
- 2) **Summary – SBE Subcontractors Participating** - Wherein all Subcontractors are listed, together with their Contract (Trade) Items, and subcontract dollar value amounts. The total SBE subcontract dollar value amount is compared to the Total Bid amount (Base Bid and accepted Alternates, if any) as a percentage (%), which should equal or exceed the Contract stated Contract Goal.
- 3) **Unavailability Certification – SBE Subcontractor Participation** - If the Bidder is unable to obtain adequate SBE Subcontractor Participation to meet the Contract Goal, he/she should request execution of Form **PBSD 1629**, Good Faith Efforts Noncompliance Supplement for each SBE Subcontractor he/she has solicited, but who cannot participate for reasons of their own. This is necessary to show Good Faith Effort on the Bidder's part to meet the Contract Goal. The Director of the Office of Small Business Development must review and approve this document.

**Failure to submit the requested forms within the allotted time will render a Bid non-responsive.**

### **3.9 GOOD FAITH EFFORTS NON-COMPLIANCE SUPPLEMENT**

If the Bidder is unable to obtain adequate SBE Subcontractor Participation to meet the Contract Goal, he/she shall request execution of Form **PBSD 1629**, Good Faith Efforts Noncompliance Supplement, and Form **PBSD 1527**, Subcontractor Participation Good Faith Effort, for each SBE Subcontractor he/she has solicited, but who cannot participate for reasons of their own. This is necessary to show Good Faith Effort on the Bidder's part to meet the Contract Goal.

If the information submitted in response to the previous paragraph demonstrates a Bidder does not meet the SBE Subcontractor Goal, the Bidder shall submit information sufficient to satisfy the School Board of Palm Beach County, Florida that the Bidder has made Good Faith Efforts. In order for the Board to approve the proposed Bid submitted by the Bidder if it has failed to meet the SBE Subcontracting Goal, the School Board of Palm Beach County, Florida must determine that the Bidder's efforts were those that a reasonable Bidder actively and aggressively seeking the Goal would make given all relevant circumstances.

In making the required judgment, the School Board of Palm Beach County, Florida may consider the kinds of efforts listed in the paragraph below and the Bidder's past history of meeting or exceeding the Goals. The Palm Beach County School Board, Florida reserves the right to deny Award of a Contract to any firm that violates its policy or fails to make a Good Faith Effort in attempting to comply.

### **3.10 RECOMMENDATIONS FOR MEETING PARTICIPATION REQUIREMENTS**

In determining whether or not a Bidder has made Good Faith Efforts the School Board Palm Beach County, Florida will look not only at the different kinds of efforts that a Bidder made, but also the quantity and intensity of these efforts. The School Board of Palm Beach County, Florida does not insist the Bidder do any one or any particular combination of things on the list, nor is the list exclusive or exhaustive. Other factors or type of efforts may be relevant in appropriate cases.

### **3.11 GOOD FAITH EFFORTS ARE AS FOLLOWS**

- 1)** The Bidder attended all Pre-Bid meetings as advertised and scheduled by the School Board of Palm Beach County, Florida to inform SBE Subcontractors of subcontracting opportunities;
- 2)** The Bidder provided written notice (return receipts for certified mail, facsimile transmission records, etc.) that at least three-quarters (3/4) of the Certified SBE Subcontractors (applicable to this Project) were contacted in sufficient time to allow them to participate effectively. The list is available through the School District of Palm Beach County's, Director of the Office of Small Business Development.
- 3)** The Bidder, in order to increase the likelihood of meeting the Contract Goal, selected portions of the Work to be performed by SBE Subcontractors that could be separated into economically feasible units to facilitate SBE Subcontractor participation;
- 4)** The Bidder provided interested SBE Subcontractors with adequate information about the plans, specifications and requirements of the Contract;



- 5) The Bidder negotiated in Good Faith with interested SBE Subcontractors, not rejecting SBE Subcontractors as unqualified without reasons based on a thorough knowledge of their capabilities;
  - 6) The Bidder contacted the Office of Small Business Development for direct referral of Certified SBE Subcontractors;
  - 7) The Bidder maintained records listing name, address, type of trade, and described results of contact with each SBE Subcontractor with regard to each prospective contract opportunity;
  - 8) The Bidder notified the Office of Small Business Development whenever he could not successfully locate qualified SBE Subcontractors;
  - 9) The Bidder engaged in specific and continuing personal recruitment efforts directed at Small Business Organizations.
  - 10) The Bidder has visited the School Board's internet website at <https://www.palmbeachschools.org/doing-business-with-the-district/small-business>
- 3.11.1** Meeting the Goal or making Good Faith Efforts to do so is a requirement of being Awarded this Contract.
- 3.11.2** Unless otherwise approved by the School Board of Palm Beach County, Florida, the listing of a SBE Subcontractor by a Bidder shall constitute a representation by the Bidder that such entity is qualified and available, and a commitment by the Bidder that, if Awarded the Contract, the Bidder will enter into a subcontract in an amount as set forth in its submittal, subject to the terms of the Contract Documents.

### **3.12 COUNTING SBE SUBCONTRACTOR PARTICIPATION TOWARD CONTRACT GOAL**

**SBE Subcontractor participation shall be counted toward meeting the Goal as follows:**

- 1) Once the School Board of Palm Beach County, Florida has determined a firm to be an eligible SBE Subcontractor, the Total Dollar Value of the Contract Awarded to the SBE Subcontractor is counted toward the Goal, except as limited by paragraph (2) through (4), below.
- 2) The School Board of Palm Beach County, Florida will count toward the Goal a portion of the Total Dollar Value of a Contract with a Joint Venture equal to the percentage of the ownership and control of the SBE Subcontractor partner in the Joint Venture.
- 3) The School Board of Palm Beach County, Florida shall count toward the Goal only expenditures to SBE Subcontractors that perform a useful function when he is responsible for execution of a distinct element of Work of a Contract and carrying out his responsibilities by actually performing and supervising the Work involved.
- 4) Consistent with normal industry practices, an SBE Subcontractor may enter into subcontracts. If such an entity subcontracts a significantly greater portion of the Work of the contract than would be expected on the basis of normal industry practices to non-SBE Subcontractors, the entity shall be presumed not to be acceptable as a SBE Subcontractor.

### **3.13 RECOMMENDATION OF AWARD**

**The following requirements must be accomplished for a Recommendation of Award:**

- 1. Pre-Conciliation Conference** - If the Director of Office of Small Business Development and Director of The Purchasing Department questions the acceptability of the Bidders SBE Subcontractor submittals, the Bidder shall, upon at least five (5) calendar day(s) notice given by the Director of Office of Small Business Development, meet with the Director of Office of Small Business Development and the Director of the Purchasing Department to present information and arguments pertinent to his compliance with the applicable requirements.
- 2.** Not later than 10 calendar days after this initial meeting with the Bidder, the Director of Office of Small Business Development and the Director of the Purchasing Department-Construction shall make a written recommendation to the Deputy Chief of Facilities Management as to the acceptability of the SBE Subcontractor involved which shall include a statement of the facts and reasons upon which it is based.
  - a.** If the Director of Office of Small Business Development and the Director of the Purchasing Department cannot Recommend Award, they will have examined the submittal of the second place Bidder or other Bidders in order of Bid standing who have requested to remain in competition by submitting the required SBE data as defined in Paragraph 3.2, and will present the comparison to the Executive Director Facility Management Services for mutual recommendation to the Board for Award or rejection of all Bids.
  - b.** If the Recommendation is for Award, and the Deputy Chief of Facilities Management is in agreement, a Recommendation for Award will be made immediately to the School Board of Palm Beach County, Florida and posted as described in another section of these documents.

### **3.14 AWARD OF CONTRACT**

Provided the Bidder has submitted completed forms and information required by this Article of the Special Conditions and his Bid is otherwise responsive to the solicitation, the School Board of Palm Beach County may Award the Contract to the Bidder who submits sufficient information to the School Board of Palm Beach County that it has met the Contract Goal or has made Good Faith Efforts to meet the Goal.

## **ARTICLE 4**

### **4.1 BUILDING ENERGY MANAGEMENT SYSTEM EQUIPMENT**

The General CONTRACTOR shall take possession of, sign for, and store at the jobsite all energy management equipment purchased by the School District of Palm Beach County until it is ready for installation by the authorized installing Contractor or Mechanical Contractor. The General CONTRACTOR is responsible for the safety of this equipment until the OWNER accepts the building.

**END OF SECTION**

## **SECTION 00510**

### **CONTRACT BETWEEN OWNER AND CONTRACTOR**

**THIS CONTRACT made this TBD day of TBD, 20XX**

Between **THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**, A body corporate, hereinafter referred as "OWNER" and **TBD**, a **TBD corporation** authorized to transact business in Florida, located at **TBD**, hereinafter referred as "CONTRACTOR."

**IN CONSIDERATION** of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

**PROJECT NAME: HOPE CENTENNIAL ELEMENTARY SCHOOL PARKING EXPANSION**  
**ADDRESS: 5350 STACY ST.**  
**WEST PALM BEACH, FL 33417**  
**ITB NO.: 26-58Q**  
**PROJECT NO.: 0012-2402**

### **ARTICLE 1**

#### **CONTRACT DOCUMENTS & DEFINITIONS**

##### **1.1 CONTRACT DOCUMENTS**

The Contract Documents consist of the Contents of the Published Invitation to Bid including, but not limited to, the OWNER-CONTRACTOR Contract, General Conditions and Special Conditions, Performance and Payment Bonds, Notice to Proceed, all Exhibits and Appendices submitted with the CONTRACTOR'S Bid in response to the Invitation to Bid Document, documentation submitted by the CONTRACTOR prior to Notice to Proceed, the documentation submitted by CONTRACTOR following Notice to Proceed, Preliminary and Final Drawings, the Project Manual, all Addenda issued prior to the Bid submission deadline, all Modifications issued after, all applicable School Board Policies, School Board approved Educational Specifications, State Requirements For Educational Facilities (SREF) 2014, Florida Administrative Code (FAC), Florida Building Code (FBC) and all other applicable specifications in effect at the time of the execution of this Contract, as well as any changes to SREF, FAC and FBC during the term of this Contract. These form the Contract, and all are fully a part of the Contract as if attached to this OWNER-CONTRACTOR Contract or repeated herein.

##### **1.2 DEFINITIONS**

###### **1.2.1 ARCHITECT**

The firm(s) designated by the OWNER to provide professional design services related to the Project described herein.

###### **1.2.2 CONTRACTOR**

The firm designated by the OWNER to provide all Work required by the Contract Documents described herein.

###### **1.2.3 DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, they generally include plans, elevations, sections, details, schedules and

diagrams. The OWNER reserves the exclusive right of refusal or acceptance as they are developed for the Project.

**1.2.4 MODIFICATION TO THE CONTRACT DOCUMENTS**

A Modification to the Contract Document is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Constructive Change Directive, (4) a written interpretation issued by the OWNER, (5) a written order for a minor change in the Work issued by the OWNER.

**1.2.5 OWNER**

The entity that will occupy, use and own the Project upon Substantial Completion is the School District of Palm Beach County. The funds which compensate the Architects, Engineers, Contractor, Construction Managers, etc. are under the sole control of the School District of Palm Beach County.

**1.2.6 OWNER'S AUTHORIZED REPRESENTATIVE**

The OWNER'S Director of Facilities, Senior Projects Administrator or the Director of Facilities' designee who is fully acquainted with the Project.

**1.2.7 PERMITTING AUTHORITY**

The School Board of Palm Beach County.

**1.2.8 PHASE**

A clearly defined Subset of Work isolated for the purpose of expediting the entire Project to completion. The sum of all Phases is equal to the Scope of Work of the Project.

**1.2.9 PROJECT**

The Project is the total Work performed under the Contract Documents.

**1.3.0 PROJECT MANUAL**

The Project Manual is the volume usually assembled for the Work which includes the Material Specifications and Design Documents.

**1.3.1 SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship and performance related services for the Work. Unless otherwise provided, all Specifications in effect on the date of Contract Award shall be utilized for completion of the Work.

**1.3.2 SUBCONTRACTOR**

A person or organization who has a direct Contract with the CONTRACTOR to perform any of the Work at the Site. Nothing contained in the Contract Documents shall create any Contractual relationship between the OWNER and any Subcontractor.

**1.3.3 SUB-SUBCONTRACTOR**

A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the Site. The term "Sub-Subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender and means a Sub-Subcontractor or an authorized representative thereof.

**1.3.4 THE WORK**

The services required by the Contract Documents, whether completed or partially

completed and includes all other labor, materials, equipment and services provided or to be provided by the CONTRACTOR to fulfill the CONTRACTOR'S obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 2**

### **SCOPE OF WORK**

- 2.1** The Scope of Work for this Contract shall incorporate all requirements set forth in the Permitted Design, District Master Specifications, Florida Building Code, Florida Accessibility Code, Florida Fire Prevention Code, NEC and NFPA requirements and all other applicable specifications. The Scope of Work for this Contract is to perform all Work necessary to deliver a completed Project in accordance with the requirements and specification established by the OWNER for: **HOPE CENTENNIAL ELEMENTARY SCHOOL PARKING EXPANSION.**

## **ARTICLE 3**

### **OWNER'S RESPONSIBILITIES**

#### **3.1 ADMINISTRATION OF THE CONTRACT**

The OWNER'S Authorized Representative will provide administration of the Contract as hereinafter described. The OWNER'S instructions to the CONTRACTOR shall be forwarded through the OWNER'S appointed designee. The OWNER'S Authorized Representative will have authority to act on behalf of the OWNER only to the extent provided in the Contract Documents, unless otherwise modified by written instrument.

- 3.1.1** The OWNER'S Authorized Representative will visit the Site at intervals appropriate to the stage of construction to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The CONTRACTOR shall keep the OWNER informed of the progress of the Work by providing a written monthly report.
- 3.1.2** The OWNER'S Authorized Representative will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures or for safety precautions and programs, in connection with the Work, and it will not be responsible for the CONTRACTOR'S failure to carry out the Work in accordance with Contract Documents. The OWNER'S designee will not be responsible for or have control or charge over acts or omissions of the CONTRACTOR, Subcontractor, or any of their owners or employees, or any other persons performing any of the Work.
- 3.1.3** The OWNER'S Authorized Representative shall at all times have access to the Work wherever it is in preparation and progress. The CONTRACTOR shall provide facilities for such access so that the OWNER'S Authorized Representative may perform his function under the Contract Documents.
- 3.1.4** Based on the OWNER'S Authorized Representative observation and an evaluation of the CONTRACTOR'S Application for Payment, the OWNER will recommend the amounts owing to the CONTRACTOR and will issue Certificate for Payment in such amounts, as provided in the Contract Documents.
- 3.1.5** The OWNER'S Authorized Representative will be the interpreter of the requirements of the Contract Documents. The OWNER'S Authorized Representative will render

interpretation necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon.

- 3.1.6** If the OWNER'S Authorized Representative cannot resolve any claims, disputes and other matters in question between the CONTRACTOR and the OWNER relating to the execution or progress of the Work or the interpretation of the Contract Documents, then such matter shall be referred to the Director of Facilities Management for decision which he will render in writing within a reasonable time. All interpretations and decisions of the OWNER'S Authorized Representative shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. The OWNER'S Authorized Representative will have the authority to reject Work which does not conform to the Contract Documents. Whenever, in their opinion the OWNER'S Authorized Representative considers it necessary or advisable for the implementation of the intent of the Contract Documents the designee will have authority to require special inspection or testing of the Work in accordance with the Contract Documents whether or not such Work be then fabricated, installed or completed.
- 3.1.7** The OWNER'S Authorized Representative will prepare Change Order Requests in accordance with the Contract Documents and will further have authority to order minor changes in the Work as provided in the Contract Documents.
- 3.1.8** The OWNER'S Authorized Representative will conduct inspections with the CONTRACTOR'S design team leader to determine the date of Substantial Completion, will receive written warranties and related documents required by the Contract Documents and assembled by the CONTRACTOR. The OWNER shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the Site of the Project and a legal description of the Site.
- 3.1.9** Information or services under the OWNER'S control shall be furnished by the OWNER to the CONTRACTOR with reasonable promptness to avoid delay in the orderly progress of the Work.

