



MIAMI DADE COLLEGE
GENERAL CONDITIONS OF
THE CONTRACT FOR CONSTRUCTION

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ARTICLE 1 - GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents

The Contract Documents consist of the Legal Advertisement Covering Selection (as appropriate, CM or general contractor), Opening of Bids, Instruction to Bidders, the Public Construction Payment Bond, the Public Construction Performance and Guarantee Bond, the Sworn Statement on Public Entity Crimes, the Trench Safety Compliance Statement, Special Provisions for Compliance with M/WBE Subcontracting Assistance Levels (if applicable), Conditions of the Contract (general, special and other Conditions), the Plans, the Specifications and Addenda, the Responses to Request for Qualifications (RFQ), Responses to Proposals (RFP), List of Subcontractors (if applicable), Bid Proposal and Accepted Alternates, Licensure Certification, Certificate of Insurance, the A/E Agreement, all incorporated in the Contract before its execution, together with this Agreement and all Modifications thereto. A Modification is (1) a Field Order, a minor change in the Contract Work which does not amend or alter the Contract sum or time or (2) a Change Order, a written order, approved and executed by Board which authorizes a change in the Contract Work and/or an adjustment in the Contract amount or Contract time.

1.1.2 The Contract

The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either oral or written. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between A/E

and Contractor, (2) between Board and a Subcontractor or Sub-subcontractor, or (3) between any persons or entities other than Board and Contractor. A/E shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of A/E's duties.

1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all supervision labor, materials, equipment and services provided or to be provided by the Contractor/CM to fulfill its obligations under the Contract. The Work may constitute the whole or a part of the Project.

1.1.4 The Project

The Project is the construction project referenced by the work order(s) assigned in accordance with the Agreement and to which the Contract Documents relate, and refers to the total construction of which the Work may be the whole or a portion thereof.

1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, schematically showing the design, location, and dimensions of the Work, as appropriate generally including plans, elevations, sections, details, schedules and diagrams. The Drawings are intended to show general arrangements, design and extent of Work, and are not intended to serve as Shop Drawings.

1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work and performance of related services. Specifications are separated into titled divisions for convenience of reference only, and shall not be interpreted as establishing divisions for the Work, trades, Subcontracts or extent of any part of the Work. The Specifications

is the volume(s) usually assembled for the Work, which may include the Instructions to Bidders, Bidding Requirements, Sample forms, Conditions of Contract and Specifications. The Specifications are complementary to the drawings.

1.1.8 Acceptance

As used herein Acceptance shall mean that all of the work required by the contract (or by the individual work order issued under the contract) is fully executed and completed in accordance with the plans and specifications so that no work remains to be completed. This shall require and include that all close-out documentation be fully completed, submitted, and approved.

1.1.9 Final Completion

Final Completion shall have the same definition and be used interchangeably with Acceptance.

1.1.10 Chief Building Official

The officer or other designated authority, or their duly authorized representative charged with the administration and enforcement of the Florida Building Code (FBC) which for purposes of construction on Board owned property is that individual so designated by the Board as the Board's Chief Building Official in charge of the Board's Office of Educational Facilities Compliance.

1.2 **EXECUTION, CORRELATION AND INTENT**

1.2.1 The Contract is binding on the date of Award by The Office of the Facilities Management, as shown in the Agreement. Before commencing Work, Contractor shall furnish the following: (a) Contract Bond(s) as provided in Article 11.3, (b) evidence of insurance as provided in Article 11.1, a signed Agreement and Licensure Certification form. Failure of Contractor to file with Board an acceptable bond and insurance as provided for in Article 11 within twenty (20) calendar days from the date of the Award shall be considered just cause and Board may annul and void the Award.

- 1.2.2 Failure of Contractor to execute the Contract GMP within forty-five (45) calendar days (in the case of Project-specific CM Selection) of the award may be just cause for Board to annul and void the Award. Award may then be made by Board to the next lowest responsible Bidder or the work may be re-advertised or may be constructed by day labor, or any other means necessary at Board's discretion.
- 1.2.3 Execution of the Contract GMP by Contractor is a representation that Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and reported to Board any error, inconsistency or omission, or variance with applicable laws, codes and regulations.
- 1.2.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor including all labor and materials, equipment, implements, machinery, tools, storage, apparatus and means of transportation necessary for the proper execution of the Work. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by a Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- 1.2.5 Reference in the Specifications to manufacturers' specifications and instructions means the latest edition in effect at the date of bidding.
- 1.2.6 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings will not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. No responsibility, direct or implied, is assumed by Board or A/E for omission or duplication by Contractor or Subcontractors due to real or alleged error in organization of the Contract Documents.

1.2.7 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications and other documents furnished to Contractor are and shall remain Board's property. All copies except the Contractor's record set, which may be retained, shall be returned if possible or suitably accounted for upon completion of the Work. Neither Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright on the drawings, specifications schedules and other documents prepared in connection with the Work. They are furnished to or by Contractor for use solely with respect to this Project and are not to be used by Contractor, any Subcontractor, Sub-subcontractor or material or equipment supplier on other Projects or for additions to this Project outside the scope of the Work without Board's specific written consent.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include but are not limited to those which are (1) specifically defined, or (2) titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the Contract Documents.

1.5 INTERPRETATION

1.5.1 .1 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be

inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words, which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning.

- .3 Where there is a discrepancy, Supplementary and Special Conditions are intended to modify and take precedence over General Conditions. In the event of a discrepancy between the drawings and specifications, the specifications shall be followed. Anything shown in one and not the other, and anything obviously necessary to complete the Project and achieve the intended result although not shown or described in the one or the other, shall be brought to the attention of the A/E, and if so directed by the A/E shall be provided or performed by the Contractor as part of its Contract.

ARTICLE 2 - BOARD

2.1 DEFINITION

- 2.1.1 Board refers to the District Board of Trustees of Miami Dade College, Florida or any of its authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF BOARD

- 2.2.1 Board may furnish surveys in the Specifications, if appropriate. The Board may make available upon written request soil borings.
- 2.2.2 All easements and rights-of-way will be procured and paid for by Board unless otherwise specifically provided in the Contract Documents.
- 2.2.3 Information or services under Board's control shall be furnished by Board with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.4 Unless otherwise provided in the Contract Documents, Contractor will be furnished free of charge six (6) copies of drawings and the Specifications.

2.2.5 The foregoing are in addition to other duties and responsibilities of Board enumerated herein.

2.3 BOARD'S RIGHT TO STOP THE WORK

2.3.1 If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2, or fails to carry out Work in accordance with the Contract Documents or at the A/E's direction, Board may, in writing, order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Board to stop the Work shall not give rise to a duty on the part of Board to exercise this right for the benefit of Contractor or any other person or entity. Such order, properly given due to contractor's failure as defined above, shall not create the right for the contractor to receive a time extension or any excusable or compensable delay.

2.4 BOARD'S RIGHT TO CARRY OUT THE WORK

2.4.1 If Contractor defaults or neglects to carry out the Work properly and diligently in substantial accord and compliance with the Project Schedule(s) furnished to and acceptable to A/E, or if Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, Board reserves the right to notify Contractor, in writing, listing the specific items to be performed and the time in which performance is to be accomplished and, if not performed or proceeded with within the time specified, Board may, without prejudice to other remedies Board may have, take over the Work or such portion thereof as may be in default, and correct and make good the deficiencies. In such case, the cost thereof, including compensation for A/E's additional services and expenses made necessary by such default, neglect or failure, may be deducted from any amount due or to become due Contractor from Board. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor or surety shall pay the difference to Board.

2.5 BOARD'S RIGHT TO REQUIRE DOCUMENTATION & AUDIT

Board may, as it deems necessary, require from Contractor support and/or documentation for any submission made by Contractor to A/E and/or Board.

Board shall have access, and contractor upon execution of the contract gives the Board unrestricted access during normal working hours, to all Contractor's records relating to this project including hard copy as well as electronic records for a period of two years after project acceptance.

ARTICLE 3 - CONTRACTOR

3.1 DEFINITION

3.1.1 Contractor is the person, firm or corporation authorized to do business in the State of Florida and properly licensed or registered for the work to be performed with whom a Contract has been made with Board for the performance of the Work described in the Contract Documents.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Board. Contractor shall not be entitled to an adjustment in the Contract Time or an adjustment in the Contract Sum if a change in the Work is required due to an error, inconsistency, omission or violation that Contractor failed to timely report.

3.2.2 Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing the ordering of any material or doing any of the Work. The Contractor is responsible for all site conditions, utility locations, and coordination of the work with existing conditions. Errors, inconsistencies or omissions discovered shall be reported to A/E at once.

3.2.3 Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.11 and 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

3.3.2 Contractor shall be responsible to Board for acts and omissions of Contractor's employees, Subcontractors and their agents and employees and other persons performing portions of the Work under the Contract and shall be responsible to A/E and Board for coordination and complete execution of the Work in accordance with the Contract Documents. The Contractor shall specifically ensure that those trades which require a Master or Journeyman to trainee ratio comply with that required ratio. This shall be strictly enforced and shall be noted daily in the Contractor's Daily Log.

3.3.3 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of A/E in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

3.3.4 Contractor shall be responsible for inspection of portions of Work already performed under the Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 Contractor shall submit to A/E and Board's authorized representative each day a daily work report for the preceding workday for any project in excess of \$500,000 in construction costs. The daily work report shall show the date, number of each workers by trade, including foreman, if any, employed on such date, excluding, however, all other supervisory employees whose compensation shall not be considered an element of cost for any purpose hereunder, the

character of the work that is being done. The daily report shall show the In addition to rendering daily work reports to A/E and Board's authorized representative, Contractor shall, when any item of Work to be paid under time and material of a Work Authorization Order has been completed, render an itemized statement to Board showing the total amount expended for each class of labor and each kind of material on account of each item of such Work including each employee of the contractor or any subcontractor, sub-subcontractor or any other labor by name, hours worked per day devoted to the T & M work and the payroll records for each, regardless of construction cost.

3.3.6 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract including its Subcontractors and Sub-subcontractors. Contractor's superintendent shall check in and out with campus security daily. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to the Contract. All of Contractor's employees and those of its Subcontractors and Sub-subcontractors shall be required to be readily identifiable as same by either badge (picture id) or clothing (company label). All subcontractors, sub-subcontractors, and other levels of service providers shall be properly licensed or registered.

3.3.7 Communication with students and/or staff is strictly prohibited and shall result in immediate dismissal of such personnel and permanent removal from the project.

3.4 LABOR AND MATERIALS

3.4.1 When provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, storage, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work as part of the contract price.

3.4.2 All labor and materials described in the Contract Documents shall be executed in a thoroughly substantial and workerlike manner. All materials, fixtures and apparatus shall be new and first class in every respect and shall be delivered to the Site and installed and maintained in a workerlike and undamaged condition. Contractor shall be responsible for the care and protection of all materials, equipment and supplies delivered to the site and all materials sold by manufacturer in sealed packages shall be so delivered to the Site. Contractor shall take particular care to ensure the work to be free from water intrusion and/or excessive moisture.

3.5 **SUBSTITUTIONS**

3.5.1 Contractor may be required by A/E or Board to furnish, in writing, a complete statement of the origin, composition and manufacturer of any materials or equipment to be used in the Work.

3.5.2 If a certain brand of materials or equipment is specified in the Contract Documents, it is required for the purpose of establishing a level of quality desired or purpose designated. Should Contractor find it necessary or desirable to use a material, equipment, product or system other than that specified, Contractor shall secure from Board, through A/E, written approval for the use of the alternate materials, equipment, product or system. Contractor shall make such request, in writing before ordering any materials requiring approval. Board is not obligated to consider Requests for Substitution or resubmittal of previously rejected substitutions after forty-five (45) days of Notice-to-Proceed. Board is not obligated to approve Requests for Substitutions and has the discretion to require Contractor to provide the materials as specified in the Contract Documents. In no case shall Contractor be entitled to additional time and/or money arising out of Board's failure to approve Requests for Substitutions.

Requests shall be submitted as follows:

.1 Submit five (5) copies of the Request to A/E.

- .2 Describe in detail (complete with test reports, catalogs, brochures and black or blue line prints of drawings) the material, equipment, product or system and changes or adjustments to other Work affected, including submission of samples. Contractor is responsible for denoting all instances wherein the proposed substitution differs from the item specified.
 - .3 Include "cost breakdown" of item specified and of proposed substitute for which request is made. Include costs of adjustments to other work affected. Include any variation in operating, maintenance or replacement costs, and length of time product has been available on the domestic market.
 - .4 State amount deducted or added to Contract amount or state "no change" in Contract amount.
 - .5 State change in Contract Time for completion or state "no change" in Contract Time.
- 3.5.3 Board's decision on approval or rejection of a Request for Substitution will be final. Approval or rejection of a request to substitute will be based in part on A/E's opinion as to adaptability, durability, quality, aesthetics, contract amount change, life cycle functions or other considerations Board determines appropriate as compared to the specified or noted item(s).
- 3.5.4 Should Board, during the course of the Work, find it necessary or desirable to use a material, equipment, product or system other than specified, Board shall notify Contractor, in writing. Should Contractor accept the proposal without a change in price or time, it shall be considered an approved substitute.
- 3.5.5 If A/E requests a sample of a specified material, element of work or approved substitute, Contractor shall provide same. If the sample is approved, all subsequent materials used in the Work shall be equal in every respect to the sample. If the sample is not approved, Contractor shall provide an acceptable sample.

3.6 MATERIALS AND EQUIPMENT

3.6.1 Contractor warrants to Board and A/E that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, by others or improper operation by others. If required by A/E and/or Board, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.7 TAXES

3.7.1 Contractor shall pay sales taxes for the Work or portions thereof provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not effective or merely scheduled to go into effect.

3.7.2 DIRECT PURCHASE OF MATERIALS AND EQUIPMENT

Miami Dade College, during the construction period shall have the right and privilege of purchasing directly from various suppliers, materials and equipment which are approved to be used or incorporated into the improvements contemplated by the Contract. In the event of direct purchase by Miami Dade College of equipment or materials, then, in such event, Miami Dade College shall be entitled to a credit against the contract sum for an amount equal to the amount of the direct purchase, plus the full amount of the sales Tax. Any such direct purchase by Miami Dade College shall require written approval by the Contractor, Sub Contractor and the Boards representative prior to such purchase. The credit over and above the actual purchase shall be considered as a "discount" to Miami Dade College, and the credit and the discount shall be reflected

periodically in the application for payment by the Contractor.

3.8 PERMITS, FEES AND NOTICES

3.8.1 Contractor shall secure and pay for all required permits and licenses necessary for proper execution and completion of the Work.

3.8.2 Contractor shall comply with and give notices required by all laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including but not limited to the Florida Administrative Code, SREF (State Requirement for Educational Facilities), OSHA, DERM, HRS, WASA and DOT, including encountering with substances requiring special handling or specific licensure such as but not limited to asbestos, lead and soil contamination.

3.8.3 While it may not be Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations, if Contractor observes that portions of the Contract Documents are at variance therewith, Contractor shall promptly notify A/E and Board, in writing, and necessary changes shall be accomplished by an appropriate Modification.

3.8.4 If Contractor performs any portion of the Work and knows or should have known it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to A/E and Board, Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.9 SUPERINTENDENT

3.9.1 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall not be replaced without Board's prior consent. The superintendent shall represent Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be

confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent and the major Subcontractors' superintendents shall be fluent in English. BOARD shall have the right to reject superintendent based on experience and qualifications.

3.9.2 Contractor shall at Board's request designate a replacement superintendent or other representative if Board determines that the Contractor's designated superintendent is not performing the work to Board's satisfaction.

3.10 **CONTRACTOR'S PROJECT SCHEDULE**

3.10.1 General

For projects in excess of \$500,000 in construction cost, the Contractor shall prepare and maintain a detailed progress schedule demonstrating fulfillment of all Contract requirements ("Schedule"), and shall utilize the Schedule for scheduling, coordinating and monitoring all Work under the Contract. Precedence format critical path method ("CPM") techniques for scheduling shall be utilized. The principles and definitions of the terms shall be as set forth in the most current version of Associated Contractors of America, Inc. Manual, "The Use of CPM in Construction, A Manual for Contractors and The Construction Industry," Copyright 1976; however, in the case of a discrepancy the provisions of this Article shall govern. The use of any particular scheduling system shall be subject to Board approval to insure capability of producing the required reports.

3.10.2 Construction Schedule.

In accordance with the terms of the Agreement, the Construction Manager shall, in consultation with the Board and the A/E, prepare and submit a proposed Construction Schedule to the Board and the A/E for approval, which shall (a) conform to the time requirements of the Contract Documents, (b) be in the form of a critical path method schedule or other as specified by the Board and identify all activities, duration for all activities, and float time, (c)

provide the expeditious execution of the Work, (d) be considered as an exhibit to the Contract and shall not be modified or extended without the prior written approval of the Board in each instance. The time difference between the Early Finish and Late Finish Date is defined as "Float". The "Float" belongs to the MDC Project and may be used by the Construction Manager or Board to benefit the MDC Project. Changes or delays that influence activities in the Construction Schedule with "Float", and do not exceed the Critical Path ending in the current Contract completion date (the sequence with zero days of float), shall not be justification for an extension of the Contract Time for the Project.

3.10.2.1 Schedule

Within ten (10) days after Award of the GMP or Notice to Proceed (in the case of the general contractor), the Contractor shall prepare and submit for review by the Board and A/E, an initial or precedence format critical path method schedule ("Schedule") indicating the rate of progress and order of Work that Contractor shall accomplish for all of the Contract. The purpose of this scheduling requirement is to assure adequate planning and execution of the Work, and to evaluate the progress of the Work. The Schedule shall indicate the dates for starting and completing various aspects of the Work including but not limited to on-site construction activities as well as the submittal, approval, procurement and fabrication of major items, materials and equipment. The Schedule shall provide the Contractor's plan for the Work based on his/her understanding of the plans, specifications and addenda received through bid delay. Contractor shall submit Logic Diagrams demonstrating the order, interdependence and sequence in which the activities may be completed, and related activities shall be grouped on the network. The critical path shall be highlighted or distinguished. An Activity Report shall accompany the Logic Diagrams, and for each activity the following information shall be provided:

- activity predecessors and relationships (or successors and relationships)
- activity description

- activity duration
- early start date, early finish date
- late start date, late finish date
- slack or float
- responsibility for activity (contractor or subcontractor), and percentage of activity completed

If the Schedule is not submitted within ten (10) days after Award of the Contract, Board may withhold approval of progress payments.

3.10.3 Monthly Updates

Monthly updates shall be included in the monthly Requisition for Payment. If updates are not incorporated with the monthly Requisition for Payment, the monthly Requisitions will be considered incomplete and will not be processed. Contractor shall be responsible to prepare, submit and maintain the schedules indicated above. Contractor may be required by Board to submit a Narrative Report with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the Contract. Any additional or unanticipated costs or expense required to maintain the Schedules shall be solely the Contractor's obligation and shall not be charged to Board.

3.10.4 Adjustment of Contract Completion

The Contract Time will only be adjusted for cause specified in the Contract and when shown to be a delay of the critical path, and in excess of the available float at the time of the change issuance.