## **ARTICLE 4**

### **CONTRACTOR'S SERVICES**

#### **4.1 SUPERVISION AND CONSTRUCTION PROCEDURES**

The CONTRACTOR shall supervise and direct the Work, using its best skill and attention. CONTRACTOR shall be solely responsible for all design and all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents provide specific instructions concerning specific matters.

- 4.1.1** The CONTRACTOR shall be responsible to the OWNER for the acts and omissions of its employees, Subcontractors and their owners and employees and any other persons performing any of the Work under a Contract with the CONTRACTOR.
- 4.1.2** The CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the OWNER at once.

- 4.1.3** The CONTRACTOR shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to this Contract.
- 4.1.4** The CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the OWNER or in the OWNER'S Appointed Architect's administration of the Contract, or by test, inspections or approvals required or performed by persons other than the CONTRACTOR.
- 4.1.5** The CONTRACTOR shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent work.

## **4.2 LABOR AND MATERIALS**

Unless otherwise specifically provided in the Contract Documents, the CONTRACTOR shall provide and pay for all design, architectural, engineering, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- 4.2.1** The CONTRACTOR shall provide to the OWNER for approval a written statement setting forth the portion of the Work it shall provide. Once approved, no changes shall be made to this written statement without prior written approval of the OWNER.
- 4.2.2** CONTRACTOR shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
- 4.2.3** CONTRACTOR agrees and understands that any iron or steel permanently incorporated in the Project must be produced in the United States as required by Section 255.0993, Fla. Stat.

In the event that CONTRACTOR desires use any product made primarily of iron or steel in the Project which is **not** produced in the United States, CONTRACTOR must notify the SCHOOL BOARD prior to the purchase so that the SCHOOL BOARD can ascertain whether said deviation is permissible under Section 255.0993(2)(b), Fla. Stat.

## **4.3 WARRANTY**

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents.

- 4.3.1** All Work not conforming to these requirements including substitutions not properly approved and authorized may be considered defective. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 4.3.2** In the event of a failure or breakdown of equipment which is still under warranty by CONTRACTOR and where such failure or breakdown impacts the operation of a school facility or building, CONTRACTOR agrees that OWNER'S personnel may make all repairs without effecting the warranty provided by CONTRACTOR under the terms of this

Contract. Further, where the CONTRACTOR'S response to such a failure or breakdown creates and/or contributes to any impairment to the operation of a school facility or building, CONTRACTOR agrees that OWNER'S personnel may make all repairs without effecting the warranty provided herein by CONTRACTOR under the terms of this Contract.

#### **4.4 TAXES**

The CONTRACTOR shall pay all sales, consumer use and other similar taxes for the Work or portions thereof provided by the Contract.

#### **4.5 PERMITS, FEES AND NOTICES**

The Palm Beach County School District Building Code Services Department is the lead Permitting Authority for the Building and Site Work. The Building Code Services Department will review construction documents as required by law in Section 235.017, *Florida Statutes*, and Section 553.80(6), *Florida Statutes*, and shall ensure compliance with requirements of law rule, and the Florida Building Code and the Uniform Fire Safety Standards as adopted by the State Fire Marshall.

Other agencies will have additional jurisdiction and permitting authority for onsite and offsite Work. It is the responsibility of the CONTRACTOR to verify and satisfy all permitting requirements. Fees for any building permits and public agency permits are the responsibility of the CONTRACTOR. OWNER does not pay any fees. Fees for utility connections shall be the responsibility of the CONTRACTOR'S team.

**4.5.1** The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations and lawful orders of any public authority bearing on the performance of the Work. The CONTRACTOR shall also comply with all provisions of State Requirements for Educational Facilities, Florida Administrative Code and Section 235.01, *Florida Statutes*, et seq. and District Master Specifications.

**4.5.2** It is the responsibility of the CONTRACTOR to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the CONTRACTOR observes that any of the Contract Documents are in variance therewith in any respect, he shall promptly notify the OWNER in writing and any necessary changes shall be accomplished by appropriate modification.

**4.5.3** If the CONTRACTOR performs any Work which is contrary to such laws, ordinances, rules and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto including but not limited to the provisions of State Requirements for Educational Facilities, Current Edition, Florida Administrative Code and F.S. 235.01 et seq., Florida Building Code and District Master Specifications.

#### **4.6 CONTRACTOR'S SUPERINTENDENT**

The CONTRACTOR shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The CONTRACTOR'S Superintendent shall represent the CONTRACTOR and all communications given to the superintendent shall be as binding as if given to the CONTRACTOR. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

**4.6.1** The CONTRACTOR'S Superintendent and necessary assistants shall be approved by



and remain acceptable to the OWNER and shall not be changed without the consent of the OWNER. The CONTRACTOR will also provide to the OWNER resumes for each of its Superintendent(s) and necessary assistants employed by it on the Project.

**4.6.2** The CONTRACTOR'S Superintendent and necessary assistants shall be in continuous attendance at the Project each working day or portions thereof that work is being performed and until all Work including the Final Punch List has been completed.

**4.6.3** For non-compliance with this Paragraph, the OWNER may take a credit in an amount equal to the daily pay rate of the absent personnel.

#### **4.7 CONSTRUCTION SCHEDULE**

The CONTRACTOR shall submit to the OWNER a Construction Schedule in the form of a CPM with his Notice to Proceed documents and a complete updated one prior to the application for the first progress payment. This and all other required schedules shall be received and approved by the OWNER for their content and completeness, as required by these conditions. The Schedule shall be based on a critical path analysis of design, permitting and construction activities and sequential operations needed for the orderly performance and completion of any separable parts of or any and all Work in accordance with the Contract.

**4.7.1** The Construction Schedule shall be complete in all respects, covering, in addition to all Work, activities and interfaces with the CONTRACTORS at the Site of the Work, offsite activities such as design, permitting fabrication and allowance for delays, submittals procurement and job-site delivery of CONTRACTOR furnished material and equipment. The schedule shall be a critical path CPM type network drawn to a time scale using arrow or precedence type diagramming or bar charts, with sufficient details to conform to the requirement outlined herein. In addition, the CONTRACTOR shall submit a detailed written narrative describing his plan of performing Work to meet the Construction Schedule and any planned multi-shift Work.

**4.7.2** The Construction schedule shall indicate a plan review period of three (3) weeks each for Foundation, Shell and Building permits. CONTRACTOR is expected to coordinate submittal requirements with the Building Department prior to making plan submittals in order to expedite the approval process.

**4.7.3 The Construction Schedule shall include the following:**

- 1)** activities showing scheduled start and finish
- 2)** brief description of each activity
- 3)** relationships between activities
- 4)** indication of activities with less than one (1) month of float
- 5)** contractual and other major milestones
- 6)** monetary value of activity, keyed to the schedule of values
- 7)** the original submittal of the CPM network and each periodic update of the same shall be accompanied by a separate listing of all activities on the schedule, which shall include the following:

- a) a listing of all activities by activity description, each identified by node or activity number
- b) the duration of each activity
- c) the earliest start and finish dates for each activity
- d) float time for each activity

**4.7.4** As each duration start date, finish date, and float times of each activity becomes actual; it shall be noted as such on the periodic update of the activities listing. As each activity is completed, it shall be noted as such on the periodic update of the activities listing.

**4.7.5** The CONTRACTOR shall promptly inform the OWNER of any proposed change in the Schedule and narrative and shall furnish the OWNER with a revised Schedule and narrative within 10 calendar days after approval by OWNER of such change. The Schedule, activities listing and narrative shall be kept current, taking into account the actual progress of the Work and shall be updated and submitted to the OWNER every 30 calendar days.

**4.7.6** The revised Schedule, activities listing and narrative shall be sufficient to meet the requirements for the completion of the separable parts of any and all Work, as set forth in the Contract Documents. Monthly Progress Payments will not be approved until receipt by the OWNER of these updates. Based on the activities as shown on the required Schedule, a separate activity listing for Monthly Progress Payment purposes shall contain the following data for each activity to be paid for: activity numbers, activity description, total value, percent previously paid, amount previously paid percent, the payment request for period, amount of payment requested for period, total percentage requested through current payment request, and total amount requested through payment requests.

**4.7.7** The CONTRACTOR shall prepare and keep current, for the OWNER'S approval, a schedule of submittals which is coordinated with the CONTRACTOR'S Construction Schedule and allows the OWNER reasonable time to review submittals.

**4.7.8** The CONTRACTOR shall submit to the OWNER, with each Application for Payment, a copy of the approved progress schedule marked to show the percentage completed for each subdivision of the Work. The monthly submission shall also state the estimated total number of days ahead of or behind the Contract Completion Date.

**4.7.9** Should the CONTRACTOR fail to meet the approved schedule, documentation acceptable to the OWNER shall be required of the CONTRACTOR to show just cause for delays or for additional time requests. Failure to comply with this paragraph shall be sufficient grounds for the OWNER to find the CONTRACTOR in substantial default and certify that sufficient cause exists to terminate the Contract or to withhold payment to the CONTRACTOR until an updated progress Schedule acceptable to the OWNER is submitted. Such failure shall not be cause for additional time.

**4.7.10** The CONTRACTOR shall conform to the most recently approved Schedules.

#### **4.8 DOCUMENTS AND SAMPLES AT THE SITE**

CONTRACTOR shall maintain at the Site for the OWNER, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked

currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the OWNER at all times and shall be delivered to the OWNER upon completion of the Work.

#### **4.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the CONTRACTOR or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

- 4.9.1** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the Work.
- 4.9.2** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 4.9.3** Prior to the start of Work, the CONTRACTOR shall submit to the OWNER and Building Code Services Department for approval a schedule of shop drawings to be submitted during the course of the Work. The Building Code Services Department will identify which shop drawings must be submitted to the Building Code Services Department for code and/or Contract related approval. The CONTRACTOR shall submit to the OWNER with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of the OWNER or any separate contractor all Shop Drawings, Product Data and Samples required by the Contract Documents.
- 4.9.4** At the time of submission, the CONTRACTOR shall inform the Architect and OWNER in writing if the Shop Drawings, Product Data, or Samples deviate from the requirements of the Contract Documents. The CONTRACTOR shall submit to the OWNER five (5) copies of all submittals for approval.
- 4.9.5** Upon approval of the submittals by the OWNER, the CONTRACTOR shall supply a maximum of six (6) corrected copies to the OWNER for distribution. All submittals shall be accompanied by a transmittal letter identifying all attachments.
- 4.9.6** By submitting Shop Drawings, Product Data and Samples the CONTRACTOR represents that they have determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.
- 4.9.7** The CONTRACTOR shall not be relieved of responsibility for any deviation from requirements of the Contract Documents by the OWNER'S approval of Shop Drawings, Product Data or Samples. The CONTRACTOR shall not be relieved from responsibility for errors and omissions in the Shop Drawings, Product Data or Samples by the OWNER'S approval thereof.
- 4.9.8** The CONTRACTOR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples to revisions other than those requested by the OWNER on previous submittals.
- 4.9.9** No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the OWNER as provided herein.

#### **4.10 USE OF THE SITE**

The CONTRACTOR shall confine operations at the Site to areas permitted by law, ordinance, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment.

#### **4.11 CUTTING AND PATCHING OF WORK**

The CONTRACTOR shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. The CONTRACTOR shall not damage or endanger any portion of the Work or the Work of the OWNER or any separate Contractor by cutting, patching or otherwise altering any Work, or by excavation. The CONTRACTOR shall not cut or otherwise alter the Work of the OWNER or any separate Contractor except with the written consent of the OWNER and of such separate Contractor. The CONTRACTOR shall not unreasonably withhold from the OWNER or any separate Contractor his consent to cutting or otherwise altering the Work.

#### **4.12 CLEANING UP**

The CONTRACTOR at all times shall keep the Project and surrounding areas free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. The OWNER may, at any time deemed necessary, direct the CONTRACTOR to clean up the site to the OWNER'S standard.

#### **4.13 ACCESS TO WORK**

The CONTRACTOR shall provide the OWNER and the OWNER'S representative access to the Work in preparation and progress wherever located.

#### **4.14 COMMUNICATIONS**

The CONTRACTOR shall forward all communications to the OWNER through its Authorized Representatives.

#### **4.15 ROYALTIES AND PATENTS**

The CONTRACTOR shall pay all royalties and license fees. CONTRACTOR shall defend all suits or claims for infringement of any patent rights and shall save the OWNER harmless from loss on account thereof. If the CONTRACTOR has a reason to believe that the design, process or product specified is an infringement of a patent, CONTRACTOR shall be responsible for such loss.

#### **4.16 COMPLETENESS OF BID**

The CONTRACTOR is to assume the Contract is complete as to all necessary parts and shall prepare the Bid accordingly. The CONTRACTOR shall supply and install all necessary devices and equipment to ensure a safe, complete and workable system. Omissions from the Plans and Specifications of any equipment, device, etc. required by applicable Codes and Standards shall not relieve the CONTRACTOR of any responsibility to furnish and install same at no additional cost to the OWNER.

#### **4.17 SCHOOL BOARD MEETINGS**

Any item relating to the Work that requires action by the School Board shall be submitted in writing to the OWNER at least 60 days prior to a regularly scheduled board meeting in order that it may be placed on the Agenda.

#### **4.18 PRECONSTRUCTION AND CONTRACT ADMINISTRATION MEETINGS**

**Preconstruction Meeting:** After the Award of the Contract and within five (5) OWNER business days, the CONTRACTOR shall meet with the OWNER and any Subcontractors that the OWNER may designate. This meeting shall be at a location designated by the OWNER.

##### **4.18.1 CONTRACT ADMINISTRATION MEETING**

A minimum of two Monthly Progress Meetings shall be held each month with the OWNER and CONTRACTOR until full and Final Completion to review the previous progress and the CPM for the following period. In the event the CONTRACTOR falls behind the accepted Schedule, the OWNER may require additional progress meetings at the OWNER'S option.

##### **4.18.2 CONSTRUCTION WATER**

The CONTRACTOR shall provide and pay for all water necessary for construction of the Project. The CONTRACTOR shall make all connections, install a meter, take out and pay for all permits necessary, do all piping necessary for construction water and clear away all evidence of same after the Work is completed.

#### **4.19 TEMPORARY FACILITIES**

The CONTRACTOR shall provide toilet facilities during construction for all workmen. These facilities shall be maintained in a clean and sanitary manner. At the direction of the OWNER, the CONTRACTOR shall provide and maintain a suitable temporary field office at the Project Site for his own use containing a separate office for use by the OWNER'S Authorized Representative.

##### **4.19.1 FIELD OFFICES AND SHEDS - OFFICE:**

To be weather-tight with lighting, electrical outlets, heating, cooling and ventilating equipment. Office trailer should be at least 12 X 60 with bathroom (working) and running water. Offices front and rear, counter tops in each end office with 2 (two) drawer fireproof legal filing cabinets. Center conference area with plan rack and plan table. Cleaning service to insure the office is clean at all times. All offices and sheds to be anchored to the ground to withstand 155 MPH X 1.1 wind load. Office equipment to consist of the following:

- a) Two (2) executive desks
- b) Two (2) office chairs
- c) One (1) secretary desk
- d) One (1) secretary chair
- e) Copier with 11 X 17 capabilities
- f) Conference table with ten (10) chairs
- g) Two (2) 4-drawer legal file cabinets (lockable)
- h) Water cooler and water delivery

- i) Wired/wireless internet connectivity
- j) Office trailer to have signage reading School District of Palm Beach County Office.
- k) Three (3) designated parking areas for District staff.