Contractor shall incorporate appropriate CPM activities into the schedule as change orders are approved by the Board.

All changes and/or additions to the Schedule must meet the approval of the A/E and Board.

Contractor agrees that whenever it becomes apparent from the current monthly status review meeting or the monthly computer-produced calendar-dated schedule that phasing or Contract completion dates will not be met, it will take some or all of the following actions at no additional cost to Board:

- A. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.
- B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
- C. Reschedule the Work under this contract in conformance with all other specification requirements.

Prior to proceeding with any of the above actions, Contractor shall notify and obtain approval from the Board and A/E for the proposed Schedule changes. If such actions are approved, the CPM revisions shall be incorporated by Contractor into the Schedule before the next update at no additional cost to Board.

3.10.5 Utilization of Non-Conforming Services

For projects of less than \$500,000 in construction costs and otherwise, in the interest of the Project, the Contractor may propose and the Board may agree to utilize, on an interim basis, schedules and scheduling techniques not in full conformity to the requirements of this section. Such interim utilization does not waive the Board's right to demand and receive schedules in full conformance herewith nor does it waive the Board's remedies for failure to full comply with the requirements for scheduling detailed herein.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

- 3.11.1 Contractor shall maintain at the Site one record copy of the Drawings, Specifications, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction and, in addition, approved Shop Drawings, Project Schedules, Product Data, Samples

and other required submittals. These shall be available to A/E and Board and shall be delivered to A/E for submittal to Board upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Contractor or Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor shall not use the A/E's contract drawings as shop drawings, but contractor shall require these entities to produce and submit such documents independently, although enhanced A/E electronic documents may be considered.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by A/E is subject to the limitations of Subparagraph 4.2.7.

3.12.5 For projects in excess of \$500,000 in construction costs, the Contractor shall submit for A/E approval (copy to Owner for information) a proposed submittal schedule. This submittal schedule shall identify all required and planned submittals showing at a minimum the clear and unambiguous identity of the submittal including all shop drawings, product data samples, and similar submittals, the date they are to be transmitted to

the A/E, and the date by which approval is required to maintain and coordinate with the construction schedule. The submittal schedule shall allow a minimum of 14 calendar days for review and approval/disapproval by the A/E in all cases and, where the amount or complexity of the submittal may require additional time, it shall be noted by the A/E and accommodated by the Contractor. For all projects, regardless of construction cost, submittals shall be scheduled and produced with sufficient time for appropriate review and re-submittal and re-review as required that the process shall not cause delay to the Work or any activities of the A/E or Board or separate Contractors. Contractor shall review, approve and submit to A/E all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of A/E or Board or of separate Contractors. Submittals made by the Contractor, which are not required by the Contract Documents, may be returned without action. Submittals shall be properly identified as specified or as A/E may require. At the time of submission, Contractor shall inform A/E, in writing, of any deviation in the submittals from the requirements of the Contract Documents. Contractor shall maintain a Shop Drawing Submittal log, copies of which shall be submitted to the A/E and Board on a weekly basis.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that it has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data, and that Contractor has checked and coordinated information contained within such submittals with the requirements of the Work and the Contract Documents. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by A/E's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed A/E and Board, in writing, of such deviation at the time of submittal and A/E and Board have given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop

Drawings, Product Data, Samples or similar submittals by A/E's approval thereof.

3.12.7 Contractor shall make any corrections required by A/E and shall resubmit the required Shop Drawings, Product Data, Samples or similar submittals until approved. Contractor shall direct specific attention, in writing, or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by A/E on previous submittals.

3.12.8 Informational submittals upon which A/E is not expected to take responsive action may be so identified in the Contract Documents.

3.12.9 When professional certification of performance criteria of materials, equipment, product or system is required by the Contract Documents, A/E shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.10 No portion of the Work requiring a Shop Drawing, Product Data, Sample or similar submittal shall be commenced until the submittal has been approved by A/E. All such portions of the Work shall be in accordance with the approved Shop Drawings, Product Data, Samples or similar submittals.

3.12.11 Shop Drawings, Product Data, Samples and similar submittals shall be marked so that items, which constitute information not pertaining to the equipment, specified shall be so indicated. All components which are provided as "optional" by manufacturer and required hereinafter shall also be marked. Failure to comply with the preceding will result in A/E's disapproval of Shop Drawings, Product Data, Samples and similar submittals.

3.12.12 Shop Drawings, Product Data and Samples

The Contractor shall provide copies of all transmittals, plans, documents, drawings, and shop drawings for the project to the Office of Facilities Planning.

3.13 USE OF SITE

3.13.1 Contractor shall confine operations at Site to areas permitted by the Board, law, ordinances, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

3.13.2 Contractor shall supply additional storage on Site if required by Board for storage of furniture, appliances, equipment, materials and supplies.

3.14 CUTTING AND PATCHING

3.14.1 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Board or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Board or a separate contractor except with written consent of Board and of such separate contractor; such consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from Board or a separate contractor Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP AND SALVAGE

3.15.1 Contractor shall keep the premises and surrounding areas free from accumulation of waste material or rubbish caused by operations under the Contract and shall maintain the premises in a clean, safe manner. Except as otherwise provided in the Contract Documents, the Contractor shall leave the structure(s) and Site clean upon completion of the Work. The roofs, floors, gutters, glass and fixtures shall be free from soil, cement and/or paint. Nothing will be accepted that has been dented, chipped or broken during the construction, or that may have been stained, scratched or discolored. This final cleanup must be performed within the Contract Time.

3.15.2 If Contractor fails to clean up as provided in the Contract Documents, Board may do so with its own or other forces and the cost thereof may be deducted from payment due or to become due.

3.15.3 All removed salvage items and materials (except any such stipulated as "not wanted" by Board) shall be delivered by Contractor to Board's maintenance department. Delivery locations and scheduling shall be coordinated with the Board's maintenance department, which shall be given at least twenty four (24) hours prior to delivery.

3.15.4 Contractor shall prepare itemized receipts, in quadruplicate or more if required, giving pertinent description(s) of items and materials delivered. Receipts shall be signed by the Maintenance Receiving Department which shall retain one receipt. Contractor shall retain one receipt and shall distribute the other receipts to applicable Subcontractor(s) and A/E.

3.15.5 Removed salvage items and materials which Board advises Contractor are not wanted are the property of Contractor and shall be removed from the Site within a reasonable time or within twenty four (24) hours after written notification by the Board that the items and/or materials are interfering with operations at the Site.

3.16 ACCESS TO WORK

3.16.1 Access to an exit or any portion of the Site for the delivery of any and all materials, equipment and supplies by Contractor, Subcontractor, Sub-subcontractor, manufacturer, supplier, distributor, laborer, or any other person, shall be permitted in strict compliance with the directives, rules, conditions and requirements of Board, as directed by A/E and coordinated through the Board's representative.

3.17 ROYALTIES AND PATENTS

3.17.1 Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of patent rights and shall hold Board

harmless for loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor knows or has reason to believe that the required design process or product is an infringement of a patent, Contractor shall be responsible for such loss unless such information is properly furnished to A/E.

3.18 INDEMNIFICATION

3.18.1

- A. The Contractor shall indemnify and hold harmless the Owner, and its District Board of Trustees, officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the failure of Contractor to provide services in accordance with the contract and to an acceptable standard, or negligence, recklessness, or intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.
- B. The remedy provided to an indemnitee by Paragraph A shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- C. The remedy provided to an indemnitee by this Contract shall survive this Contract and shall not be limited in any manner by acceptance, final completion, or final payment.
- D. A claim for indemnify pursuant to this Contract shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning, or construction of an improvement to real property.

The provisions of this Article are severable and if, for any reason, any one or more of the provisions contained in the Article shall be held by a court of competent jurisdiction to be invalid, illegal, against public policy, or unenforceable in any

respect, the invalidity, illegality, being against public policy, or unenforceability shall not affect any other provision of this Article which shall remain in effect and be construed as if the invalid, illegal, against public policy, or unenforceable provision had never been contained in the Article.

3.18.2 **Not Used.**

3.18.3 In any and all claims against an indemnitee by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification pursuant to this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.4 The following persons or organizations shall be deemed to be indemnities:

.1 Board and its members, officials, officers and employees, agents and authorized representatives, the A/E and its officers and employees, and the Building Official and its officers and employees.

3.18.5 The obligations of Contractor shall not extend to the liability of the A/E, and Building Official and their respective officers and employees arising out of:

.1 the preparing, approving, or failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or

.2 the giving of or the failure to give directions or instructions by the A/E, and Building Official and their respective officers and employees provided such giving or failure to give is the primary cause of the injury or damage.

3.18.6 The remedy provided to an indemnitee by this indemnification shall be in addition to and not in

lieu of any other remedy available under the Contract or otherwise. This indemnification obligation shall not be diminished or limited in any way to the total limits of insurance required in the Contract or otherwise available to Contractor or any Subcontractor. The limit on the amount of the indemnity pursuant to Subparagraph 3.18.2 applies only to the contractual indemnity resulting from Paragraph 3.18. The limit on the amount of the indemnity pursuant to Subparagraph 3.18.2 is not applicable to any right to indemnity or contribution or any other remedy, which would exist in favor of an indemnitee in the absence of Paragraph 3.18.

3.18.7 The remedy provided to an indemnitee shall survive the Contract and shall not be limited in any manner by Acceptance, Final Completion or final payment. A claim for indemnity pursuant to Paragraph 3.18 shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning, or construction of an improvement to real property.

3.18.8 Contractor hereby acknowledges the receipt of Ten Dollars (\$10.00) and other good and valuable consideration as part of the Contract Sum from Board and A/E which has been paid to Contractor as specific consideration for the indemnification provided herein and is incorporated as a deduction in the bid amount.

3.19 **TESTING**

3.19.1 The Board may, at its sole discretion, identify additional tests, which shall be performed by the Contractor on the project, or parts of the project as directed. Such testing may include but is not limited to systems, water intrusion, building envelope security, various roofing and building moisture content testing.

3.19.2 Where such testing is required, it shall be the responsibility of the Board to procure and pay for such testing services from properly certified testing firms contracted with the Board or its agents or contractors. It shall further be the responsibility of the Contractor to schedule and ensure the proper

conduct of such testing at times when that testing is appropriate in the construction of the project.

3.19.3 The Contractor shall include such testing in the Contractor's construction schedule when first submitted to the Board if such tests are designated at the time of award, or, if such testing is determined to be necessary after award, the Contractor shall include same in the construction schedule at its next regular monthly submittal of that schedule with its next regular Application for Payment after receiving direction to include such testing.

3.19.4 The Contractor shall coordinate with the Architect and testing firm to ensure the appropriateness of the schedule for each required test and the availability of the Architect's appropriate representatives to observe such tests. The Architect shall observe, certify the proper testing procedures were employed, and certify the results as either acceptable or unacceptable.

3.19.5 In the event that the project or any portion thereof does not satisfactorily perform when any required test is administered, the Contractor shall immediately take such action as is required to correct the condition(s) causing the unacceptable performance and re-test at the Contractor's own expense until the project or that portion of the project performs acceptably when tested. Payment to the Contractor shall be adjusted appropriately in the event of any unacceptable test results.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT OR ENGINEER (A/E)

4.1.1 A/E is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture or engineering identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term A/E means A/E or its authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of A/E as set forth in the Contract Documents shall

not be restricted, modified or extended without written consent of Board. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of A/E, Board shall appoint an A/E, whose status under the Contract Documents shall be that of the former A/E, unless otherwise specified by the Board.

4.2 **A/E'S ADMINISTRATION OF THE CONTRACT**

4.2.1 A/E will provide administration of the Contract as described in the Contract Documents (1) during construction, (2) until final payment is due, and (3) during the guarantee period. A/E will advise and consult with Board. A/E is the agent of Board only to the extent provided in the Contract Documents unless otherwise modified by written instruments in accordance with other provisions of the Contract.

4.2.2 A/E will visit the site at least weekly or more often as appropriate to the stage of construction or as directed by Board to become familiar with the progress and quality of the completed Work and to determine, in general, if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. A/E will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations, A/E and its engineers and other consultants will keep Board informed of the progress and quality of the Work and will endeavor to guard Board against defects and deficiencies in the Work.

4.2.3 A/E will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures or for safety measures and programs in connection with the Work since these are solely Contractor's responsibility as provided herein. While A/E is not responsible for Contractor's Project Schedules or failure to carry out the Work in accordance with the Contract Documents nor does A/E have control over or charge of acts or omissions of Contractor, Subcontractor, or their agents or employees or any other persons performing portions of the Work, A/E will enforce the

faithful performance of Contract and assure that the Work has been or is being performed in accordance with the Contract Documents. Despite A/E's lack of control and/or responsibility for the aforesaid, A/E will provide written notice to Board if it observes or has reason to become aware of any defect or non-conformance with the Contract Documents.

- 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by Board, Board and Contractor shall endeavor to communicate through A/E. Communications by and with A/E's engineers and other consultants shall be through A/E. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with separate contractors shall be through Board.
- 4.2.5 Based on A/E's Site observations and evaluation of Contractor's notarized Requisitions for Payment, the Schedule of Values, subcontractor partial releases and the Project Schedule, A/E shall review the Requisitions for Payment and certify to Board the amounts due Contractor. Prior to issuing certification for payment, A/E shall review the status of Contractor's As-built Documents and Project Schedule and verify that the documents and/or schedules are up-to-date and accurate to the extent visual observation of the construction will disclose. A/E shall also confirm that, after the first application for payment, each subsequent application shall be accompanied by subcontractor partial lien releases fully accounting for subcontractor payments due for the previous application, when directed by Board. If the As-Built Documents and Project Schedule are not up-to-date and/or accurate, A/E shall include in its certification for payment a statement that the As-Built Documents and/or Project Schedule are not up-to-date. In such event, Board may (a) hold an additional 10% of amount then due Contractor until A/E verifies that the As-Built Documents and/or Project Schedule are up-to-date and accurate, (b) refuse to process the Partial or Final Requisition for Payment, or (c) pay Contractor. The A/E's certification is a representation by A/E to Owner that all required items noted herein are submitted

and proper and serves as a recommendation for payment only.

4.2.6 A/E will have authority to recommend to Board the rejection of Work, which does not conform to the Contract Documents. A/E will recommend that Board stop construction pursuant to Paragraph 2.3 when, in A/E's professional judgment, defects and deficiencies in the construction warrant that it be stopped. Whenever A/E considers it necessary or advisable for implementation of the intent of the Contract Documents, A/E will have authority to recommend to Board additional inspection or testing of the Work in accordance with Subparagraph 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of A/E nor a decision made in good faith to exercise or not to exercise such authority will give rise to a duty or responsibility of A/E to Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

4.2.7 A/E will review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the information given and the design concept expressed in the Contract Documents. A/E's approval of a separate item shall not indicate approval of an assembly in which the item functions. A/E's action will be taken with such reasonable promptness as to cause no delay in Work or in the activities of Board, Contractor, or separate Contractors, and in accordance with the Contractor's approved submittal schedule while allowing sufficient time in A/E's professional judgment to permit adequate review, but in any event, A/E's action will be taken not later than fourteen (14) calendar days from Contractor's submittal.

If A/E is required to review a submittal more than two (2) times due to incomplete or incorrect submittals by Contractor, an appropriate Change Order may be issued by A/E deducting a sum reasonably sufficient to compensate A/E from payments due or to become due Contractor as compensation for A/E's additional expenses and services made necessary by

Contractor's submission of incomplete or incorrect submittals.

Review of submittals by A/E is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. A/E's review of Contractor's submittals shall not relieve Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.11. A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by A/E, of any construction means, methods, techniques, sequences or procedures. A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 Change Orders will be prepared as provided at Article 7 for Board's approval and execution in accordance with the Contract Documents. If Contractor submits an excessive number of requests for Change Orders, unless the excessive number of requests arises from A/E errors and/or omissions in the Contract Documents, the cost thereof, including compensation for A/E's additional services and expenses made necessary by such excessive number of requests for Change Orders, may be deducted from any amount due or to become due Contractor from Board.

4.2.9 A/E will review and evaluate substitutions proposed by Contractors for conformance with the Contract Documents and will recommend substitutions only when it can be demonstrated that the item specified or its successor is no longer available for purchase or that the substitution provides a clear benefit to Board in performance and/or price. A/E will not be required to take any action on requests for substitutions that are not submitted to it accordance with 3.5, except for good cause shown or unless requested by Board and, if so, the cost thereof, including compensation for A/E's additional services and expenses made necessary by such request for substitutions may be deducted from any amount due or to become due Contractor from Board.

- 4.2.10 Upon written notice from Contractor that the Work is substantially complete as defined at Paragraph 9.8, A/E will inspect the Project as described at Paragraph 9.8.
- 4.2.11 Upon Contractor's written notice that the Work is substantially complete, A/E will inspect the Work to determine if it is ready for inspection. If A/E believes that the Work is substantially complete, A/E will provide written notice to Board and Contractor. A/E and Board then will conduct inspection(s) and take subsequent action as described at Paragraph 9.8.
- 4.2.12 Upon written notice from Contractor, A/E and Board will conduct inspection(s) to determine the date of Final Completion as described at Paragraph 9.10. If A/E is required to conduct more than two (2) Final Completion inspections because of the failure of Contractor to complete punch list items in accordance with the Contract Documents, the cost thereof, including compensation for A/E's additional services and expenses made necessary by the failure of Contractor to timely complete all punch list work may be deducted from any amount due or to become due Contractor from Board.
- 4.2.13 Contractor shall provide A/E, which will confirm completeness and correctness of same and forward to Board for Board's review and records, the written documents required by the Contract Documents to be provided such as Warranties, Operation and Maintenance Manuals, as-built drawings, releases of claim and other documents required of Contractor. A/E will process any pending Change Order requests and evaluate the assessment of liquidated damages, if any. Upon its determination that Contractor has fulfilled the requirements of the Contract Documents, A/E will issue a final Certificate for Payment.
- 4.2.14 If Board at its option and A/E agree, A/E will provide one (1) or more project representatives to assist in carrying out A/E's responsibilities at the Site. The duties, responsibilities and limitations of authority of such Project representatives shall be set forth in the A/E Agreement and Addendums thereto which are incorporated in the Contract Documents.

4.2.15 A/E will interpret and advise on matters concerning performance pursuant to the Contract Documents on written request of either Board or Contractor. A/E's response to such requests will be made with reasonable promptness, and if no agreement is made concerning the time within which interpretations required of A/E shall be furnished, A/E will furnish such interpretations within fifteen (15) days after written request.

4.2.16 Interpretations and recommendations of A/E will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.2.17 A/E's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and acceptable to Board.

4.3 **CLAIMS AND DISPUTES**

4.3.1 A Claim 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, 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 Board and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the Claim.