#### **4.20 CONSTRUCTION ELECTRICITY AND LIGHTING**

The CONTRACTOR shall provide and pay for light and power necessary and adequate for the construction of the Project and the testing of all systems. The CONTRACTOR is to make all the necessary arrangements for this service and perform all Work required, including, but not limited to, temporary connections, wiring and devices.

#### **4.21 USE OF OWNER'S FACILITIES**

The OWNER'S facilities shall not be used by any personnel connected with the Project specified in the Contract Documents.

#### **4.22 REPAIRS**

The CONTRACTOR shall restore all damage to existing facilities and improvements occurring during the Work to equal or better condition than that which existed prior to the damage.

#### **4.23 MAINTAINING UTILITIES**

The CONTRACTOR shall protect and maintain all active utilities in place and in operation.

#### **4.24 LAYOUT OF WORK**

The CONTRACTOR shall employ a registered Surveyor to lay out the Work and all lines and levels pertaining thereto, to establish all necessary benchmarks, and to certify same as the Work progresses. The CONTRACTOR shall notify the OWNER of any discrepancies between the existing lines and levels and those shown on the drawings and shall not proceed with any Work affected thereby until he has received written instruction from the OWNER. Written certification of elevations shall be given to the OWNER.

#### **4.25 PROTECTION OF PROPERTY DURING MANUFACTURE AND INSTALLATION**

The CONTRACTOR shall, during the manufacturing, assembly and installation of the structure take all steps necessary to protect and keep free from dirt, dust, mold, mildew, bacteria and bacterial spores the interior duct system, plenums, wall cavities, walls, finish materials and products.

**4.25.1** The CONTRACTOR shall not install any finish materials until such time as the CONTRACTOR has in operation and maintain a temporary cooling system. This system shall maintain a maximum temperature and humidity of 80% and 60% RH for 24 hours and seven (7) days a week during finishing operations.

**4.25.2** The CONTRACTOR shall use temporary filters in the cooling systems and shall replace these temporary filters at any time they become contaminated and in any event, not less than every 30 days. In addition, prior to start-up, either temporary or final, the CONTRACTOR will ensure that all duct and plenums are free from all dirt, dust, mold and mildew.

#### **4.26 UNAUTHORIZED ALIENS**

The School District shall consider the employment by any CONTRACTOR of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationalization Act. Such violation shall be cause for termination of this Contract.

### **ARTICLE 5**

#### **SUBCONTRACTORS**

##### **5.1 DEFINITION**

A Subcontractor is a person or an entity who has a direct contract with the CONTRACTOR to perform any of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" does not include any separate Contractor or his Subcontractors.

A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the Site. The term "Sub-Subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender and means a Sub-Subcontractor or an authorized representative thereof.

Nothing contained in the Contract Documents shall create any contractual relationship between the OWNER and Subcontractor or Sub-Subcontractor.

All Subcontractors and Sub-Subcontractors shall have a required occupational license appropriate for the location of the Work and a Certificate of Competency for those trades which require such Certificates.

The School District of Palm Beach County, Florida encourages the CONTRACTOR to hire Subcontractors who are educated and skilled in their respective trade so as to ensure quality workmanship in connection with the Project. Such workmanship and quality should be of the highest standards in the industry or trade in which the Subcontractor is employed.

**5.2** Nothing contained in the Contract Documents shall create any contractual relationship between the OWNER and Subcontractor or Sub-Subcontractor.

**5.3** All Subcontractors and Sub-Subcontractors shall have a required occupational license appropriate for the location of the Work and a Certificate of Competency for those trades which require such Certificates.

**5.4** The School District of Palm Beach County, Florida encourages the CONTRACTOR to hire Subcontractors who are educated and skilled in their respective trade so as to ensure quality workmanship in connection with the Project. Such workmanship and quality should be of the highest standards in the industry or trade in which the Subcontractor is employed.

##### **5.5 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

Unless otherwise required by the Contract Documents, CONTRACTOR shall furnish to the OWNER in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work.

The OWNER will promptly reply to the CONTRACTOR in writing stating whether or not, after due investigation, has reasonable objections to any such proposed person or entity. Failure of the OWNER to reply promptly shall constitute notice of no reasonable objection. The CONTRACTOR shall not contract with any such proposed person or entity to whom the OWNER has made reasonable objection under the provisions of this Paragraph.

The CONTRACTOR shall not be required to contract with anyone to whom he has a reasonable objection.

If the OWNER has reasonable objection to any such proposed person or entity, the CONTRACTOR shall submit a substitute to whom the OWNER have no reasonable objection. The CONTRACTOR shall make no substitution for any Subcontractor, person or entity previously selected without OWNER'S prior written approval.

## **5.6 SUBCONTRACTURAL RELATIONS**

By an appropriate written OWNER-CONTRACTOR Contract, the CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CONTRACTOR by the terms of the Contract Documents and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by these Documents assumes toward the OWNER. Said Contract shall preserve and protect the rights of the OWNER under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the CONTRACTOR shall require each Subcontractor to enter into similar agreements with his Sub-Subcontractors.

The CONTRACTOR shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article and identify to the Subcontractor any Terms and Conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such documents available to his Sub-Subcontractors.

## **ARTICLE 6**

### **WORK BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

The OWNER reserves the right to perform Work related to the Project with his own forces, and to award separate Contracts in connection with other portions of the Project or other Work on the Site under these or similar Conditions of the Contract. If the CONTRACTOR claims that delay or additional costs are involved because of such actions by the OWNER, he shall make such claims as provided elsewhere in the Contract Documents.

When separate Contracts are Awarded for different portions of the Project or other Work on the Site the term "Separate Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate OWNER- CONTRACTOR Contract.

The OWNER will provide for the coordination of the Work of his own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

Notwithstanding any other provision of the Contract Documents, should the CONTRACTOR sustain loss or be damaged by act or omission of a separate Contractor, the OWNER shall not



be liable for any such loss or damage and the CONTRACTOR shall not be entitled to obtain any monetary relief from the OWNER to compensate for any such loss or damage, but shall be limited to such recovery as is otherwise available at law from persons and/or entities other than the OWNER.

## **6.2 MUTUAL RESPONSIBILITY**

The CONTRACTOR shall afford the OWNER and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

**6.2.1** If any part of the CONTRACTOR'S Work depends on proper execution or results upon the Work of the OWNER or any separate Contractor, the CONTRACTOR shall, prior to proceeding with the Work, promptly report to the OWNER any apparent discrepancies or defects in such other Work that render it unusable for such proper execution and results. Failure of the CONTRACTOR to so report shall constitute an acceptance of the OWNER'S or separate Contractors' work as fit and proper to receive his Work except as to defects which may subsequently become apparent in such work by others.

**6.2.2** Should the CONTRACTOR wrongfully cause damage to the Work or Property of the OWNER or to other Work on the Site, the CONTRACTOR shall promptly remedy such damages as provided in Article 10.

**6.2.3** Should the CONTRACTOR wrongfully cause damage to the Work or Property of any third party Contractor, the CONTRACTOR shall, upon due notice, promptly attempt to settle with such third party Contractor by agreement or otherwise to resolve the dispute. If such third party Contractor sues the OWNER on account of any damage alleged to have been caused by the CONTRACTOR, the OWNER shall notify the CONTRACTOR who shall defend such proceedings at the CONTRACTOR'S expense and if any judgment or award against the OWNER arises therefrom, the CONTRACTOR shall pay or satisfy it and shall reimburse the OWNER for all attorneys' fees and costs which the OWNER has incurred.

## **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises between the CONTRACTOR and separate Contractor concerning their responsibilities for cleaning up as required by this Contract, CONTRACTOR agrees that OWNER may clean up and charge the cost to the CONTRACTOR(S).

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

**7.1.1** The OWNER, without invalidating this Contract, may order Changes in the Work (Changes) within the general Scope of this Contract consisting of additions, deletions or other revisions. The Contract Sum and the Construction Completion Date may be adjusted accordingly. All Changes in the Project shall be authorized by Change Order, Construction Change Directive (CCD) or order for minor change in the Project, subject to any limitations stated in the Contract Documents.

**7.1.2** Changes in the Project shall be performed under applicable provisions of the Contract

Documents, and the CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, CCD or order for a minor change in Work. A Change Order shall be based upon agreement among the OWNER, CONTRACTOR and Architect. A CCD requires agreement by the OWNER and Architect and may or may not be agreed to by the CONTRACTOR; and order for Minor Change in the Work may be issued by the Architect alone.

- 7.1.3** The total markup for overhead and profit among all tiers of Subcontractors for any Change in Work shall be 15% of the cost of the Work above for the Subcontractor performing the Change in Work and five percent (5%) for each successively higher tier of Sub-contractor. A 10% additional overhead and profit may be added by the CONTRACTOR for the cost of premiums for additional bonds and insurance, fees and taxes related to the Change in Work, if any.
- 7.1.4** The amount of credit to be allowed by the CONTRACTOR to the OWNER for a deletion or change which results in a net decrease in the Contract Sum will be the amount of actual net cost as confirmed by the Architect. When both additions and deletions covering the related Work or substitutions are involved in any one (1) change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 7.1.5** Pending final determination of cost to the OWNER, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the CONTRACTOR to the OWNER for a deletion or change, which results in a net decrease in the Contract Sum shall be, the actual net cost as determined by the Architect.
- 7.1.6** If the OWNER and CONTRACTOR do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.
- 7.1.7** When the OWNER and the CONTRACTOR agree with the determination with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreements shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

## **7.2 CHANGE ORDERS**

A Change Order is a written instrument prepared by the Architect and signed by the OWNER, CONTRACTOR and Architect, stating their agreement upon all of the following:

- 1)** a change in the Project
- 2)** the amount of the adjustment in the Contract Sum, if any; and
- 3)** the extent of the adjustment in the Contract Time, if any.

The increase or decrease in the Contract Sum resulting from a Change Order shall be determined in one or more of the following ways:

- 1)** Cost of labor using the rates specified by the Change Order Rate Schedule
- 2)** Cost of materials, supplies and equipment including transportation

- 3) Rental costs of machinery and equipment exclusive of hand tools
- 4) Cost of premiums for additional bonds and insurance, fees and taxes related to the change.

**7.2.1** If none of the methods set forth above can be agreed upon, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect will establish an estimated cost of the Work and the CONTRACTOR shall not perform any Work whose cost exceeds that estimate without prior written approval by the OWNER. In such case, and also under the Article above, the CONTRACTOR shall keep and present, in such form as the OWNER may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project. The amount of decrease in the Contract amount to be allowed by the CONTRACTOR to the OWNER for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

**7.2.2** If unit prices are stated in the Contract or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the OWNER or the CONTRACTOR, the applicable unit prices and Contract Sum shall be equitably adjusted.

**7.2.3** Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or OWNER furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with this Article.

### **7.3 CONSTRUCTION CHANGE DIRECTIVES**

A Construction Change Directive (CCD) is a written order prepared by the Architect and signed by the OWNER and Architect, directing a change in the Project and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The OWNER may by CCD, without invalidating the Contract, order changes in the Project within the general Scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of total agreement on the terms of a Change Order. All Construction Change Directives shall be implemented per Board Policy 7.22. If the CCD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1) Cost of labor using the rates specified by the Change Order Rate Schedule
- 2) Cost of materials, supplies and equipment including transportation
- 3) Rental costs of machinery and equipment exclusive of hand tools

- 4) Cost of premiums for additional bonds and insurance, fees and taxes related to the change.

Upon receipt of a CCD, the CONTRACTOR shall promptly proceed with the change in the Project involved and advise the Architect of the CONTRACTOR'S agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. A CCD signed by the CONTRACTOR indicates the agreement of the CONTRACTOR'S therewith, including the adjustment in the Contract Sum and Contract Time or the method for determining them. Such agreement shall become effective immediately and shall be recorded as a Change Order.

#### 7.4 **CHANGE ORDER RATE SCHEDULE**

TRADE	HOURLY RATE	TRADE	HOURLY RATE
Laborer - General, cleaning	\$18.46	Laborer Plaster	\$27.27
Laborer - common, demo	\$36.46	Carpenter, Drywall, ACT, Framing	\$25.30
Laborer Plaster Tender	\$40.12	Tile Setter	\$26.83
Laborer Mason tender	\$15.59	Tile Finisher	\$32.20
Laborer Pipe layer	\$17.57	Drywall Finisher, taper	\$28.64
Operator - Forklift	\$43.84	Painter	\$27.32
Laborer Cement, Concrete	\$15.59	Elevator Mechanic	\$96.81
Operator - Concrete Pump	\$48.03	Fire Sprinkler Fitter	\$61.18
Cement mason, Concrete Finisher	\$18.46	Foreman	\$70.03
Laborer Mason and Brick	\$17.15	Plumber	\$54.64
Brick layer	\$40.02	Laborer Pipe Layer	\$21.54
Iron Worker	\$46.26	HVAC Install Unit only	\$20.49
Foreman	\$54.95	HVAC Sheet Metal Worker	\$43.45
Carpenter (not Drywall)	\$25.30	Pipe Fitter HVAC, control	\$54.64
Foreman	\$51.30	Foreman	\$60.64
Laborer Roof <del>Tearoff</del>	\$13.41	Electrician	\$58.76
Roofer - except metal	\$35.24	Foreman	\$60.64
Roofer Built up	\$21.61	Operator - backhoe loader combo	\$51.00
Roofer -metal	\$25.32	Cranes	\$52.08
Roofer Foreman	\$45.21	Operator - Asphalt paver	\$17.33
Insulator	\$51.81	Fence Erector	\$23.35
Glazing	\$45.58	Laborer landscape, Irrigation	\$13.63
Plasterer	\$47.76		

Over-time is to be applied to these base rates at x 1.5 the hourly rate.

#### 7.5 **CLAIMS FOR ADDITIONAL COST OR TIME**

All claims for additional cost or time shall be made by Change Order submitted as provided in this Article. If the CONTRACTOR is delayed at any time in the progress of the Work by any act or neglect of the OWNER or the Architect or of any employee of either or by any separate CONTRACTOR employed by the OWNER or by any changes ordered in the Work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the CONTRACTOR'S control or by delay authorized by the OWNER pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the OWNER may determine. Only delays, which are determined to extend the critical path of the schedule for constructing the Project, will result in a time extension. Neither the OWNER nor the CONTRACTOR shall be considered to own the schedule float time.

## **7.6 MINOR CHANGES IN THE PROJECT**

The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the Contract amount or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team. Changes shall be approved by the Project Manager and the Architect-Engineer.

## **7.7 EMERGENCIES**

In any emergency affecting the safety of persons or property, the CONTRACTOR shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Contract amount or Extension of Time claimed by the CONTRACTOR on account of emergency work shall be determined as provided in this Contract.

# **ARTICLE 8**

## **CONTRACT TIME & LIQUIDATED DAMAGES**

**8.1** The Contract Time shall commence upon the issuance of the Construction Notice to Proceed. Substantial Completion of the Work shall be on **XXXXXXXXXXXXXXXX**. All Work and requirements of the Contract shall be fully and finally complete on **XXXXXXXXXXXXXXXX**. No Work shall be commenced until the CONTRACTOR has furnished the OWNER the Performance and Payment Bonds, Insurance Certificates and other documents required by Contract Documents. Time is of the essence in this Contract. The CONTRACTOR shall begin the Work on the date of commencement and shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time.

## **8.2 LIQUIDATED DAMAGES**

It is mutually agreed by and between parties hereto that time shall be an essential part of this Contract, including, without limitation, the time for achieving Substantial and Final Completion as defined herein.

### **8.2.1 SUBSTANTIAL COMPLETION**

The parties agree that in case of the failure on the part of the CONTRACTOR to achieve scheduled Substantial Completion as set forth within the Notice To Proceed, the OWNER will be damaged thereby; and the amount of said damages, inclusive of expenses for inspection(s), as well as additional personnel superintendence, and necessary traveling expenses being difficult if not impossible of definite ascertainment and proof, it is

hereby agreed that the amount of such damages shall be **\$XXXXXXXX** as liquidated damages for every calendar days delay in achieving Substantial Completion; and the CONTRACTOR hereby agrees that said sum shall be deducted from the monies due CONTRACTOR under the Contract or if, insufficient money is then due, the CONTRACTOR hereby agrees to pay to the OWNER as liquidated damages and not by way of penalty, such total sum shall be due. In the event that the CONTRACTOR shall have achieved Substantial Completion before the date required by the Contract Documents, those days shall be added to the number of days available to the CONTRACTOR to attain Final Completion before liquidated damages shall commence.

**8.2.1.1** CONTRACTOR'S request for Substantial Completion Inspection to establish a Punch List shall mean that all Work is complete and properly installed. If, at this time, the OWNER indicates that the job is not ready or is incomplete, the inspection will be cancelled and rescheduled. Re-inspection costs for Board Appointed Architect/Engineer visitations will be borne by the CONTRACTOR.

### **8.2.2 FINAL COMPLETION**

It is mutually agreed by and between the parties hereto that time shall be an essential part of this Contract, including, without limitation, the time for achieving Final Completion as defined herein. The parties agree that in the case of the failure of the CONTRACTOR to achieve scheduled Final Completion as set forth within the Notice To Proceed, the OWNER will be damaged thereby; and the amount of said damages, inclusive of expenses for inspection(s) as well as additional personal superintendence, and necessary traveling expenses being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be **\$XXXXXXXX** as liquidated damages for every calendar days delay in achieving Final Completion in excess of the number of calendar days prescribed and the CONTRACTOR hereby agrees that said sum shall be deducted from the monies due the CONTRACTOR under the contract or if insufficient money is then due, the CONTRACTOR hereby agrees to pay to the OWNER as liquidated damages and not by way of penalty, such total sum as may be due.

**8.2.2.1** The CONTRACTOR further recognizes that it may have to perform its Final Completion Work in a manner compatible with the on-going operation of the school which may result in access to area where Work is needed being denied or limited. The CONTRACTOR expressly agrees that such denial or limitation of access is an anticipated event and that such limitation or denial will not excuse the timely performance by the CONTRACTOR nor shall it be grounds for any claim for additional time and/or costs, such being expressly waived and relinquished.

**8.2.2.2** In further recognition of the adverse impact of delay on OWNER, the CONTRACTOR recognizes that the OWNER, in addition to assessing liquidated damages, may notify the CONTRACTOR'S bonding company of the failure to timely achieve Final Completion.

### **8.3 DELAYS AND EXTENSIONS OF TIME**

If the CONTRACTOR is delayed at any time in the progress of the Work by neglect of the OWNER, or by any separate CONTRACTOR employed by the OWNER, or by Changes ordered in the Work or by labor disputes, fire, or by any other cause which the OWNER determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the OWNER may determine. An extension of Contract Time will not be given due to weather conditions, unless such weather conditions (wind or rain) for any 30 day

period are on the average for the 30 days more severe than the average for the same 30 day period for the previous 10 years and caused a delay. In requesting an extension of time for weather conditions, CONTRACTOR shall present complete records and averages referred to above, and such requests shall document how the weather conditions delayed the progress of the Work. Any claim for extension of time shall be made in writing to the OWNER not more than 20 days after the commencement of the delay; otherwise it shall be waived. In each written request for extension of time the following information shall be provided, as a minimum. Failure to submit such information shall constitute a just cause for denial of the claim for extension of time:

- 1)** Nature of the delay;
- 2)** Dates of commencement/cessation of the delay;
- 3)** Activities on the current progress schedule affected by the delay;
- 4)** Identification of the source of delay;
- 5)** Anticipated impact and extent of the delay; and
- 6)** Recommended action to minimize the delay.

**8.3.1** Any additional claim made after the initial claim has been implemented by Change Order shall not be considered. Pending final resolution of a claim, request for extension of time, or Change Order, the CONTRACTOR shall proceed diligently with the performance of the Contract and the OWNER shall continue to make payments in accordance with the Contract Documents. In the case of a continuing delay only one claim is necessary. The CONTRACTOR shall provide an estimate of the probable effect of such delays on the progress of the Work.

**8.3.2** If no agreement is made stating the dates upon which interpretations as provided in this Article shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretation until 15 days after written request is made for them, and not then unless such claim is reasonable.

**8.3.3** The CONTRACTOR shall not be entitled to any extensions of time for delays resulting from any such causes unless it shall have notified the OWNER in writing within 20 days after the commencement of such cause of the occurrence thereof and of the probable duration thereof.

**8.3.4** The CONTRACTOR shall not be entitled to and hereby waives, any and all damages which it may suffer by reason of delay, or for delay from any Act of God or unforeseen condition, and waives all damages which it may suffer by reason of such delay including but not limited to lost profits, job site overhead, supervision, home office overhead; the extension of time granted herein being the CONTRACTOR'S sole remedy.

**8.3.5** In no event shall CONTRACTOR be entitled to and as such CONTRACTOR hereby waives Any and all damages which it may suffer by reason of acceleration, being of prime importance changes, inefficiencies or any other type of forcible claim on the Project; whether such is voluntary by the CONTRACTOR, or helpful, actual or otherwise.

## **ARTICLE 9**

### **PAYMENT AND COMPLETION**

### 9.1 **CONTRACT SUM**

The OWNER shall pay the CONTRACTOR for the completion of the Work in accordance with all requirements of the Contract Documents subject to additions and deductions by Change Order as provided by the Contract Documents, the Contract Sum of:

\$ **TBD**

**(CONTRACT SUM WRITTEN OUT)**

This amount represents the lump sum amount the OWNER will pay the CONTRACTOR to complete the Scope of Work. The CONTRACTOR represents this Contract Sum represents the total costs for complete and functional systems and therefore, the CONTRACTOR'S review and comparison of all drawings has taken into consideration the total and complete functioning of all systems.

### 9.2 **SCHEDULE OF VALUES**

Before the first "Application and Certificate for Payment" the CONTRACTOR shall submit to the OWNER for approval a "Schedule of Values" as the OWNER may require. The "Schedule of Values" document shall be arranged in accordance with the Construction Specification Institute format. The data within the Schedule of Values must be supported by actual data from all subcontracts, Divisional surplus data, brief descriptions of all un-purchased scope with estimates organized by respective Division category (each un-purchased scope within each Division may be identified in a separate line item), and any other data to substantiate its accuracy. As subcontracts are executed, the Schedule of Values is to be updated monthly. In addition to the foregoing, the CONTRACTOR shall be required to provide the OWNER a complete list that includes all Subcontractors, material men, and suppliers to be utilized on the Project. The CONTRACTOR shall also update said list with each pay request. Failure to comply with these terms shall be grounds for non-payment to the CONTRACTOR.

### 9.3 **APPLICATION FOR PAYMENT**

At least 25 OWNER business days before the date the CONTRACTOR desires a progress payment, the CONTRACTOR shall submit to the OWNER four (4) notarized copies of their Application for Payment (Application), on Form **PBSD 2354** with the information required and supported by such data substantiating the CONTRACTOR'S right to payment as the OWNER may require, and reflecting retainage as provided elsewhere in the Contract Documents.

**As specified by the OWNER, the following forms shall be submitted with each Application:**

- 1) Final Release and Verification of Payment Form **PBSD 1621 (Attachment H)****
- 2) Periodic Performance Evaluation (PPE) for the time period covered by the application**
- 3) Signed and Notarized copy of each Subcontractors Requisition for Payment and associated Schedule of Values for the time period covered by the Application.**

Failure to comply with the requirements of the Paragraph shall be grounds for the OWNER to reject the Application.

**9.3.1** Unless otherwise provided in the Contract Documents, payments will be made at the



discretion of the OWNER on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the School Site and, if approved in advance by the OWNER, payments may similarly be made for materials or equipment suitably stored in a bonded warehouse approved in writing by the OWNER. Payments for materials or equipment stored on or off Site shall be conditioned upon the submissions by the CONTRACTOR of Bills of Sale or such other procedures satisfactory to the OWNER to establish the OWNER'S title to such materials or equipment or otherwise protect the OWNER'S interest, including warehouse bond, applicable insurance and transportation to the Site of those materials and equipment stored off the Site.

**9.3.2** The CONTRACTOR shall not withhold payments to Subcontractors if such payments have been made to the CONTRACTOR. Should this occur for any reason, the CONTRACTOR shall immediately return such monies to the OWNER, adjusting pay requests and Project bookkeeping as required. The CONTRACTOR warrants that title to all Work, materials and equipment covered by the Application for Payment will pass to the OWNER either by incorporation in the construction or upon the receipt of payment by the CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances, hereinafter referred to as "liens"; and that no Work, materials or equipment covered by Application for Payment will have been acquired by the CONTRACTOR, or by any other person performing Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

**9.3.3** Following receipt of the first payment and prior to the receipt of each subsequent payment, the CONTRACTOR shall furnish the OWNER with satisfactory evidence that all labor and materials furnished through the date of the preceding requisition for payment have been fully paid less the retained percentage. At any time, the OWNER may require proof of payment to the Subcontractors and Suppliers in a form acceptable to the OWNER be submitted by the CONTRACTOR with the Application for Payment. If any Subcontractor or Supplier is not paid, the CONTRACTOR shall supply written explanation for such nonpayment, with the Application for Payment. Failure to comply with the above may result in payment being withheld.

**9.3.4** If a CONTRACTOR fails to pay a Subcontractor, after 10 days from being paid by the OWNER on a previous draw, and no legitimate disputes exist as determined by the Architect, then such event shall thus be considered a default under the Contract Documents, and the Architect shall be requested not to certify any further payments to the CONTRACTOR. This provision shall apply to as well as materialmen and suppliers of the CONTRACTOR. Further, this shall be considered an act of default by the CONTRACTOR. In the event the CONTRACTOR disputes any determination of the Architect, with respect to any "Application and Certificate for Payment, "the CONTRACTOR shall never the less continue to diligently prosecute the Work.

#### **9.4 CERTIFICATE FOR PAYMENT**

The Architect shall, within five (5) OWNER business days after the receipt of the CONTRACTOR'S Application for Payment, either issue a Certificate for Payment, with a copy to the CONTRACTOR, for such amount as the Architect and OWNER determine is properly due, or notify the CONTRACTOR in writing the reasons for withholding a Certificate as provided in Paragraph 9.6. The issuance of a Certificate for Payment will constitute a representation by the Architect, based on his observations at the Site and the date of the Application for Payment that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with Contract Documents. The

foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests and inspections required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specifically paid or satisfactorily explained nonpayment, for all labor and materials for which he has previously submitted Applications for Payment. The issuance of a Certificate for Payment will constitute a representation that the CONTRACTOR is entitled to payment in the amount certified.

## **9.5 PROGRESS PAYMENTS**

Based upon the Applications for Payment submitted to the Architect by the CONTRACTOR and Certificates for Payment issued by the Architect, the OWNER shall make Monthly Progress Payments against the account of the Contract Sum to the CONTRACTOR in accordance with the following:

**9.5.1** Within 20 business days after issuance of a Certificate of Payment by the Architect, the OWNER shall pay the CONTRACTOR, less than 5% retainage, the sum of money due each Progress Payment that is properly allocated to labor, materials and equipment incorporated in the Work for the period covered by the Application for Payment less such amounts, as the OWNER determines, for all incomplete Work and unsettled claims as provided in the Contract Documents.

If, after Substantial Completion, there should remain items to be completed the CONTRACTOR and Architect-Engineer shall list those items required for completion and an amount equal to 150% of the value of any remaining items will be withheld until the specific items have been completed. Thereafter, the CONTRACTOR shall pay to the Subcontractors the amount retained for each incomplete item after each of said items has been completed.

**9.5.2** The CONTRACTOR shall not be entitled to any interest on payments which may be due but are unpaid by the OWNER.

**9.5.3** The CONTRACTOR shall, within 10 calendar days of receipt of payment from the OWNER, pay each Subcontractor, out of the amount paid to the CONTRACTOR on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the CONTRACTOR on account of such Subcontractor's Work. The CONTRACTOR shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-Subcontractors within seven (7) calendar days of receipt of payment from the CONTRACTOR.

**9.5.4** The CONTRACTOR shall promptly pay each Subcontractor, upon receipt of payment from the OWNER, out of the amount paid to the CONTRACTOR on account of such Subcontractor's portion of the Work. The CONTRACTOR shall, by the appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in similar manner.

**9.5.5** The OWNER may, on request and at his discretion, furnish to any Subcontractor, if practical, information regarding the percentage of completion or the amounts applied for by the CONTRACTOR and the action taken thereon by the OWNER on account of Work done by such Subcontractor.

**9.5.6** The OWNER shall not have any obligation to pay or to see to the payment of any monies

to any Subcontractor.

**9.5.7** No Certificate for Payment, or any Progress Payment, nor any partial or entire use or occupancy of the Project by the OWNER, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## **9.6 PAYMENTS WITHHELD**

The Architect may decline to certify payment and may withhold the Certificate in whole or in part, to the extent necessarily reasonable to protect the OWNER'S interest, if in its opinion, the Architect is unable to justify payment as provided in Paragraph 9.4 the Architect will notify the CONTRACTOR as provided in Paragraph 9.4. If the CONTRACTOR and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to certify as provided in Paragraph 9.4.

The Architect may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such an extent as may be necessary in his opinion to protect the OWNER from loss because of:

- 1) Defective Work, not remedied;
- 2) Rejection of Work, or any part of the Work, by the authority having jurisdiction;
- 3) Claims filed or reasonable evidence indicating probable filing of such claims;
- 4) Failure of the CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment within 10 days;
- 5) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 6) Damage to the OWNER or another CONTRACTOR;
- 7) Reasonable evidence that the Work will not be completed within the Contract Time;
- 8) Persistent failure to carry out the Work in accordance with the Contract Documents;
- 9) Failure of the CONTRACTOR to submit the information required by the Contract Documents;
- 10) Failure of the CONTRACTOR to maintain and submit up to date and accurate record Documents;
- 11) Failure of the CONTRACTOR to properly complete the Application for Payment.

## **9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment through no Fault of the CONTRACTOR, within five (5) OWNER business days, after his receipt of the CONTRACTOR'S Application for Payment, or if the OWNER does not pay a CONTRACTOR within 25 business days after the date established in the Contract Documents any amount certified by the OWNER, then the CONTRACTOR may, 14 additional days after written notice to the OWNER, stop Work until payment of the amount owing has been received.

## **9.8 SUBSTANTIAL COMPLETION**

When the CONTRACTOR considers that the Work is substantially complete as defined in this Contract, the CONTRACTOR shall notify the OWNER. If the OWNER, on the basis of an inspection, determines that the Work and the requirements of the Contract are substantially complete, the OWNER will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion. Time involved in obtaining Substantial Completion beyond the date established therefore shall be subjected to the assessment of Liquidated Damages.

At the time of Substantial Completion, the OWNER will conduct its inspection to determine that the facility is in compliance with statutes, rules and codes affecting the health and safety of the occupants, and issue a Facility Occupancy Certificate, Forms OEF 110 and 210).

**9.8.1** The School District of Palm Beach County Florida, will "determine that the facility is in compliance with statutes, rules and codes affecting the health and safety of the occupants."

The OWNER and the CONTRACTOR will inspect the Project. If it is apparent that many items of the Work and the requirements of the Contract Documents are not complete, no further inspection will be made.

If the Project is ready for inspection the OWNER shall prepare a written Punch List incorporating items designated by all parties. The failure to indicate any items on this list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

All Punch List items shall be fully and finally completed prior to the date established in the Contract Documents. Time involved in correcting Punch List items beyond this date shall be subject to the assessment of Liquidated Damages.

The OWNER shall determine the date when the Work and the requirements of the Contract Documents are fully and finally completed and the CONTRACTOR shall submit a letter to the OWNER certifying the date.

**9.8.2** When the CONTRACTOR notifies the OWNER and the Architect that the Work is substantially complete, the Architect, OWNER and the CONTRACTOR will inspect the Project. If it is apparent that many items of the Work and the requirements of the Contract Documents are not complete, no further inspection will be made.