4.3.2 Decision of A/E. Claims, including those alleging an error and/or omission by A/E, shall be referred initially to A/E for advice and recommendation. A recommendation by A/E shall be required as a condition precedent to litigation of a Claim between Contractor and Board as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work. The decision by A/E in response to a Claim shall not be a condition precedent to litigation in the event (a) the position of A/E is vacant, (b) A/E has not received evidence or has failed to render a decision within agreed time limits, or (c) forty-five (45) days have passed after

the Claim has been referred to A/E. In the event that Contractor disagrees with a decision of A/E, Contractor shall immediately notify Board, in writing, through A/E, setting forth the reasons and objections to such decision.

- 4.3.3 Time limits on Claims. Claims by either party must be made within seven (7) days after occurrence of the event giving rise to such Claim or within seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. No Claims will be considered unless submitted in a timely manner as required by this paragraph.
- 4.3.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Board shall continue to make payments in accordance with the Contract Documents.
- 4.3.5 Waiver of Claims: Final Payment. The making of final payment by Board shall constitute a waiver of Claims by Contractor except those expressly identified in writing to Board.
- 4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by Contractor shall be given to A/E promptly before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. Contractor shall document the conditions by providing A/E with photographs and written description of the conditions. A/E will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If A/E

determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, A/E shall so notify Board and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within seven (7) days after A/E has given notice of the decision. If Board and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to A/E for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Costs. No Claims for changes in the Work will be allowed by A/E unless authority for same, in writing, has been obtained from Board. If Contractor wishes to make Claim for an increase in the Contract Sum, written notice, as provided herein, shall be given before proceeding to execute the Work. If Contractor or any Subcontractor should start on the Work prior to obtaining written approval, it will be construed as an acceptance by Contractor of such Work being required under the Contract and no future Claim for additional cost will be considered or allowed by Board. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from A/E, (2) an order by Board to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by A/E, (4) failure of payment by Board, (5) termination of the Contract by Board, (6) Board's suspension or (7) other reasonable grounds, Claim shall be made in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided for at Subparagraph 8.3.2 shall be given.

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather

conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. A claim for additional time due to rain will not be considered until and unless the time lost exceeds the rain day allowance provided for at Subparagraph 8.3.1.7.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or any of the other party's employee's or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven (7) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional costs or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph shall be deemed to preclude an award of liquidated damages, when

applicable, in accordance with the requirements of the Contract Documents.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

Claims and Disputes may be settled by using procedures outlined below.

- 4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.2 **ARBITRATION**

Controversies and Claims Subject to Arbitration.

Any controversy or Claim arising out of or related to the Contract, or the breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

- 4.4.3 All matters in dispute under this Contract and/or the Contract Documents that are not settled pursuant to paragraphs 4.4.1 and 4.4.2 shall be resolved in the sole and exclusive venue of the Circuit Court for the 11th Judicial Circuit, In and For Miami-Dade County, Florida. Contractor shall insure each subcontract identifies this court as the venue for all disputes and that flow-down clauses are utilized by subcontractors, sub-subcontractors, and suppliers regarding this venue. Contractor shall include jury waiver clauses in each subcontract.
- 4.4.4 The parties hereby waive any and all right to trial by jury in an action hereunder commenced by either party in respect to this Contract or any matter arising out of this Contract, or any matter in relation to work, labor, services or materials furnished to the Project.
- 4.4.5 If a dispute arises between Board and Contractor regarding the scope of the Contractor's Work, or in the interpretation of the Contract Documents, and the parties hereto cannot promptly resolve that dispute, Board may order, in writing, the disputed work to be performed by Contractor and the dispute shall be resolved as provided at Paragraph 4.4.3.
- 4.4.6 If a dispute arises between Board and Contractor regarding the Contract Documents or the breach thereof, Contractor shall continue to prosecute the Work and maintain its progress, unless requested by Board to suspend or delay the Work or any part thereof, or unless Contractor is terminated pursuant to Paragraph 14.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity other than a materialman or laborer who enters into a subcontract with Contractor for the performance of any part of Contractor's Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity other than a materialman or laborer who enters into a sub-subcontract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.

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

5.2.1 Contractor shall furnish in its proposal to Board the list of Subcontractors, Sub-subcontractors and materialmen (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work.

5.2.2 If Board has a reasonable objection to any proposed Subcontractor, Sub-subcontractor or materialman, Board will promptly notify Contractor.

5.2.3 Contractor shall not contract with any proposed Subcontractor, Sub-subcontractor or materialman to whom Board has made a reasonable objection pursuant to this section.

5.2.4 If Board has a reasonable objection to a Subcontractor, Sub-subcontractor or materialman,

Contractor shall propose another to whom Board has no reasonable objection.

5.2.5 A Subcontractor, Sub-subcontractor or materialman may be added to the list of Subcontractors, Sub-subcontractor or materialmen if required for performance of Change Order Work. The addition of the Subcontractor, Sub-subcontractor or materialman will become a part of that Change Order Work. A listed Subcontractor, Sub-subcontractor or materialman may be changed only upon written approval of Board. The request to change shall state reasons for the request and shall be accompanied by a signed and notarized release from the listed Subcontractor or Contractor's Affidavit to Board that such a release is not obtainable.

5.3 **SUBCONTRACTUAL RELATIONS**

5.3.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by each Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Board and A/E. Each subcontract agreement shall preserve and protect the rights of Board and A/E under the Contract Documents with respect to the Work to be performed by Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Board. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with its Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreements, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of

applicable portions of such documents available to their respective proposed Sub-subcontractors.

.1 Subcontractor's combined overhead and profit for Change Order Work shall not be in excess of ten percent (10%).

5.3.2 Contractor shall fix the scope of that portion of the Work to be performed by each of the Subcontractors. Contractor shall be held liable to Board for the performance of all of the Work and the Contract Documents do not attempt to fix the scope of the Work or responsibility of any Subcontractor. No Subcontractor shall, under any conditions, relieve Contractor of liabilities and obligations under this Contract and Contractor shall be solely responsible to Board as provided for herein. The CM agrees specifically that no Change Orders shall be requested by the CM or considered by the BOARD for failure to supply BOARD with the complete "Buy-out" of all Subcontractors contracts (14) fourteen days after GMP acceptance.

5.3.3 Any disputes, which may arise between Contractor and any Subcontractor or between any Subcontractor and its Sub-subcontractors, must be resolved between those parties. Board and A/E will not undertake or be responsible for the resolution of such disputes.

5.3.4 Contractor shall be liable to Board for materials furnished as provided in Article 3. Materials shall include all materials whether manufactured and/or fabricated by other persons. In the event that an agent or other representative of Board approves the installation or erection of any item of material and Contractor concludes that same is not fabricated in good workerlike manner, Contractor shall immediately advise Board in writing.

5.3.5 Subcontractor shall, at Board's request to Contractor, designate a replacement representative if Board determines that the subcontractor's designated representative is not performing the work to Board's satisfaction.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.4.1 Each subcontract agreement for a portion of the Work is assigned by Contractor to Board provided that:

- .1 Assignment is effective only after termination of the Contract by Board pursuant to Paragraph 14.2 and only for those subcontract agreements which Board accepts by notifying the Subcontractor in writing; and
- .2 Assignment is subject to the prior rights of the surety obligated under the Bond relating to the Contract.

ARTICLE 6 - CONSTRUCTION BY BOARD OR BY SEPARATE CONTRACTORS

6.1 **BOARD'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 Board reserves the right to perform construction or operations related to the Project with Board's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under these or similar Conditions of the Contract. If Contractor claims that Board involves delay or additional cost because of such action, Contractor shall make such Claim as provided in these General Conditions.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Board-Contractor agreement.

6.1.3 Board shall provide for coordination of the activities of its own forces and of each separate contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other separate contractors and Board in reviewing their Project Schedules when directed to do so. Contractor shall make any revisions to the Project Schedule Sum deemed necessary by Board. The Project Schedule shall then constitute the schedule

to be used by Contractor, separate contractors and Board until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when Board performs construction or operations related to the Project with its own forces, Board shall be deemed to be subject to the same obligations and to have the same rights which apply to Contractor under the Conditions of the Contract.

6.2 **MUTUAL RESPONSIBILITY**

6.2.1 Contractor shall afford Board and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Contractor's construction and operation with theirs as required by the Contract Documents.

6.2.2 If part of Contractor's Work depends for proper execution or results upon construction or operations by Board or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to A/E apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Board's or separate contractors' completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by Contractor's delays or by improperly timed activities by Contractor or defective construction shall be borne by the Contractor.

6.2.4 Should Contractor wrongfully cause damage to the Work or property of Board or separate contractors, Contractor shall assume the responsibility and liability for such damage, promptly remedying same as provided in Subparagraph 10.2.5.

6.2.5 Should Contractor be caused damage by any other contractor to the Work by reason of such other contractor's failure to properly perform its contract with Board, no action will lie against Board and

Board shall have no liabilities therefore, but Contractor may assert a Claim for damages against such other contractor as the third-party beneficiary under the contract between such other contractor and Board.

6.2.6 Claims and other disputes and matters in question between Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3, provided the separate contractor has reciprocal obligations.

6.2.7 Board and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor at Paragraph 3.14.

6.3 **BOARD'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises among Contractor, separate contractors and Board as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described at Paragraph 3.15, Board may clean up and allocate the cost among those responsible as A/E determines it to be just.

ARTICLE 7 - CHANGES IN THE WORK

7.1 **CHANGE ORDERS**

7.1.1 A Change Order is a written order to Contractor executed by Board, issued after receipt of Notice to Proceed, authorizing a change in the Work or an adjustment in the GMP Sum or the Time. The GMP or contract Sum and the Time may be changed only by Change Order. A Change Order signed by Contractor indicates its agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. All costs, direct or indirect, allowable under the Contract are to be included in the Change Order. No change in Contract Sum shall be requested or considered due to changes in the cost of labor or material encountered between the time of the bid and the time of procurement of the labor or material.