At the time that the Project is Substantially Complete and ready for inspection, the Architect, OWNER and the CONTRACTOR will jointly inspect the Work and develop a comprehensive list of all items that are required for satisfactory Final Completion of the construction Project.

Following that joint inspection, the Architect shall provide to the CONTRACTOR and the OWNER a comprehensive list of items that must be rendered complete, satisfactory and acceptable. The list must be provided within 30 days if the Project construction cost is \$10,000,000 or less and within 60 days if the Project construction cost is more than \$10,000,000.

The CONTRACTOR shall have the time permitted by this contract to fully satisfy and complete that list or shall pay the liquidated damages set forth herein. The failure to

include any corrective Work or pending items not yet completed on the list does not alter the responsibility of the CONTRACTOR to complete all the construction services purchased pursuant to the Contract.

- 9.8.3** Upon proper and satisfactory completion of the Work identified on the list and the satisfaction of all non-construction requirements such as but not limited to, providing the appropriate warranties and other required documentation set forth in the Contract, the CONTRACTOR may submit a payment request for all remaining retainage being withheld by the OWNER.

If a Good Faith dispute exists as to whether one or more of the items identified on the list have been completed in accordance with the Contract, the OWNER will continue to withhold an amount not to exceed 150 percent of the total costs to complete the Work.

- 9.8.4** Should the CONTRACTOR, in whole or in part, fail to cooperate in the inspection and preparation of the Final Completion list of Work or should the CONTRACTOR fail to perform its contractual responsibilities with regard to the development of the list, the OWNER will not pay or process any payment request for retainage.

## **9.9 DATA FURNISHED BY THE CONTRACTOR**

During the Work and prior to receiving Final Payment, the CONTRACTOR shall furnish to the OWNER for transfer onto the record drawings one (1) complete set of "Record" drawings and one (1) set electronic documents acceptable to the OWNER, indicating all construction changes and actual locations which are at variance with the original drawings. Data shall be supplied in the format and quantity required by the OWNER.

- 9.9.1** At the completion of the Work and prior to receiving Final Payment, the CONTRACTOR shall furnish to the OWNER for delivery to the OWNER all bonds, warranties, guarantees, manuals and operating instructions and a complete list of equipment installed in the Project showing manufacturer, location, model numbers and cost.

- 9.9.2** At the completion of the Work and prior to receiving Final Payment, the CONTRACTOR shall furnish to the OWNER a Schedule of Maintenance, stating frequency and type of service for each piece of equipment.

- 9.9.3** At the completion of the Work and prior to receiving Final Payment, the CONTRACTOR and Subcontractors shall instruct the OWNER how to use all equipment and systems in the Project and supply appropriate instruction manuals.

## **ARTICLE 10**

### **PROTECTION OF PERSONS & PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. In the event the CONTRACTOR encounters on the Site materials reasonably believed to be Asbestos or Polychlorinated Biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop Work in the area affected and report the condition to the OWNER in writing.

The Work in the affected area shall not thereafter be resumed except by written agreement of the OWNER and CONTRACTOR if in fact the material is Asbestos and Polychlorinated

Biphenyl (PCB) and has not been rendered harmless.

The Work in the affected area shall be resumed in the absence of Asbestos or Polychlorinated Biphenyl (PCB), or when it has been rendered harmless, by written agreement of the OWNER and CONTRACTOR, or in accordance with final determination by the OWNER. The CONTRACTOR shall not be required to perform without consent any Work relating to Asbestos or Polychlorinated Biphenyl (PCB).

## **10.1 SAFETY OF PERSONS AND PROPERTY**

The CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- a)** all employees on the Work and all other persons who may be affected thereby;
- b)** all the Work and all the materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the CONTRACTOR or any of his Subcontractors or Sub-Subcontractors; and
- c)** other property at the Site and adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**10.1.1** The CONTRACTOR shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss in accordance with CFR/29 Code of Federal Register, part 1926.

**10.1.2** The CONTRACTOR shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, including safety regulations and notifying owners and users of adjacent utilities.

**10.2** If the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the CONTRACTOR shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

**10.3** The CONTRACTOR shall promptly remedy all damages or loss to any property caused in whole or in part by the CONTRACTOR, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the CONTRACTOR is responsible except damage or loss attributable to acts or omissions of the OWNER or anyone directly or indirectly employed by them or by anyone by whose acts either they may be liable and not attributable to the fault or negligence of the CONTRACTOR. The foregoing obligations of the CONTRACTOR are in addition to his obligations under the Contract Documents.

**10.4** The CONTRACTOR shall designate a responsible member of his organization at the Site whose duty shall be prevention of accidents. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated by the CONTRACTOR in writing to the OWNER.

**10.5** The CONTRACTOR shall not load or permit any part of the Work to be loaded so as to endanger its safety.

All alcoholic beverages, smoking and drugs shall be prohibited from the Project site.

The CONTRACTOR shall promptly report to the OWNER in writing and by telephone all accidents arising out of or in connection with the Work that cause death, serious personal injury or major property damage. In addition, the CONTRACTOR shall be required to notify the OWNER of all recordable accidents.

All workers on the Project site shall wear appropriate and uniform-like attire and shall have visible identification as being employees of the CONTRACTOR or Subcontractor (for example, all employees wear same color shirts).

## **10.6 EMERGENCIES**

In any emergency affecting the safety of persons or property, the CONTRACTOR shall act at its discretion, to prevent threatened damages, injury or loss. Any additional compensation or extension of time claimed by the CONTRACTOR on account of emergency work shall be determined as provided in Changes in the Work.

## **ARTICLE 11**

## **INSURANCE**

### **11.1 GENERAL CONDITIONS**

The CONTRACTOR shall purchase and maintain such insurance that will protect him 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 himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

Prior to beginning the Work, the CONTRACTOR shall obtain and furnish the OWNER the Insurance Policies and other such requirements as are required, which shall be procured from Agents authorized to do business in the State of Florida and in such form and amounts acceptable to the OWNER.

If at any time the OWNER shall deem the insurance coverage to be unsatisfactory, the CONTRACTOR shall, at no expense to the OWNER and within five (5) days after receipt of written notice by the OWNER, furnish an additional insurance in such form and amount and with a surety acceptable to the OWNER. The failure of the CONTRACTOR to furnish insurance policies in a timely manner shall not delay the commencement of the Contract Time, nor shall be a cause for an extension of the Contract Time.

The CONTRACTOR shall fully comply with Contract Documents, Project Plans and Specifications. Insurers providing the insurance required by this contract must meet the following minimum requirements:

- 1)** Be authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida or be eligible surplus lines insurers under *Florida Statutes* 626.918, and
- 2)** Must have a current rating of "A-" or better and a Financial Size Category of "VIII" or better according to the most recent rating in effect by the A.M. Best Company.
- 3)** The School Board of Palm Beach County must be named as an additional insured on all policies required in this Contract.

- 11.1.1** Claims under Workers' Compensation, shall be in compliance with Chapter 440, *Florida Statutes*. Employers' Liability shall have a minimum limit of \$500,000 per each accident.
- 11.1.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
- 11.1.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- 11.1.4** Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of any offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person;
- 11.1.5** 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
- 11.1.6** Claims for damages because of bodily injury or death if any person or property damage arises out of ownership, maintenance or use of any motor vehicle.
- 11.1.7** Business Automobile Liability shall be required with limits at least \$1,000,000 per occurrence for both bodily injury and property damage Combined Single Limit for owned, hired and non-owned and employers' non-ownership, with the School Board of Palm Beach County as the named insured on the policy.
- 11.1.8** The CONTRACTOR shall purchase and maintain Commercial General Liability Insurance including Contractual Liability and products and completed Operations Insurance. The OWNER must be named as an Additional Insured on all General Liability and Automobile required in this Contract, using ISO Additional Insured Endorsement CG2038 or CG2010 07/04 or CG2026 **and** CG2037 07/04 or equivalent for General Liability policies. CG2010 or CG2026 must be accompanied by CG2037 to include products and completed operations.
- Endorsements limiting coverage to on-going operations and/or excluding products and completed operations "are not acceptable". Coverage shall be for bodily and personal injury and property damages. Limits of liability of the OWNER shall be set at \$1,000,000 per occurrence and \$2,000,000 per Aggregate. CONTRACTOR'S insurance is primary to rather than contributory with any insurance or self-insurance carried by OWNER.
- 11.1.9** OWNER'S and CONTRACTOR'S Protective Liability Insurance shall be carried by the CONTRACTOR in the amount of \$1,000,000 per occurrence/aggregate with the School Board of Palm Beach County as the named insured on the policy.
- 11.1.10** Insurance required by Paragraph 11.1 shall provide a "Hold Harmless" and "Indemnification" Rider and shall be so noted on the CONTRACTOR'S Certificate of Insurance. The CONTRACTOR hereby acknowledges receipt of \$100 and other good and valuable consideration from the OWNER in exchange for giving the OWNER the Indemnification provided in this Contract.
- 11.1.11** Certificates of Insurance shall be filed with the OWNER by the CONTRACTOR prior to commencement of the Work. The Certificates shall contain a provision that coverage afforded under these policies will not be cancelled until at least 10 days prior written



notice has been given to the OWNER.

## **11.2 BUILDER'S RISK INSURANCE**

**11.2.1** The Builder's Risk Insurance for the Project will be provided by the Master Builder's Risk Policy, purchased by the OWNER for the duration of the Project. The Master Builder's Risk Policy will cover all Contractors and Subcontractors working on the insured Project as additional insureds. The OWNER will be responsible for any deductible incurred as a result of a loss covered by the Builder's Risk Policy. The OWNER shall name the Construction Manager as an additional insured as it relates to the Builders Risk Policy.

**11.2.2** The OWNER and CONSTRUCTION MANAGER waive all rights against each other and the Subcontractors, Sub-subcontractors, owners and employees for damages caused by fire and other perils to the extent covered by the Builders Risk insurance obtained for this Project except such rights as they may have to the proceeds of such insurance held by the OWNER as trustee. OWNER agrees that the Builders Risk Policy for the Project will not be canceled or lapsed on the account of partial occupancy or use. This insurance will be maintained in effect, unless otherwise provided for in the Contract Documents.

## **11.3 WAIVER OF SUBROGATION**

In the event of loss, damage or injury to the CONTRACTOR shall look solely to any insurance in its favor without making any claim against the School Board of Palm Beach County. The CONTRACTOR hereby waives any right of subrogation against the School Board of Palm Beach County, for loss, damage or injury within the scope of the Performer's insurance, and on behalf of itself and its insurer, waives all such claims against the School Board of Palm Beach County. In addition, these Terms and Conditions shall apply to the CONTRACTOR'S operations for any school or ancillary owned by the School Board of Palm Beach County.

## **ARTICLE 12**

### **INDEMNIFICATION**

**12.1** To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold harmless the OWNER, its officers, agents, volunteers, and employees from and against all claims, damages, losses and expenses, including but not limited to all fees and charges of engineer(s), architect(s), attorney(s), and other professional(s), court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of CONTRACTOR'S professional work or services under this Contract, including but not limited to any claim, damage, loss or expense attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting therefrom or any actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court, but only to the extent caused in whole or part by the actual or alleged negligent acts, errors, omissions of the CONTRACTOR, CONTRACTOR'S Subcontractor(s), or anyone directly or indirectly employed or hired by CONTRACTOR, or anyone for whose acts CONTRACTOR may be liable.

The OWNER reserves the right, but not the obligation to participate in defense without relieving CONTRACTOR of any obligation hereunder. CONTRACTOR agrees to investigate,

respond, adjust and provide a defense for, all and any such claims, demands and actions at CONTRACTOR'S sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent.

CONTRACTOR will provide reasonable assurance to OWNER of its financial capacity to assume the defense of such proceeding with counsel satisfactory to OWNER and, if CONTRACTOR assumes the defense of a proceeding, then no compromise or settlement of such claims may be effected by CONTRACTOR without OWNER'S consent, unless

- 1) there is no finding or admission of any violation of laws or regulations or any violation of the rights of OWNER,
- 2) the compromise or settlement will have no effect on any other claims that may be made against OWNER, and
- 3) the sole relief provided is monetary damages that are paid in full by CONTRACTOR. OWNER will have no liability or responsibility to CONTRACTOR or any third-party with respect to any compromise or settlement of such claims effected without its consent.

The CONTRACTOR'S indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation, or benefits payable by or for the CONTRACTOR of any Subcontractor under Workers' Compensation Acts, Disability Benefit Acts, other Employee Benefit Acts, or any statutory bar. CONTRACTOR acknowledges that OWNER would not enter into this Contract without this indemnification of OWNER by CONTRACTOR, and that OWNER'S entering into this Contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract.

**12.2** Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article. Nothing in this Contract shall be construed to affect in any way the OWNER'S rights, privileges, and immunities as set forth in *Florida Statutes* 768.28.

**12.3** The Terms and Conditions of this Contract shall apply with respect to CONTRACTOR'S operations for any school or ancillary property owned by the School Board of Palm Beach County. The indemnification requirements shall extend to and through any and all proceedings.

In any and all claims against the OWNER or their employees by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone from whose act any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under Worker's or Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

**12.4** This indemnification provision does not extend to require indemnification to the OWNER for its own negligence and, therefore, certain requirements of Section 725.06, *Florida Statutes*, are not required. However, should this clause be interpreted by a court to require compliance with other provisions of Section 725.06, *Florida Statutes*, then the following apply (i) this indemnification provision is incorporated by reference into the Contract (ii) the indemnification as provided in this paragraph shall be subject to a monetary limitation equal to the maximum General Liability coverage and (iii) the OWNER and Project Manager both acknowledge that the monetary limitation referenced above bears a reasonable commercial relationship to this

Contract.

The CONTRACTOR'S Liability Policy shall provide a "Hold Harmless" rider to cover this provision and this shall be so noted on the CONTRACTOR'S Certificate of Insurance.

The CONTRACTOR hereby acknowledges receipt of \$100 and other good and valuable consideration from the OWNER in exchange for giving the OWNER the indemnification provided above in accord with this Article.

### **ARTICLE 13**

#### **PERFORMANCE BOND AND PAYMENT BOND**

##### **13.1 BOND REQUIREMENTS**

The CONTRACTOR shall furnish bonds and maintain throughout the duration of the Project as provided in Section 255.05 *Florida Statutes*, et seq. covering the faithful performance of the Contract and payment of all obligations arising thereunder, including liability for liquidated or time-related damages. Bonds shall be secured by the CONTRACTOR from a Surety Company licensed in the State of Florida with an "A-" or better in management and financial strength category specified in below according to the most recent addition of Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey, 08858.

**13.1.1** CONTRACTOR shall be required to provide surety bonds in the amount of 100% of the Contract amount.

**13.1.2** In addition to the above-minimum qualifications, the Surety Company must meet at least one of the following additional qualifications:

**A.** The Surety Company shall hold a current Certificate of Authority as acceptable surety on Federal Bonds in accordance with the United States Department of Treasury Circular 570, Current Revisions. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety Company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Current Edition. Further, the Surety Company shall provide the OWNER with evidence satisfactory to the OWNER, that such excess risk has been protected in an acceptable manner.

**B.** The Surety Company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide.

##### **MAXIMUM AMOUNT OF BOND**

##### **BEST FINANCIAL CATEGORY**

**Up to \$5,000,000**

**Class V**

**\$5,000,000**

**Class VI**

**\$10,000,000**

**Class VII**

**\$25,000,000 to \$50,000,000**

**Class VIII**

**\$50,000,000 to \$100,000,000**

**Class IX**

**13.1.3** One (1) set of originals is required. Proof of recordation must be submitted from the Palm Beach County Record Department.

### **13.2 TIME AND DELIVERY OF BONDS**

Prior to beginning the Work, the CONTRACTOR shall obtain and furnish the OWNER bonds and other such requirements as are required, which shall be procured from Agents authorized to do business in the State of Florida and in such form and amounts acceptable to the OWNER.

If at any time the OWNER shall deem the surety and/or sureties to be unsatisfactory or the bonds inadequate, the CONTRACTOR shall, at no expense to the OWNER and within five (5) OWNER business days after receipt of written notice by the OWNER, furnish an additional bond or bonds in such form and amount and with a surety acceptable to the OWNER. The failure of the CONTRACTOR to furnish bonds in a timely manner shall not delay the commencement of the Contract Time, nor shall be a cause for an extension of the Contract Time.

CONTRACTOR shall fully comply with Contract Documents, Project Plans and Specifications. The CONTRACTOR shall deliver the required bonds to the OWNER using Performance Bond Form 00610-PB and Labor and Material Payment Bond Form 00610-LMPB (**Attachment E**). The bonds written shall be Performance and Payment Bonds. Both bonds shall be written in the amount of the Contract Sum and shall continue in effect for one (1) year after completion and acceptance of the Work. The bonds shall be dated on or before the Contract Date.

The CONTRACTOR shall require the Attorney-In-Fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of the Power of Attorney.

Pursuant to the requirements of Section 255.05, *Florida Statutes*, CONTRACTOR shall ensure the bond(s) referenced above shall be recorded in the Recording Department of Palm Beach County Clerk of Circuit Court. Proof of recordation must be submitted to the Construction Purchasing Department. One (1) set of originals is required.

## **ARTICLE 14**

### **UNCOVERING AND CORRECTION OF WORK**

#### **14.1 UNCOVERING OF WORK**

If any portion of the Work should be covered contrary to the request of the OWNER or to requirements specifically expressed in the Contract Documents, it shall, if required in writing, be uncovered for observation and shall be replaced at the CONTRACTOR'S expense.

If any other portions of the Work have been covered which the OWNER has not specifically requested to observe prior to being covered, the OWNER may request to see such Work and it shall be uncovered by the CONTRACTOR.

If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the OWNER.

If such Work be found not in accordance with the Contract Documents, the CONTRACTOR shall pay such cost unless it be found that this condition was caused by the OWNER or a third party CONTRACTOR, in which event the OWNER shall be responsible for payment of such cost.

#### **14.2 CORRECTION OF WORK**

The CONTRACTOR shall promptly correct all Work rejected by the OWNER as defective or as failing to conform to the Contract Documents whether observed before or after Substantial

Completion and whether or not fabricated, installed or completed.

The CONTRACTOR shall bear all costs of correcting such rejected Work, including compensation for the OWNER'S additional services made necessary thereby. If, within three (3) years after Substantial Completion Date of the Work or within one (1) year after acceptance by the OWNER of designated equipment or within such longer periods of time as may be prescribed by law or by the terms of any warranties required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

The CONTRACTOR shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected. If the CONTRACTOR fails to correct defective or non-conforming Work as provided in this Article, the OWNER may correct it in accordance with the Contract Documents.

**14.2.1** If the CONTRACTOR does not proceed with the correction of such defects or non-conforming Work within a reasonable time fixed by a written notice, the OWNER may remove it and may store the materials or equipment at the expense of the CONTRACTOR.

If the CONTRACTOR does not pay the cost of such removal and storage within ten 10 days thereafter, the OWNER may upon the 10 additional days written notice sell such Work at an auction or at a private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by the CONTRACTOR, including compensation for the OWNER'S additional services made necessary thereby.

If such proceeds of sale do not cover all costs which the CONTRACTOR should have borne, the difference shall be charged to the CONTRACTOR and an appropriate Change Order shall be issued. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the OWNER.

**14.2.2** The CONTRACTOR shall bear the cost of making acceptable to the OWNER all work of the OWNER or third party Contractors destroyed or damaged by CONTRACTOR'S correction or removal.

**14.2.3** Nothing contained in the Contract shall be construed to establish a period of limitation with respect to any other obligation which the CONTRACTOR might have under the Contract Documents.

### **14.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

If the OWNER prefers to accept defective or non-conforming Work he may do so instead of requiring its removal and correction, in which case a Change Order shall be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustments shall be effected whether or not Final Payment has been made.

## **ARTICLE 15**

### **SMALL BUSINESS ENTERPRISE**

#### **SUBCONTRACTOR PARTICIPATION (GOALS) REQUIREMENTS**

### **15.1 POLICY**

It is the policy of the School District of Palm Beach County that Small Business Enterprises (SBE) have the maximum practical opportunity to participate in the competitive process of supplying goods and services to the District. To that end, the Palm Beach County School Board enacted Policy 6.144. They are incorporated in this Contract as required by School Board Policy 6.144:

- a) The SBE Procedure Manual is incorporated by reference and the CONTRACTOR'S failure to comply with any of its requirements will be considered a Breach of Contract.
- b) The CONTRACTOR shall maintain and submit to the District all relevant records and information necessary to document compliance with Policy 6.144. The District has the right to inspect such records.

All Contractors shall meet the SBE participation percentages submitted in their respective Bids with the Subconsultants and Subcontractors provided on Form **PBSD 1526 (Attachment G)** and at the dollar values specified. CONTRACTOR agrees to provide any additional information requested by the District to substantiate SBE participation.

Form **PBSD 1621 (Attachment H)** Final Release and Verification of Payment, including retainage, shall be provided prior to the District's payment to the CONTRACTOR. The Final Release and Verification of Payment Form **PBSD 1621 (Attachment H)** is to be executed by the SBE firm to verify receipt of payment. This form must reflect the current payment information. Failure to provide accurate information shall delay payment. A sample report and the instruction submittal will be available to the CONTRACTOR at the Preconstruction Conference or from the Office of Small Business Development. The application for payment **will not** be processed without Form **PBSD 1621 (Attachment H)**.

### **15.2 EXCUSE FROM ENTERING SUBCONTRACTS**

If prior to execution of a subcontract required by this Article, CONTRACTOR submits a written request and demonstrates to the satisfaction of the Director of the Purchasing Department that, as a result of a change in circumstances beyond CONTRACTOR'S control of which it was not aware and could not reasonably have been aware prior to the Award of the Contract, an SBE Subcontractor who was to enter into such subcontract has not qualified, or that the SBE Subcontractor has unreasonably refused to execute the subcontract, the CONTRACTOR shall be excused from executing such contract with that Subcontractor, who will be replaced with another acceptable Certified SBE Subcontractor, if possible (or available).

### **15.3 TERMINATION OF SUBCONTRACTS**

If, after execution of a subcontract required by this Article, the CONTRACTOR submits a written request to the School Board of Palm Beach County, Florida and demonstrates to the satisfaction of the Director of the Purchasing Department that, as a result of a change in circumstances beyond the CONTRACTOR'S control of which it was not aware prior to the date of execution of such subcontract, an SBE Subcontractor who entered into such subcontract has committed and failed to remedy a material breach of the subcontract, the CONTRACTOR may proceed to exercise such rights as may be available to it to terminate the subcontract.

### **15.4 ALTERNATIVE SUBCONTRACTS**

If the CONTRACTOR is excused from preparing a subcontract pursuant to this Article or

rightfully terminates a subcontract pursuant to this Article and without such subcontract the CONTRACTOR will not achieve the level of SBE Subcontractor participation upon which the Contract was Awarded, the CONTRACTOR shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by other Certified SBE Subcontractors/Subcontractor(s) for a contract amount totaling not more than the contract amount under the excused or terminated subcontract less all amounts previously paid thereunder.

### **15.5 COMPLIANCE WITH CONTRACT GOAL**

The CONTRACTOR shall be deemed to be in continued compliance with the Established Goal for SBE Subcontractor Participation where the CONTRACTOR negotiates with the next lowest Certified SBE Subcontractor, and, if necessary, CONTRACTOR shall rebid the portion of the Work. The CONTRACTOR shall notify all current Certified SBE firms qualified to complete that portion of the Work.

### **15.6 B2GNOW COMPLIANCE REPORTING SYSTEM**

The SCHOOL BOARD maintains an electronic contract compliance system known as the B2GNow Compliance Reporting System. The B2GNow Reporting System replaces the SCHOOL BOARD'S Professional and Construction Services Utilization report, Form **PBSD 1528** and Partial Release of Claims and Waiver of Lien and/or Verification of Payment, Form **PBSD 1620**. Paper copies of Form **PBSD 1528** and Form **PBSD 1620** will not be accepted. This Contract is subject to compliance tracking and CONTRACTOR shall use the B2GNow secure web-based system to submit Project Specific information including, but not limited to, monthly payments and progress reports on all Subconsultants and Subcontractors.

CONTRACTOR understands that all Subconsultants and/or Subcontractors are also required to utilize the B2GNow Reporting System to manage their contact information and Project Specific records, respond to any noted instructions and/or information requests. CONTRACTOR agrees to advise all of its Subconsultants and/or Subcontractors in writing of the requirement to submit all Contract compliance-related data electronically to the B2GNow Reporting System. CONTRACTOR further agrees and understands it is responsible for ensuring all Subconsultants and/or Subcontractors have uploaded all requested items via the B2GNow Reporting System.

CONTRACTOR understands its contact information and that of its Subconsultants and/or Subcontractor must remain accurate and up-to-date in the B2GNow Reporting System and agrees to timely notify SCHOOL BOARD of any changes to its contact information or that of a Subconsultant and/or Subcontractor. From time to time, the SCHOOL BOARD may require additional information from the CONTRACTOR and/or its Subconsultants/Subcontractors and CONTRACTOR agrees that it will provide such information, within five (5) business days via the B2GNow Reporting System. CONTRACTOR understands its obligations hereunder are continuing and shall survive the expiration or termination of the Contract.

Information concerning access of the B2GNow Reporting System will be provided to CONTRACTOR by the Office of Small Business Development. The B2GNow Reporting System is web-based and can be accessed at the following Internet address: <https://www.palmbeachschools.org/doing-business-with-the-district/small-business>. The CONTRACTOR shall contact the Office of Small Business Development to register for training and support for the B2GNow Reporting System. CONTRACTOR agrees to advise all of its Subconsultants and/or Subcontractors in writing of their obligation to contact the Office of Small Business Development to register for training and support for the B2GNow Reporting System. For information request and questions, contact the Office of Small Business Development (561-681-2403).

## **ARTICLE 16**

### **FUNDING OUT/TERMINATION AND/OR SUSPENSION OF THE CONTRACT**

#### **16.1 FUNDING OUT**

Florida School Laws prohibit the Board or its designee from creating obligations on anticipation of budgeted revenues from one fiscal year to another without year-to-year extension provisions in the Contracts. It is necessary that fiscal funding out provisions be included in all Bids in which the terms are for periods of longer than one year. Therefore, the following funding out provisions are an integral part of this Invitation to Bid and must be agreed to by the CONTRACTOR:

The Board or its designee may, during the Contract Period, terminate or discontinue the items covered in this Bid for lack of appropriated funds upon the same Terms and Conditions. Such prior written notice will state:

- 1) That the lack of appropriated funds is the reason for termination, and;
- 2) Board agrees not to replace the equipment or services being terminated with equipment and services with functions similar to those performed by the equipment covered in this Bid from another vendor in the succeeding funding period.
- 3) "This written notification will thereafter release the School Board of Palm Beach County, Florida of all further obligations in any way related to such equipment covered herein".

#### **16.2 TERMINATION BY THE CONTRACTOR**

The CONTRACTOR may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the CONTRACTOR or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the CONTRACTOR, for any of the following reasons:

- 1) Issuance of an order of a court or other public authority having jurisdiction;
- 2) An act of government, such as a declaration of national emergency, making material unavailable;
- 3) Because the OWNER has not issued a "Certificate for Payment" and has not notified the CONTRACTOR of the reason for withholding certification, or because the OWNER has not made payment on a "Certificate for Payment" within the time stated in the Contract Documents and the OWNER does not have a right provided in this Contract;
- 4) If repeated suspensions, delays or interruptions by the OWNER, constitute in the aggregate more than 100 percent of the total number of days, schedules for completion, or 120 days in any 365-day period, whichever is less.

If one (1) of the above reasons exists, the CONTRACTOR may, upon seven (7) additional days written notice to the OWNER, terminate the Contract and recover from the OWNER payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable earned overhead, earned profit and termination expenses incurred by the CONTRACTOR up to the date of termination.



This shall be CONTRACTOR'S sole remedy and in no event shall the OWNER be liable to CONTRACTOR for payment for Work not actually performed, lost or anticipated profits, compensation of personnel contemplated for this Contract and associated overhead, lost business opportunities and reputation and lost profit from those business opportunities home office overhead, or any other type of damages (including consequential, special or indirect).

Moreover, all documents required as conditions precedent to Final Payment under this Contract must be provided to the OWNER as a condition precedent to payment of the Termination Fee, and any amounts owed to CONTRACTOR shall be reduced by any setoffs to which the OWNER is entitled under this Contract.

### **16.3 TERMINATION BY THE OWNER FOR CAUSE**

If the CONTRACTOR is adjudged a bankrupt, or if he makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a provision of the Contract Documents, then the OWNER, if sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the CONTRACTOR and its surety, seven (7) days written notice, terminate the employment of the CONTRACTOR and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and may finish the Work by whatever method that he may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.

If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for any additional services made necessary thereby, such excesses shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER upon demand, the amount to be paid to the CONTRACTOR or to the OWNER, as the case may be. This obligation for payment shall survive termination of the Contract.

When the OWNER terminates the Contract for one (1) of the reasons stated in this Article, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished. The costs of finishing the Work includes, without limitation, all reasonable attorneys' fees, insurance, Architects' and Engineers' fees, personnel time multiplied by 2.5 of the Direct Personnel Expense, insurance, loss of use because of delay, and all other direct, indirect and consequential costs incurred by the OWNER by reason of the termination of the CONTRACTOR as stated herein. Notwithstanding the foregoing, nothing contained herein shall allow the OWNER to obtain double recovery for said items.

Upon a termination for cause, OWNER will only be required to pay to the CONTRACTOR that amount of the Contract actually satisfactorily performed up to the date of termination. This shall be CONTRACTOR'S sole remedy and in no event shall the OWNER be liable to the CONTRACTOR for payment for Work not actually performed, lost or anticipated profits, compensation of personnel contemplated for this Contract and associated overhead, lost business opportunities and reputation and lost profit from those business opportunities home office overhead, or any other type of damages (including consequential, special or indirect).

Moreover, all documents required as conditions precedent to Final Payment under this Contract must be provided to the OWNER as a condition precedent to payment of the Termination Fee, and any amounts owed to the CONTRACTOR shall be reduced by any setoffs

to which the OWNER is entitled under this Contract. If OWNER improperly terminates the Contract for cause, the termination for cause will be converted to a termination in accordance with the provisions of Section 16.4 below.

#### **16.4 SUSPENSION BY THE OWNER FOR CONVENIENCE AND/OR TERMINATION FOR CONVENIENCE**

The OWNER may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the OWNER may determine.

An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent: that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CONTRACTOR is responsible; or that an equitable adjustment is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

The OWNER reserves the right at any time and for any reason whatsoever, in the OWNER'S absolute discretion, to terminate this Contract and the services of the CONTRACTOR and the Work by giving 30 days prior written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the OWNER shall reimburse the CONTRACTOR for that portion of the Work actually satisfactorily performed up to the date of termination in accordance with the Schedule of Values. This shall be CONTRACTOR'S sole remedy and in no event shall the OWNER be liable to the CONTRACTOR for payment for Work not actually performed, lost or anticipated profits, compensation of personnel contemplated for this Contract and associated overhead, lost business opportunities and reputation and lost profit from those business opportunities home office overhead, or any other type of damages (including consequential, special or indirect).

Moreover, all documents required as conditions precedent to Final Payment under this Contract must be provided to the OWNER as a condition precedent to payment of the Termination Fee, and any amounts owed to the CONTRACTOR shall be reduced by any setoffs to which the OWNER is entitled under this Contract.