7.1.2 Board, without invalidating the Contract, may order changes in the Work within the general scope of the project consisting of additions, deletions or other

revisions, the GMP or contract Sum and Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. No changes shall be made unless ordered in writing by Board. Except as provided in Subparagraph 7.1.9, no claim for additions to the GMP or contract Sum will be valid unless approved by written Change Order issued by Board and accepted by Contractor.

7.1.3 Contractor and/or A/E may request changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The change shall be identified, described and estimated and sufficient data provided to Board for it to evaluate the change.

7.1.4 Board shall determine the method to be used to determine the adjustment in the GMP or Contingency Expenditure or contract Sum such as:

- .1 Acceptance by Board of a lump sum price documented by an estimate which includes but is not limited to (a) direct itemized list and cost of labor to which the actual cost of payroll benefits may be added, (b) direct itemized list and cost of material and equipment to which applicable sales tax may be added and, (c) allowance to Contractor for combined overhead and profit of ten (10%) percent for work self-performed and five (5%) for subcontracted work.
- .2 By unit prices when available and accepted by Board; or
- .3 By cost on a time and material basis plus a fixed percentage for overhead and profit using the following method:
 - (a) Direct itemized list and actual cost of labor to which the actual cost of payroll benefits may be added.
 - (b) Direct itemized list and actual cost of material and equipment to which may be added the applicable sales tax.

(c) Allowance to Contractor for combined overhead of ten (10%) percent for self-performed work and five (5%) for subcontracted work.

(d) Overhead includes small tools and consumable equipment.

7.1.5 When unit prices have been bid and accepted by the Board, they apply to both new and reconstructive work.

7.1.6 Rental rates for contractor owned equipment should not exceed 75% of the published rate in the latest edition of the Associated Equipment Distributors' "Rental Rates and Specifications" or in an equivalent publication.

7.1.7 If none of the methods set forth in Clauses 7.1.4.1, 7.1.4.2 or 7.1.4.3 is agreed upon, Contractor, upon receipt of a written Work Authorization Order from Board, shall promptly proceed with the Work involved on a time and material basis. Contractor shall submit to Board's authorized representative each day a daily work report in duplicate for approval. The daily work report will show the name and number of each worker, including foreman and jobsite superintendent, if any, employed on such extra work, excluding, however, all other supervisory employees whose compensation shall not be considered an element of cost for any purpose hereunder, the actual number of hours employed on such work, the character of the work that he/she is doing and wages paid to him/her or to be paid to him/her. The daily work report shall show the materials furnished, the amount paid or to be paid therefor, and an allowance for combined overhead and profit, as provided in section 7.1.4.1. All Subcontracts shall include this allowance provision. In addition to rendering daily work reports for the approval of Board's authorized representative, Contractor shall, when any item of work to be paid for on a time and material basis under a Work Authorization Order has been completed, render an itemized statement to Board showing the total amount expended for each class of labor and

each kind of material on account of each item of such work.

- 7.1.8 The premium time portion of authorized overtime work shall be reimbursable in accordance with agreed upon wages only but shall not include any allowance for overhead and profit. Contractor may not seek reimbursement for premium time unless such premium time has been ordered, in writing, by Board.
- 7.1.9 For deletions in the Work, reductions shall be made in the Contract Sum based upon the actual amount of savings in the cost computed upon the same basis as for additional work but without the application of the percentage set forth in Subparagraph 7.1.4.
- 7.1.10 In order to minimize the impact of delay in receiving and processing changes and obtaining approval, the Board has authorized the College President or designee (Vice Provost for Facilities Management) to approve changes of up to, but not exceeding ten percent (10%) of the GMP.
- 7.1.11 Changes Orders that exceed ten percent (10%) of the GMP may be approved by the College President and the Board Chairman or Vice Chairman only in emergency cases. Such Change Orders must be ratified by the College's District Board of Trustees.
- 7.1.12 Should the Contractor believe any change in the work entitles the Contractor to additional money and/or time and an extension of the contract completion date, the Contractor shall, with regard to any such claim, comply with Paragraph 4.3.3., time limits for claims. The Contractor shall not make any additions or changes to the Change Order input form which purport to waive or modify the time permitted to make a claim as provided for by 4.3.3; nor shall the Board accept such addition or change. Any claim by the Contractor for additional time or money not made within seven (7) days (4.3.3); shall forever be waived by the Contractor.

7.2 **CONCEALED CONDITIONS**

- 7.2.1 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 Contract Documents, 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 shall be equitably adjusted by Change Order or contingency expenditure for CM/Contractor upon claim by either party made in accordance with 4.3.6.

7.3 FIELD ORDERS

7.3.1 A/E has the authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order signed by the A/E and Contractor and shall be binding on Contractor. Contractor shall carry out such written field order promptly.

7.4 CONTINGENCY EXPENDITURE

7.4.1 The contingency authorized by the Board for the Work may only be expended with Board's approval and unused contingency shall revert to the Board by credit Change Order.

7.4.2 Should a contingency expenditure be needed and appropriate, party (Owner, CM, A/E) identifying the need shall communicate that issue. The CM shall forward to A/E who shall review for compliance and if in the A/E's opinion, a contingency expenditure is warranted, approve a RCE (Request for Contingency Expenditure) and initiate a Construction Change Directive for Owner's approval.

ARTICLE 8 - TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments,

allocated in the Contract Documents for Final Completion of the Work.

8.1.2 The contract commencement date shall be the date of award. The Contractor shall have twenty (20) days from award by the Board to obtain and submit proof of bond and insurance as required by Article XI. Failure to submit acceptable bond and insurance information in accordance with Article XI within the twenty (20) days shall be a material breach of contract and shall be cause for the Board in its sole discretion to rescind the contract and place any and all bid security into the funds of the District Board of Trustees of Miami Dade College, Florida as liquidated damages for such failure and take such other action at contract and at law as the Board may deem appropriate. Upon submittal of appropriate documentation as required by Article XI, within the twenty (20) days required herein, the Board shall timely issue the Contractor notification of the acceptance of such documents. A Notice-to-Proceed will be issued in the case of a general contractor, and the Contractor may proceed with the work. The date of commencement shall not be postponed nor the contract extended by reason of failure of the Contractor or of persons or of entities for whom the Contractor is responsible to act.

8.1.3 The date of Substantial Completion is the date certified by A/E in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean a calendar day unless otherwise specifically defined.

8.1.5 All time limits stated in the Contract Documents are of the essence of the Contract. The time for completion set forth in the Contract is a binding part of the Contract upon which the Board may rely in planning the use of the facilities to be constructed and for all other purposes.

8.2 **PROGRESS AND COMPLETION**

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, Contractor confirms that the Contract Time

is a reasonable period for performing the Work. Should Contractor fail to complete the Work or obtain Substantial Completion within the time specified by the Contract Documents and provided Contractor has not previously obtained a Change Order pursuant to Article 7 for an increase in the Contract Time, a sum appropriate with the following schedule shall be deducted for each day of delay in attaining Substantial Completion.

The schedule is agreed upon by and between the Board and the Contractor because of the difficulty of fixing the Board's actual damages in such event. The Board and Contractor specifically agree that this is a reasonable estimate of the Board's damage.

.1 Schedule for liquidated damages:

<u>Project Price</u>	<u>Liquidated Damages</u>
Up to \$100,000	\$ 50.00 + 0.1% of Contract Price
\$100,001 to \$500,000	\$150.00 + 0.07% of all over \$100,001
\$500,001 to \$1,000,000	\$430.00 + 0.05% of all over \$500,001
\$1,000,001 to \$1,500,000	\$680.00 + 0.03% of all over \$1,000,001
\$1,500,001 and over	\$980.00 + 0.01% of all over \$1,500,001

.2 Contractor acknowledges that it is not necessary for Board to prove monetary loss in order to assess liquidated damages.

.3 Nothing in this Subparagraph shall be construed as limiting the right of Board to terminate the Contract as provided for at Article 14.

8.2.2 Should Contractor fail to meet the Project Schedule or its revisions or updates at any time during the course of construction, the A/E may order acceleration of the Work to regain the schedule, as required at no increase to the Contract Sum.

8.2.3 Contractor shall not, except by agreement or instructions of Board in writing, prematurely

commence operations on the Site or elsewhere prior to (a) submission of the Contract Bond as provided in Article 11, (b) issuance of the Notice to Proceed and, (c) the effective date of insurance required by Article 11 to be furnished by Contractor. The date of the commencement of the Work shall not be changed by the effective date of such insurance.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If Contractor is delayed at any time in progress of the Work for the causes or reasons listed as follows, provided that the cause or reason is beyond Contractor's control and that Contractor is not a party to such cause or reason, the Contract Time shall be extended by Change Order as provided for at Article 7:

- .1 Act or neglect of Board or its representatives.
- .2 Separate contractor(s) employed by Board, including labor strikes against said contractor(s) if said strike delays Contractor. Refusal to cross picket lines is not a cause for delay subject to an extension of time.
- .3 Changes ordered in the Work.
- .4 Acts or regulations of government agencies occurring after Notice to Proceed.
- .5 Labor strikes against Contractor or any of its subcontractors.
- .6 Fire, tornado, cyclone, hurricane, earthquake, epidemics or similar catastrophes.
- .7 Rain if the Project is without a roof and completely shut down, or with a roof and the entire Project is delayed by exterior work but only if the stoppage of the Work exceeds the Rain Day Allowance and directly affects the critical path of the project. The Contractor must request the Rain Day. Rain Day Allowances shall be determined at the weekly construction meetings by the Architect's representative using NOAA's National Weather Service homepage at

www.nws.noaa.gov. Time sheets and photographs may be used as documentation.

.8 Subsurface conditions varying materially from subsurface information furnished prior to bidding.

.9 War, insurrection, riot or civil commotion.

8.3.2 Claims relating to time shall be made in accordance with the applicable provisions of Paragraph 4.3. The Claim shall precisely and exactly state which portion(s) of the Work was delayed, the number of days that the Project was delayed, the cause(s) and reason(s) for the delay and shall include exhibits as evidence and proof of the cause(s) and reason(s), and the Claim shall further show how the delay directly affected the completion of the Work. Contractor shall, regardless of the cause or reason of delay, continue to prosecute all of the Work not directly affected by said cause or reason and, with respect to such portion(s) of the Work affected, will take all reasonable measures to minimize the effect of said cause of delay.

8.3.3 Only that portion of the delay actually affecting the completion of the Work will be considered as a legitimate time extension.

8.3.4 Extensions of time shall be the Contractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable, reasonable or unreasonable, anticipated or unanticipated. Contractor expressly agrees not to make, and hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid causes and agrees that Contractor's sole right and remedy in the case of any delay shall be an extension of the time fixed for completion of the Construction Contract. Without limitation, the Board's exercise of its rights under the changes clauses, regardless of the extent or number of such changes, shall not under any

circumstances be construed as compensable delays, it being acknowledged that the Construction Contract amount includes and anticipates any and all delays whatsoever from any cause, whether such delays be avoidable or unavoidable, reasonable or unreasonable, anticipated or unanticipated. This does not apply to Owner caused delay, which will be compensable as to on site costs.

8.3.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision is inapplicable or unenforceable for any reason or cause, then the Contractor shall be entitled to the sum of \$50 per day for each day it is actually delayed by the action of or neglect of the Board or A/E or by changes in the Work, or by any other cause of delay which is attributable to the Board or A/E and beyond the Contractor's control, avoidance or mitigation and without the fault or negligence of the Contractor and/or Subcontractor or supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 **NOT USED**

9.2 **SCHEDULE OF VALUES**

9.2.1 At least thirty (30) days prior to the first Requisition for Payment, Contractor shall submit to A/E the final detailed Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as A/E may require. This schedule shall be used as a basis for reviewing Contractor's Requisitions for Payment. The Owner may, on any individual project and at the Owner's sole discretion, waive the requirement, such waiver must be in writing.

9.3 **REQUISITIONS FOR PAYMENT**

9.3.1 Contractor shall submit to A/E its notarized Requisition for Payment. The Requisition for Payment shall be completed in accordance with the Schedule of

Values and five (5) copies shall be submitted along with a), the updated Project Schedule, and b), if required by Owner Partial Releases for the prior draw. Contractor shall, in addition, provide A/E with Affidavits from Contractor, Subcontractors and material suppliers showing that all have been paid in full excluding retainage for the prior months' Requisition for Payment. In the event the Contractor's Requisition for Payment is rejected, the Contractor shall re-submit the rejected Requisition for Payment with the required corrections within ten (10) days of that rejection and shall clearly mark the re-submitted Requisition for Payment as a "Re-submittal of a previously rejected Requisition for Payment".

9.3.1.1 The Requisition for Payment may include requests for payment on accounts of adjustments only when the Change Order or contingency expenditure has been approved.

9.3.1.2 The Requisition for Payment may not include requests for payments of amounts Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.1.3 The Requisition for Payment shall provide that ten percent (10%) of each Requisition for Payment shall be retained until fifty percent (50%) of the construction services of the Contract has been accepted by the College, except that additional retainage may be withheld for failure to update or make accurate the Contract Documents or project schedule or for other good cause, including but not limited to failure to complete the punch list.

9.3.1.4 After fifty percent (50%) of the construction services has been accepted, invoiced and paid, the Board shall reduce the retainage to five percent (5%) for each subsequent progress requisition payment made to the CM, absent good cause as certified by the A/E.

9.3.2 Unless otherwise provided in the Contract Documents, Requisitions for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by Board, payment may be

similarly made for materials and equipment stored off-Site if stored in a bonded warehouse and agreed to by Board in writing establishing Board's title to such materials and equipment or otherwise protecting Board's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off-Site.

9.3.3 Contractor warrants that title to all Work covered by a Requisition for Payment shall pass to Board no later than the time of payment. Contractor further warrants that upon submittal of a Requisition for Payment, all Work for which Certificates for Payment have been previously issued and payments received from Board shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers, or other persons or entities capable of making a claim by reason of having provided labor, materials and/or equipment relating to the Work.

9.4 **CERTIFICATES FOR PAYMENT**

9.4.1 The A/E will, within seven (7) calendar days after receipt of the Contractor's Requisition for Payment as defined herein, either issue to Board a Certificate for Payment, with a copy to Contractor, for such amount as A/E determines is properly due, or notify Contractor and Board, in writing, of A/E's reasons for withholding Certificate for Payment in whole or in part as provided in Subparagraph 9.5.1. The approval or disapproval shall be in the office of the MDC Project Manager following receipt of the Contractor's Requisition for Payment as defined in 9.3.1 above. In the event that the A/E is not available or unreasonably refuses to sign the Contractor's Requisition for Payment, the Vice Provost for Facilities Operations or designee may sign such requisition in place of the A/E and issue to the Board a Certificate for Payment which shall be processed by the Board as though issued by the A/E.

9.4.2 The issuance of a Certificate for Payment will constitute a representation to Board, based on A/E's observations at the Site and on the data comprising the Contractor's Requisitions for Payment, that the

Work has progressed to the point indicated and that, to the best of A/E's knowledge, information and belief based on A/E's professional judgment, that the quality of the construction is in accordance with the Contract Documents. The issuance of a Certificate for Payment will further constitute a representation that in the A/E's opinion Contractor is entitled to payment in the amount specified.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 A/E may decide not to certify payment and may withhold a Requisition for Payment in whole or in part, to the extent reasonably necessary to protect Board, if in A/E's opinion the representations to Board required by Subparagraph 9.4.2 cannot be made. If A/E is unable to certify payment in the amount of the Requisition for Payment, A/E will notify Contractor and Board as provided in Subparagraphs 9.3.1 and 9.4.1 by issuing a written disapproval of the Requisition for payment. It shall then become the Contractor's responsibility to correct the disapproved Requisition for Payment and re-submit same as defined in 9.3.1. The A/E may withhold part of the Requisition for Payment and if so shall promptly and within the time frames identified above, issue a Certificate for Payment for the amount, which the A/E is able to make such representations to the Board. A/E may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in A/E's opinion to protect Board from loss resulting from but not limited to the following:

- .1 defective Work not remedied.
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims.
- .3 failure of Contractor to make payments properly to Subcontractors for labor, materials or equipment.

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
- .5 damage to Board or another contractor.
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- .7 persistent failure to carry out the Work in accordance with the Contract Documents, the Project Schedule, or the A/E's direction.
- .8 failure to maintain and submit as required up-to-date and accurate as-built documents and schedules.
- .9 actual or anticipated liquidated damages in excess of retainage as provided for at Clause 8.2.1.1.

9.6 **PROGRESS PAYMENTS**

- 9.6.1 After A/E has issued a Certificate for Payment, Board shall review and if in agreement make payment in the manner and within the time provided in the Contract Documents.
- 9.6.2 Contractor shall promptly pay each Subcontractor, upon receipt of payment from Board, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner. The Board will pay the Contractor in Miami-Dade County, the Contractor will pay all subcontractors and suppliers in Miami-Dade County and appropriate flow-down provisions will be used to insure all payments are made in Miami-Dade County.

9.6.3 A/E will, on request, furnish to a Subcontractor, a copy of the Contractor's Schedule of Values. Neither Board nor A/E shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.4 Board may require consent of surety prior to Board's making progress payments.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by Board shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 **NOT USED**

9.8 **SUBSTANTIAL COMPLETION**

9.8.1 Substantial Completion means that the Work can be used by Board for the intended purpose and that all safety-to-life features of the work are completed, all work and systems are in place and that no defects or hazards exist in the work which could cause injury, that all substantial completion documents including but not limited to warranties, Contractor's as built drawings, maintenance manuals, Fire Sprinkler, and Fire Alarm certifications etc. have been provided and accepted as required that all inspections required by the permitting authority have been successfully completed and the Building Official has Form 110B or its equivalent, and that only minor elements of the work remain to be done for final completion.

9.8.2 When the Contractor considers that the work is substantially complete, the Contractor shall conduct an inspection of the work and shall prepare a written punch list of all incomplete, unsatisfactory, or otherwise unacceptable items. The Contractor shall verify the completion/correction of all the items on the Contractor's punch list as a condition for requesting a Substantial Completion Inspection by the A/E as below. The Contractor shall also call for

inspections by the permitting authority and shall have all elements of the work requiring inspection by that body fully inspected and approved and shall provide copies of the Contractor's completed punch list and corrected inspection reports to the Architect and Owner with the substantial completion documents as a condition for requesting a substantial completion inspection by the A/E as defined by 9.8.3 below.