The CONTRACTOR'S reimbursement shall also include materials provided to the Project that were ordered prior to the receipt of the notice of termination, and for Work performed that is completed and not covered by the most current Certificate of Payment.

When the CONTRACTOR is in receipt of the Notice of Termination no materials shall be ordered or paid for by the OWNER except for those which the OWNER may specifically authorize in writing, also the CONTRACTOR shall not perform any Work except such Work as may be directed by the OWNER in writing or as necessary to protect persons or property and to prepare to demobilize from the site. Since the Contract Price covers demobilization, only the CONTRACTOR'S cost of protecting the Work would be compensable.

The CONTRACTOR shall not be entitled to loss of profit from the Project for uncompleted Work. In addition, should a court of competent jurisdiction determine that the OWNER wrongfully terminated this Contract without cause, then the CONTRACTOR agrees to treat such termination as a termination for convenience hereunder.

#### **16.5 OWNER'S RIGHT TO STOP THE WORK**

If the CONTRACTOR fails to correct defective Work as required in the Contract or persistently

fails to carry out the Work in accordance with the Contract Documents, the OWNER by a written order signed personally by the OWNER'S representative specifically so empowered, may order the CONTRACTOR to stop the Work or any portion thereof until the cause for such order has been eliminated; however, this right of the OWNER to stop the Work shall not give rise to any duty on the part of the OWNER to exercise this right to the benefit of the CONTRACTOR or any other person or entity except to the extent required by the Contract Documents.

#### **16.6 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the OWNER to commence and continue corrections of such default or neglect with diligence and promptness, the OWNER may after seven (7) days following the receipt by the CONTRACTOR of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then and thereafter due the CONTRACTOR the cost for correcting such deficiencies, including compensation for any additional services made necessary by such default, neglect or failure. Such action by the OWNER and the amount charged to the CONTRACTOR are at the discretion of the OWNER. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the differences to the OWNER.

#### **16.7 SCHOOL BOARD PROJECT REPRESENTATIVE**

The OWNER will designate its School Board representative or other designee who will act as the onsite field representative and fulfill duties as enumerated in the Rules of the Department of Education, State Requirements for Educational Facilities, Chapter 4.5., FAC and District Master Specifications.

#### **16.8 DECLARATION OF DEFAULT**

The failure of the CONTRACTOR to perform in conformance with OWNER'S requirements or to supply enough properly skilled workmen or materials or to make prompt payment to Subcontractors or for materials or labor, or to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or to comply with the Contract Documents, shall be sufficient grounds for the OWNER to find the CONTRACTOR in substantial default and to certify that sufficient cause exists to terminate the Contract and to withhold payment or any part thereof until the cause or causes giving rise to finding default has been eliminated by the CONTRACTOR and approved by the OWNER.

If a finding of default is made, the CONTRACTOR shall remain responsible for performance of the requirements of the Contract Documents unless and until the OWNER terminates the Contract. Upon finding default, the OWNER shall set a reasonable time within which the CONTRACTOR shall eliminate the cause or causes of default. When the basis for finding default no longer exists, the OWNER shall notify the CONTRACTOR in writing that the default has been corrected and that the CONTRACTOR is no longer in default. If the CONTRACTOR fails to correct the default within the time allowed, the OWNER, if sufficient cause exists, may terminate the Contract and the employment of the CONTRACTOR pursuant to the Contract.

### **ARTICLE 17**

#### **WRITTEN GUARANTEE**

- 17.1** The CONTRACTOR warrants that the Work will be fit for its intended purpose and the Project is merchantable and habitable for its intended purpose. Further, the CONTRACTOR shall and does hereby guarantee the Work and shall remedy any defects due to faulty materials or workmanship which appear within two (2) years, unless a longer period is specified in the Contract Documents. Neither the Final Payment nor any provisions in the Contract Document shall relieve the CONTRACTOR of the responsibility for negligence, defects of manufacture, faulty materials, or workmanship to the extent within the period provided by law and upon written notice they shall remedy any defects due thereto and pay all expenses for any damages to other Work resulting therefrom.
- 17.2** If any lien or claim remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER all monies that the latter may be compelled to pay in discharging such liens or claims, including all costs and reasonable Attorney's fees. Any Subcontractor may seek relief from the Surety and CONTRACTOR under *Florida Statute* 255.05.

## **ARTICLE 18**

### **ACCESSIBILITY & COOPERATION WITH THE INSPECTOR GENERAL AND STAFF**

- 18.1** Pursuant to School Board Policy 1.092, CONTRACTOR agrees and understands that the School District's Office of Inspector General shall have immediate, complete, and unrestricted access to all financial and performance-related records, papers, books, documents, information, writings, drawings, graphs, photographs, processes, data or data compilations, computer hard drives, emails, instant messages, services, and property or equipment purchased in whole or in part with School Board funds ("Information and Records").

CONTRACTOR shall furnish the Inspector General with all Information and Records requested for the purpose of conducting an investigation or audit, as well as provide the Inspector General with reasonable assistance in locating assets and obtaining Information and Records that are in the possession, custody, or control of CONTRACTOR or its employees, agents, or Subcontractor.

CONTRACTOR understands, acknowledges, and agrees to abide by applicable portions of School Board Policy 1.092. Such policy is located at: <https://www.boarddocs.com/>.

The Office of Inspector General may require a meeting with CONTRACTOR when the investigation or audit relating to the Contract is near completion.

CONTRACTOR must agree to maintain the confidentiality of the preliminary/draft report and the information contained therein pursuant to section 119.0713(2), *Florida Statutes*, and shall enter into a written confidentiality agreement for the period until the investigation or audit is completed. CONTRACTOR'S failure to enter such written confidentiality agreement shall be deemed to constitute CONTRACTOR'S waiver of the opportunity to respond to the investigation or audit preliminary report, and the investigation or audit shall be completed without CONTRACTOR'S response.

## **ARTICLE 19**

### **BACKGROUND CHECK AND FINGERPRINTING (JESSICA LUNSFORD)**

- 19.1** All non-instructional personnel (which includes, but is not limited to all employees of the CONTRACTOR and all of its Subcontractors, Subconsultants vendors, individuals, other entities, etc.) under Contract with the School Board (or who receives remuneration for services performed for the School District or a school) who are permitted access on school grounds

when students are present, who have direct contact with students or who have access to or control of school funds must undergo level 2 screening. Level 2 screening consists of fingerprinting and a background check, as set forth in Section 1012.32, *Florida Statutes*.

All contractual personnel agree to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all employees and Subconsultants of the organization who meet any of the above conditions submit to a background check, including fingerprinting, at the sole cost of the CONTRACTOR.

CONTRACTOR personnel shall not begin providing services contemplated by the Contract until he or she receives notice of clearance by the School Board. Neither the School Board, nor its members, officers, employees, nor agents, shall be liable under any legal theory for any claim whatsoever for the rejection of the CONTRACTOR (or discontinuation of the CONTRACTOR'S services) on the basis of these compliance obligations.

The CONTRACTOR agrees that neither the CONTRACTOR, nor any employee, agent nor representative of the CONTRACTOR who has been convicted or who is currently under investigation for a crime delineated in Section 435.04, *Florida Statutes*, will be employed in the performance of this Contract. All exceptions to certain fingerprinting and criminal history checks pursuant to Section 1012.468, *Florida Statutes* (2007), shall apply for a crime delineated in *Florida Statutes* §435.04 will be employed in the performance of this Contract.

### **SCHOOL SAFETY REQUIREMENTS**

- 19.2** Effective August 1, 2024, Florida law requires the School District to establish additional school safety requirements. Pursuant to Florida Statute 1006.07(6)(f), all doors, gates and access points that restrict ingress to or egress from a school campus must remain closed and locked, while students are on campus, unless a person is actively entering or exiting the door, gate or access point.

When on school property, whether working, servicing, or providing supplies, all doors, gates, and access points shall remain closed and locked. Doors and gates cannot be propped open for any reason while students are on campus. This requirement applies to before and after school as well as during normal school hours.

This legal requirement applies to CONTRACTORS' employees, agents, subcontractors, and suppliers. The CONTRACTOR is responsible for enforcing compliance with Florida law.

### **ARTICLE 20**

#### **MANDATORY NONDISCRIMINATION**

- 20.1** The CONTRACTOR certifies that they are in compliance with the non-discrimination clause contained in Executive Order 11246, Section 202, 3 CFR, 1964-65 as amended by Executive Order 11375, Section 202, 3 CFR 1967 and as may be further amended relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. The provisions of the ADA Act of 1990 pertaining to employment shall also be applicable.

The CONTRACTOR shall not discriminate on the basis of race, gender, gender identity or expression, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of sub-contractors, vendors, suppliers, or commercial customers. The CONTRACTOR shall provide equal opportunity for sub-contractors to participate in all of its public sector and private sector sub-contracting opportunities.

CONTRACTOR understands and agrees that violation of this clause may be considered is a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- 20.2** Upon the filing of a complaint against awarded CONTRACTOR pursuant to Palm Beach County School Board Policy 6.144 - Commercial Nondiscrimination, awarded CONTRACTOR agrees to provide any and all materials and documents requested by the OWNER and to fully cooperate in any investigation conducted by the OWNER pursuant to Policy 6.144. CONTRACTOR further understands and agrees that violation of this clause may be considered is a material breach of the Contract and may result in contract termination, debarment, and other sanctions.

## **ARTICLE 21**

### **PUBLIC RECORDS REQUIREMENTS**

#### **21.1 THE CONTRACTOR SHALL:**

- a) Keep and maintain Public Records that ordinarily and necessarily would be required by the School Board of Palm Beach County in order to perform the service to the Board under this Contract.
- b) Upon request from the Board's custodian of Public Records, provide the Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.
- c) Ensure that Public Records that are exempt or confidential and exempt from Public Records Disclosure Requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Responder does not transfer the records to the Board.
- d) Upon completion of the Contract, transfer, at no cost, to the Board all Public Records in possession of the Responder or keep and maintain Public Records required by the Board to perform the service. If the Responder transfers all Public Records to the Board upon completion of the Contract, the Responder shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records Disclosure Requirements. If the Responder keeps and maintains Public Records upon completion of the Contract, the Bidder shall meet all applicable requirements for retaining Public Records. All records stored electronically must be provided to the Board, upon request from the Board's custodian of Public Records, in a format that is compatible with the information technology systems of the Board.
- e) Failure of CONTRACTOR to abide by the terms of this provision shall be deemed a material breach of this Contract. This provision shall survive any termination or expiration of this Contract. In the event of a dispute regarding the enforcement of this provision where the CONTRACTOR has unlawfully refused to comply with the Public Records Request within a reasonable time, the School Board shall be entitled to recover its reasonable costs of enforcement, including reasonable attorney's fees from the CONTRACTOR as authorized by 119.0701, *Florida Statutes*. If the CONSTRUCTION MANAGER has questions regarding the application of Ch. 119, *Florida Statutes*, to the CONSTRUCTION MANAGER'S duty to provide Public Records relating to this Contract, they must contact the Public Records Management Coordinator for the School District at [PublicRecords@PalmBeachSchools.org](mailto:PublicRecords@PalmBeachSchools.org).

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CH. 119, *FLORIDA STATUTES* TO THE PROPOSER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THEY MUST CONTACT THE PUBLIC RECORDS MANAGEMENT COORDINATOR FOR THE SCHOOL DISTRICT OF PALM BEACH COUNTY AT 561-629-8585, [PublicRecords@PalmBeachSchools.org](mailto:PublicRecords@PalmBeachSchools.org) OR 3300 FOREST HILL BLVD., SUITE C-110, WEST PALM BEACH, FL 33406.**

## **ARTICLE 22**

### **MISCELLANEOUS PROVISIONS**

#### **22.1 GOVERNING LAW AND VENUE**

This Contract shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree the exclusive venue for any lawsuit arising from, related to, or in connection with this Contract shall be in the state courts of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. If any Claim arising from, related to, or in connection with this Contract must be litigated in Federal Court, the Parties agree the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division.

#### **22.2 SUCCESSORS AND ASSIGNS**

The OWNER and the CONTRACTOR each bind himself, his partners, successors, assigns and legal representatives, or such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole or in part for any reason or purpose including pass-through claims of Subcontractors without the written consent of the other, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder, without the previous written consent of the OWNER.

#### **22.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

**To School Board:**

Director of Purchasing Department  
The School District of Palm Beach County  
3300 Forest Hill Blvd., Suite A-323  
West Palm Beach, FL 33406

**With a copy to:**

Inspector General  
The School District of Palm Beach County  
3300 Forest Hill Blvd., Suite C-306  
West Palm Beach, FL 33406

**With a copy to:**

Office of the General Counsel  
The School District of Palm Beach County  
3300 Forest Hill Blvd., Suite C-331  
West Palm Beach, FL 33406

**To Contractor:**

**TBD**

## **22.4 LEGAL REQUIREMENTS**

Federal, State, County and local laws, ordinances, rules and regulations as well as School Board policies that in any manner affect the items covered by this Purchase Order herein apply and must be adhered to by the vendor.

In addition, if applicable, vendor compliance is required for the following: Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, as amended.

## **22.5 GOVERNMENT FUNDING**

Funding for this Contract and the individual POs may be provided in whole or in part by one or more U.S. Government funding agencies. As a result, Vendor shall comply with the applicable laws and regulations listed below, the entire Terms and Conditions of which are fully incorporated herein:

- Rights to Inventions Made Under a Contract or Agreement (35 U.S.C. 206)
- Energy Policy and Conservation Act (42 U.S.C. 6201) & EPS Improvement Act of 2017 (42 U.S.C. 6291)

## **22.6 FEMA SPECIAL CONDITIONS**

Funding for this Agreement and the individual POs may be provided in whole or in part by one or more U.S. Government funding agencies. CONTRACTOR may need to respond to events and losses where products and services are needed for the immediate and initial response to emergency situations such as, but not limited to, water damage, fire damage, vandalism cleanup, biohazard cleanup, sewage decontamination, deodorization, and/or wind damage during a disaster or other emergency situation. During the performance of this Contract, CONTRACTOR accepts these Special Conditions required by the Federal Emergency Management Agency (FEMA).

### **A. CONTRACT REMEDIES**

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and must provide for sanctions and penalties as appropriate.

#### **1.1 Applicability**



This contract provision is required for contracts over the SAT, currently set at \$250,000 for procurements made on or after June 20, 2018. Although not required for contracts at or below the SAT, FEMA suggests including a remedies provision.

### **1.2 Additional Considerations**

For FEMA's Assistance to Firefighters Grant (AFG) Program, recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount. In that situation, the contract must include a clause addressing that non-delivery by the contract's specified date or other vendor nonperformance will require a penalty of no less than \$100 per day until such time that the vehicle, compliant with the terms of the contract, has been accepted by the recipient. This penalty clause should, however, account for force majeure or acts of God. AFG recipients should refer to the applicable year's Notice of Funding Opportunity (NOFO) for additional information, which can be accessed at FEMA.gov.

## **B. TERMINATION FOR CAUSE AND CONVENIENCE**

Contracts for more than \$10,000 must address termination for cause and for convenience by the non-federal entity, including how it will be carried out and the basis for settlement.

### **2.1. Applicability**

This contract provision is required for procurements exceeding \$10,000. FEMA suggests including a termination for cause and for convenience in all contracts even when not required.

## **C. EQUAL EMPLOYMENT OPPORTUNITY (if applicable)**

- 1.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Nondiscrimination clause.
- 2.** CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.** CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's

essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency,

instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**D. COMPLIANCE WITH THE DAVIS-BACON ACT** (if applicable)

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. CONTRACTOR shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Additionally, contractors are required to pay wages not less than once a week.

**E. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT** (if applicable)

1. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**F. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (if applicable)

1. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. *Withholding for unpaid wages and liquidated damages.* CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**G. COMPLIANCE WITH THE CLEAN AIR ACT** (if applicable)

1. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**H. COMPLIANCE WITH THE FEDERAL WATER POLLUTION CONTROL ACT** (if applicable)

1. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. CONTRACTOR agrees to report each violation and understands and agrees that CONTRACTOR will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**I. SUSPENSION AND DEBARMENT** (if applicable)

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**J. RECOVERED MATERIALS**

In the performance of this contract, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. at a reasonable price.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**K. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY2019 NDAA) and 2 C.F.R. § 200.216, as implemented by FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Applicability For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients, and their contractors and subcontractors, are required to include this contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders.<sup>61</sup> FEMA strongly encourages the use of this contract clause for any contracts where FEMA funding will be used regardless of whether the funding is from FEMA declarations or awards issued on or after November 12, 2020. Prohibition on Contracting for Covered Telecommunications Equipment or Services.

Definitions As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for

Covered Telecommunications Equipment or Services (Interim), as used in this clause

Prohibitions Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Exceptions This clause does not prohibit contractors from providing:

- i A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28
- ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

By necessary implication and regulation, the prohibitions also do not apply to covered telecommunications equipment or services that:

- i. Are not used as a substantial or essential component of any system; and are not used as critical technology of any system.
- ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

Reporting requirements. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in established in this section to the recipient or subrecipient, unless elsewhere in the contract documents established procedures for reporting the information.

CONTRACTOR shall report the following information pursuant to preceding paragraph above of this section:

- i. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- ii. Within ten (10) business days of submitting the information preceding paragraph above of this section: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
  - e. Subcontracts.
- iii. CONTRACTOR shall insert the substance of this Section, including this paragraph, in all subcontracts and other contractual instruments.

#### **L. DOMESTIC PREFERENCES FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, CONTRACTOR should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

Applicability For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products



such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

**M. ACCESS TO RECORDS** (if applicable)

1. CONTRACTOR agrees to provide THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA and CONTRACTOR acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**N. DHS SEAL, LOGO & FLAGS**

CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**O. COMPLIANCE WITH FEMA POLICIES, PROCEDURES AND DIRECTIVES** (if applicable)

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. CONTRACTOR will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**P. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Q. COMPLIANCE WITH THE FALSE CLAIMS ACT (31 U.S.C. §§ 3729-3733)**

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR’s actions pertaining to this contract.

**R. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352** (as amended) (if applicable)

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **22.7 CLAIMS FOR DAMAGES**

A Claim for Damages is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract Terms, payment of money, and extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the OWNER and CONTRACTOR arising out of or relating to the Contract. Claims must be made by written notice within 20 days after the first observance of such injury or damage, and the responsibility to substantiate the claims rests with the party making the claim.

## **22.8 RIGHTS, REMEDIES AND WAIVER**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the OWNER, or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed in writing.

## **22.9 TESTS**

If the Contract Documents, Laws, Ordinances, Rules, Regulations or Orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the CONTRACTOR shall give the OWNER forty-eight (48) hours advance notice of its readiness so the OWNER may observe such inspections, tests or approvals conducted by public authorities.

Unless otherwise provided, the OWNER shall bear all costs of the inspections, tests or approvals. Inspections, tests, observations or approvals shall not relieve the CONTRACTOR from his obligation to perform the Work in accordance with the Contract Documents.

If the OWNER determines that any Work requires special inspections, testing or approval, the OWNER will instruct the CONTRACTOR to order such special inspection, testing or approval and the CONTRACTOR shall give OWNER notice as provided in the Contract. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the CONTRACTOR shall bear all costs thereof including testing, retesting and compensation for the OWNER'S additional services made necessary by such failure.

Required certificates of inspection, testing or approval shall be secured by the CONTRACTOR and promptly delivered by him to the OWNER. If the OWNER is to observe the inspection, test or approvals required by the Contract Documents, he will do so promptly, and where practical, at the source of supply.

## **22.10 INSPECTION PROCEDURES**

The Palm Beach County School District Building Department is the designated inspector on behalf of the OWNER. The Building Department shall inspect the Work for compliance with requirements of law, rule, and the Florida Building Code and the Uniform Fire Safety standards as adopted by the State Fire Marshall. Additionally, the School District's Designee shall also make simultaneous or additional inspections for compliance with the Contract Documents. Such inspections shall not relieve the CONTRACTOR from any duties or responsibilities described herein.

All Work shall be of the highest quality and substandard Work will not be accepted. No Work shall be concealed or rendered inaccessible until it has been inspected and approved by the Inspectors. The CONTRACTOR shall notify the Inspector a minimum of two (2) full working days prior to the date of the requested inspection. The CONTRACTOR shall give exact location, trade involved and specified date and time for inspection.

**22.10.1** The CONTRACTOR shall have English speaking supervisors representing the trades present and all necessary test equipment, ladders, gauges, etc. available for the Inspector at the prescribed time for inspection.

**22.10.2** The Inspector shall prepare an inspection report and provide the CONTRACTOR'S Superintendent a copy indicating if the Work has been accepted or rejected. It shall be the responsibility of the CONTRACTOR'S Superintendent to have non-conforming or rejected Work corrected and to ensure that a successful re-inspection by the Inspector is made. Work that has been concealed or rendered inaccessible without acceptance by the Inspector shall be uncovered by the CONTRACT at no expense to the OWNER.

**22.10.3** Upon proper completion of the Work, the CONTRACTOR shall certify that the Project is complete using Forms OEF 110, Request for Inspection and Occupancy Certificate; OEF 210, Report of Facilities Construction (RFC); and/or OEF 209 (electronic), Certificate of Final Inspection (CFI), for Projects involving occupancy and non-occupancy as designated on the forms. Pursuant to Section 432.3.7 *Florida Statutes*, no Building shall be occupied until the building has received a Certificate of Occupancy issued by the Building Department.

**22.10.4** Substantial and Final Inspections shall be set up with the School District's Designee at a minimum of seven (7) calendar days in advance to ensure that all necessary personnel can be made available. The OWNER'S Designee shall determine if the Project is ready for Substantial and Final Inspection.

**22.10.5** The CONTRACTOR shall cause all required inspections, acceptances, safety checkouts, performance tests, etc. to be made in the presence of the inspectors to ensure that the Work has been performed in accordance with the Contract Documents. The CONTRACTOR shall provide all instruments, special apparatus, personnel and experts to make all necessary and required tests. Approval or acceptance of Work by the Inspectors shall not relieve the CONTRACTOR of liabilities and responsibilities for Work not conforming to the Contract Documents.

**22.10.6** Payment shall not be made for Work that has not been approved by the Inspectors. No payment on Change Order Work shall be made until said Work has complied with all requirements and Inspections set forth in the Contract Documents.

**22.10.7** Prior to instituting litigation, the parties shall submit the dispute to step negotiations

followed by non-binding mediation in Palm Beach County, Florida.

## **22.11 STEP NEGOTIATIONS**

Either party must give the other party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one step above the Project team who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within 10 days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within 30 days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within 15 days after such referral, either Party may initiate mediation as provided hereinafter.

All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

**22.11.1** If the dispute has not been resolved by the negotiation as provided herein, the Parties may endeavor to settle the dispute by mediation. Either Party may initiate a mediation proceeding by a request in writing to the other Party, thereupon; both Parties will be obligated to engage in mediation. The mediation conference will be hosted at School Board Headquarters, 3300 Forest Hill Boulevard, West Palm Beach, FL 33406 or at a mediator's office:

**22.11.2** If the Parties have not agreed within 30 days of the request for mediation on the selection of a mediator willing to serve, the School Board will provide a list of mediators from which the CONTRACTOR shall choose and

- 1) Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator declares in writing that further efforts would not be useful, or (c) the Parties agree in writing that an impasse has been reached, or (d) 60 days from commencement of mediation proceedings. Neither Party may withdraw before the conclusion of the proceeding.
- 2) The Parties regard the aforesaid obligation to mediate as an essential provision of this Contract and one that is legally binding on them. All costs of mediation shall be shared equally amongst the Parties in dispute. In case of violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

**BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND OWNER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS CONTRACT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

## **22.12 ARBITRATION**

Nothing arising under the Contract Documents or in connection with the performance of the Work or Project shall be subject to arbitration. Nor shall any attempts at arbitration be binding on the OWNER.

### **22.13 WASTE REDUCTION STRATEGIES**

Pursuant to School Board Policy 7.197, the CONTRACTOR shall implement the following procedures:

- 1. Durable and Reusable Products** – Wherever possible the CONTRACTOR will reduce the use of non-recyclable materials and products and promote the use of durable and reusable products.
- 2. Construction Related Materials** – During construction projects, the amount of “attic stock” paints, floor tiles, ceiling tiles, and other building materials left onsite by the CONTRACTOR shall be minimized to the greatest extent practical.
- 3. Construction and Demolition Debris** – The CONTRACTOR will, to the greatest extent possible, require that all construction and demolition materials (including concrete and metal) be reused or recycled in an appropriate manner.

### **22.14 DISTRICT PURCHASED MATERIALS**

As provided by *Florida Statutes* 212.08(6) the School District is exempt from sales tax on materials purchased directly by the District. As authorized by Board Policy 6.141, the District may utilize this tax exempt status for material purchased related to construction projects and, as directed by the OWNER the CONTRACTOR shall administer, at no additional cost to the OWNER, the Procedure for District Purchased Materials specified in **Attachment D**, if requested to do so.

### **22.15 POSSESSION OF FIREARMS**

Possession of firearms is prohibited on School Board property. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive device; or any machine gun. No person who has a firearm in their vehicle may park their vehicle on School District property. Furthermore, no person may possess or bring a firearm on School District property.

If any employee of an independent Contractor or Subcontractor is found to have brought a fire-arm on School District property, said employee will be terminated from the School Board Project by the independent Contractor or Subcontractor. If the Subcontractor fails to terminate said employee, the Subcontractor's agreement with the independent Contractor for the School Board Project shall be terminated. If the independent Contractor fails to terminate said employee or fails to terminate the agreement with the Subcontractor who fails to terminate said employee, the independent Contractor's agreement with the School Board shall be terminated.

### **22.16 OWNERSHIP AND USE OF DOCUMENTS**

CONTRACTOR represents that it has the exclusive right, title, and interest in and to the drawings, specifications and other documents prepared by the CONTRACTOR Team for this Project (“Materials”) and the exclusive right to provide and/or license the Materials. CONTRACTOR further represents that if the Materials are the subject of a patent, copyright,

service mark, or trademark registration, CONTRACTOR holds the sole and exclusive rights under such applicable registrations in and to the Materials.

CONTRACTOR agrees to indemnify, defend and hold harmless OWNER from and against any and all claims made by and any third party, including costs in connection with the defense thereof, resulting from any alleged patent, trademark, service mark, or copyright infringement by OWNER'S use of the materials in accordance with this Contract.

CONTRACTOR hereby grants to OWNER and OWNER hereby accepts from CONTRACTOR, the non-exclusive irrevocable right, perpetual license, and privilege to use and re-use within Palm Beach County, at no additional cost to the OWNER, all or any portion of the drawings, specifications and other documents prepared by the CONTRACTOR for this Project.

CONTRACTOR, as a material matter and inducement to the entry of this Contract, and in consideration for the payment specified herein, acknowledges, assigns, and grants to OWNER an exclusive, irrevocable, and perpetual right and license to use or re-use existing plans, drawings, specification, and other materials or instruments of service prepared by CONTRACTOR or its subconsultants on an existing or prior project for use By the OWNER or re-use in accordance with Section 287.055(10) *Florida Statutes*, and such use or re-use shall not be considered procurement of professional services for a project or a specific project Contract Award.

- 22.17** This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. The Contract may be amended or modified only by a modification to the Contract Documents as defined in the Contract. The OWNER shall be entitled to performance of obligations intended for his benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the OWNER and any Subcontractor or Sub-Subcontractor.
- 22.18** By executing this Contract, CONTRACTOR acknowledges receipt of the above referenced documents, has read, understands and agrees to all of the Terms and Conditions set forth in those documents.
- 22.19** This Contract is personal to the parties hereto and may not be assigned by CONTRACTOR without the prior written consent of the School Board.
- 22.20** This Contract shall not be construed against the party who has drafted the same. Both parties to this Contract have had experts of their choosing review the same.
- 22.21** This Contract is binding on the parties hereto their successors and/or assigns.
- 22.22** If any provisions of this Contract is deemed unenforceable by a court of competent jurisdiction, then said provision shall be deemed stricken from said Contract as if it never existed; however, all other Terms and Conditions shall remain enforceable and all other provisions in accordance with this Contract.
- 22.23** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Contract.
- 22.24** **DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:**

- 1)** The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2)** The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3)** The CONTRACTOR will send to each labor union or representative of workers with which IT has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONTRACTOR'S commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4)** The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5)** The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6)** In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7)** the CONTRACTOR will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

- 8) CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

## **22.25 PUBLIC ENTITY CRIME INFORMATION STATEMENT**

A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a Public Entity Crime may not submit a Bid/Proposal on a Contract to provide any goods or services to a public entity, may not submit a Bid/Proposal on a Contract with a public entity for the construction or repair of a public building or public work, may not submit an RFP on leases of real property to a public entity, may not be awarded or perform work as a CONSTRUCTION MANAGER, supplier, Subcontractor, or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the Convicted Vendor List.

## **22.26 DISQUALIFYING CRIMES**

The Proposer certifies by submission of this RFP, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by the State of Florida or Federal Government. Further, Proposer certifies that it has divulged, in its RFP response, information regarding any of these actions or proposed actions with other governmental agencies.

## **22.27 VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)**

**22.27.1** Pursuant to Fla. Stat. §448.095, Contractor agrees that it shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://www.fdle.state.fl.us/EVERIFY> to verify the work authorization status of all newly hired employees during the term of this contract or solicitation.

**22.27.2** Pursuant to Fla. Stat. §448.095, if Contractor enters into a contract with a Subcontractor(s) for the labor, supplies or services provided under this contract or solicitation, Contractor must require that the Subcontractor(s) provide it with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor understands that it must maintain a copy of such affidavit for the duration of the contract or solicitation.

**22.27.3** If the School Board has a good faith belief that the Contractor has knowingly violated Fla. Stat. §448.09, School Board shall terminate the contract with the Contractor. The Contractor is liable for any additional costs incurred by the School Board as a result of a termination of this contract or solicitation pursuant to §448.095(2)(f).

**22.27.4** If School Board has a good faith belief that a Subcontractor(s) has knowingly violated §448.095, but Contractor has otherwise complied with this subsection, School Board shall promptly notify Contractor and order Contractor to immediately terminate the contract with the Subcontractor(s).



**END OF SECTION**

The CONTRACTOR has reviewed the Contract Documents, and hereby confirms that it understands and agrees with all of the Terms and Conditions of same.

IN WITNESS WHEREOF, the OWNER and CONTRACTOR hereto have executed this Contract by their respective duly authorized officers on the respective dates by each signature. School Board of Palm Beach County, Florida signing by and through Board Chair or Vice Board Chair is authorized to execute same by Board Action on the TBD day of TBD, 20XX.

IN WITNESS WHEREOF, the OWNER and CONTRACTOR hereto have executed this Contract by their respective duly authorized officers on the respective dates by each signature. School Board of Palm Beach County, Florida signing by and through the Superintendent/CFO/Director of Purchasing who is authorized to execute same on the TBD day of TBD, 20XX.

PROJECT NAME: HOPE CENTENNIAL ELEMENTARY SCHOOL PARKING EXPANSION  
PROJECT ADDRESS: 5350 STACY ST.  
WEST PALM BEACH, FL 33417  
ITB NO.: 26-58Q  
PROJECT NO.: 0012-2402

<hr/>		THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
Company		
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Name (Print)	Title	Karen M. Brill, Board Chair
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Signature	Date	Date
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Attest Name (Print)	Title	Michael J. Burke, Superintendent
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Signature	Date	Date
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(Corporate Seal)		APPROVED AS TO FORM AND LEGAL SUFFICIENCY:
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		Hollie N. Hawn, Esq. Attorney to the Board
<hr/>		<hr/>
		Date