9.8.3 When Contractor considers that the Work is substantially complete, and has completed the conditions of 9.8.1 and 9.8.2 above, the Contractor shall, in writing, request a Substantial Completion Inspection by the A/E. Such written request shall include all the elements required by 9.8.1 and 9.8.2 above. Upon receipt of the request for Substantial Completion Inspection, the A/E shall confirm all conditions required by 9.8.1 and 9.8.2 above have been met and shall then and only then schedule with the Board and the Contractor the Owner's Substantial Completion Inspection. This inspection shall include at a minimum the A/E and all engineers and other consultants, the Board, the Contractor, the subcontractors and subsubcontractors. While each element of the work and/or trade grouping of the work does not need to be inspected at the same time, the A/E shall be responsible for insuring that the requisite parties attend each element of the Owner's Substantial Completion Inspection and shall maintain the consolidated list of deficiencies and comments. At the conclusion of the Inspection the Work will be determined to be as follows:

- .1 Finally Complete. If the Board determines that the Work has achieved Final Completion, final payment shall be made in accordance with Paragraph 9.10.4.
- .2 Substantially Complete. If the Board determines that the Work has achieved Substantial Completion, this is the date for contract purposes that liquidated damages end and A/E will prepare a Substantial Completion Punch List which will incorporate all punch lists prepared by participants in the walk-through(s). The Substantial Completion Punch List will be

provided to Contractor within fifteen days of the Inspection. Contractor shall complete the Substantial Completion Punch List within thirty (30) days of its receipt and provide written notice to A/E that the Work is ready for final inspection and acceptance.

.3 If the Substantial Completion Punch List is not completed and the project accepted within thirty (30) days of its receipt from A/E, the Surety shall be notified and the Contractor shall meet with representatives(s) of the Board and A/E to show good cause for failure to complete the punch list as required and to present the Contractor's schedule for punch list completion. The Board, at its sole option, may accept the Contractor's presentation and allow the Contractor to continue so long as it maintains the punch list completion schedule or the Board may now or at any time the Contractor fails to maintain the punch list completion schedule require the Contractor vacate the jobsite and all remaining work shall be accomplished by the Board, by its own forces or others, at contractors expense or make demand on surety. Contractor acknowledges and agrees that the cost of such completion will be at a premium and in excess of costs Contractor would have incurred to have the work completed as part of the project under the contract and no claim shall accrue to the Contractor therefore. Contractor also acknowledges and agrees that failure to complete the punch list as prescribed herein shall be good and sufficient reason for the Board, at its sole discretion, to declare Contractor non-responsible for a period not to exceed three years and thereby not award Contractor any work during said period even if contractor shall be a low bidder. Contractor further waives any claim to due process or other hearing or proceeding and agrees the failure to complete the punch list as prescribed herein is sufficient in and of itself to sustain such action by Board.

.4 Not Substantially Complete. If the Board determines that the Work has not achieved

Substantial Completion, the A/E will notify Contractor in writing of the deficiencies within ten (10) days of the Inspection.

9.8.4 Upon Substantial Completion of the Work and upon application by Contractor and certification by A/E, Board may at its option, without prejudice to other remedies it may have, reduce the retainage withheld to an amount equivalent to three (3) times the value of the Work to be determined to be defective and/or incomplete.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 Board may occupy and/or use any completed portion of the Work prior to Final Completion and/or final payment. Such occupancy or use is not a waiver by Board of its right to demand strict compliance with the terms and provisions of the Contract and does not constitute acceptance of work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Final completion occurs when the Board determines there are no incomplete or deficient items of the work, and that the contract documents have been fully complied with by the Contractor. Upon receipt of written notice that the Work is ready for final inspection and Acceptance or at the completion of the thirty (30) day punch list period, whichever is earliest, and upon receipt of a final Requisition for Payment, A/E, its engineers and other consultants, Board and Contractor shall participate in a walk-through to inspect the Work. At the conclusion of the inspection, the Work shall be determined by the Board to be as follows:

- .1 Finally Complete. If it is determined that the Work has achieved Final Completion, final payment shall be made in accordance with Subparagraph 9.10.4.
- .2 Not Finally Complete. If it is determined that the Work has not achieved Final Completion, A/E shall prepare a Final Completion Punch List and

Final Completion shall be achieved by the Board in accordance with subparagraph 9.8.3.3.

9.10.2 If after the preparation of an initial Final Inspection Punch List additional legitimate punch list items are identified, the Board may, at its option, address the additional punch list items as items under guarantee pursuant to Subparagraph 12.2.

9.10.3 After all Final Inspection Punch List items have been completed, A/E will recommend to Board Acceptance of the Project and make recommendations regarding Contractor's final pay request. Acceptance occurs on the date that Board determines the Project is complete including the proper and complete submittal of all warranties, manuals, and other close-out documents, and no work remains to be performed. Final completion also requires that the Contractor has submitted to the Architect and the Architect has verified all required warranties and guaranties in the following form:

- .1 Original document and two (2) copies all with original signatures, dated and sealed.
- .2 Each set of the above in separate three ring binder.
- .3 Each warranty/guaranty to show project name, project number, name of Contractor and telephone number, brief description of warranty/guaranty, date of start, and time period valid.

9.10.4 After the work is determined to be finally complete, the Contractor may apply for Final Payment by submitting its final Requisition for Payment which shall be accompanied by (1) Contractor's Affidavit that payroll, bills for materials and equipment and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) consent of surety to final payment, (3) a certificate evidencing that all insurance required by the Contract Documents is to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Board, (4) a written statement that Contractor knows of no substantial reason that the

insurance will not be renewable to cover the period required by the Contract Documents, (5) other data required by Board establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, security interest or other encumbrances arising out of the Contract, to the extent and in such form as may be designated by Board, and (6) a completed set of as-built plans approved by the A/E. Final payment shall not be issued until Board has received a properly completed OEF Form 209 and OEF Form 110B or its equivalent.

9.10.5 Final Payment to Contractor is payment in full including retainage. Final Payment may not be issued prior to Acceptance as described at Subparagraph 9.10.4.

9.10.6 Acceptance of Final Payment by Contractor, a Subcontractor, Sub-subcontractor or material supplier shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Requisition of Payment. Such waivers shall be in addition to the waiver described at Subparagraph 4.3.5.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 In the event Contractor encounters on the site material reasonably believed to be asbestos, lead, 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 Board and A/E with follow-up in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of Board and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of

asbestos or PCB, or when it has been rendered harmless, by written instructions from Board or in accordance with final determination by A/E or by resolution pursuant to Paragraph 4.4.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors, (3) other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, (4) Students, staff and other Board personnel as well as anyone who could reasonably be effected and all related property. The use of animals is strictly prohibited by any contractor, subcontractor, etc., for the use of security purposes at any MDC construction project site, be it an occupied or unoccupied facility unless so waived by the Board.

10.2.2 Contractor warrants that they are aware and knowledgeable of and shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such

activities under supervision of properly qualified personnel.

10.2.5 Contractor shall promptly remedy all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of Board or A/E or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Paragraph 3.18.

10.2.6 Contractor shall designate a responsible member of Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Board and A/E.

10.2.7 Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

10.2.8 Neither A/E or its employees shall be liable or responsible for Contractor's failure to comply with the provisions of Article 10. A/E shall however direct the performance of work necessary to ensure the prevention of damage, injury or loss in the event that Contractor fails to perform pursuant to the provisions of Subparagraph 10.2.

10.2.9 Board may, at its option, direct Contractor to replace any employee of the Contractor, Subcontractor, Sub-subcontractor and/or materialman who consistently fails or refuses to adhere to Board safety rules and regulations and/or who is disorderly and disruptive. This does not create a duty on the part of the Board to act under this paragraph.

10.3 **EMERGENCIES**

10.3.1 In an emergency affecting safety of the students, faculty staff, or other Board personnel or property of the Board, Contractor shall act, at the Board's discretion or as a last resort in the Contractor's best judgment, to prevent threatened damage, injury or loss to said personnel and/or property. Additional compensation or extension of time claimed by Contractor on account of an emergency may be determined as provided in Subparagraph 4.3.7 and Article 7.

ARTICLE 11 - INSURANCE AND BONDS

11.1 **CONTRACTOR'S INSURANCE**

11.1.1 Evidence of Insurance For purposes of this Agreement, the Board shall provide Builder's Risk insurance and property insurance on an "all risk" basis. Should the Board's determined to have Contractor provide Builder's Risk, an equitable adjustments to this Agreement shall be made. The Contractor shall not commence Work until the Contractor has procured the insurance required pursuant to this Article and such insurance has been approved by the Board. Should the Contractor chose not to purchase the Builder's Risk insurance required herein until mobilization, any change in the cost of same to the Contractor between the time of the bid and the time of the purchase of the Builder's Risk insurance shall be the sole responsibility of the Contractor. The Contractor shall provide evidence of such insurance in the following manner.

.1 As evidence of compliance with the insurance required by other than Clause 11.1.3.6 - Property Insurance, Contractor shall furnish the Board with a fully completed certificate(s) of insurance signed by an authorized representative of the insurer(s) providing the coverages.

.2 As evidence of compliance with the insurance required by Clause 11.1.3.6 - Property Insurance, Contractor shall furnish the Board with either fully completed Evidence of Property Insurance signed by an authorized representative of the

insurer providing such coverage or an original policy signed by an authorized representative of the insurer providing such coverage.

- .3 The evidence of insurance described in Clauses 11.1.1.1 and 11.1.1.2 shall provide that the Board be given no less than thirty (30) days written notice prior to cancellation.
- .4 Until such time as the insurance is no longer required to be maintained by Contractor, Contractor shall provide the Board with renewal or replacement evidence of the insurance in the manner described by Clauses 11.1.1.1 or 11.1.1.2 no less than fifteen (15) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

11.1.2 Qualification of Insurers. Insurers providing the insurance required of Contractor by this Contract must meet the following minimum requirements.

- .1 Such insurers must either:
 - (a) authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida or an eligible surplus lines Insurer under Florida Statute.

or

 - (b) with respect only to the Workers' Compensation/Employers' Liability coverage authorized as a commercial self-Insurance fund pursuant to Florida Statute.
- .2 In addition, Insurers, other than Lloyds of London or those authorized by Florida Statute 624.482, shall have and maintain throughout the period for which coverage is required a Best's Rating of "B+" or better and a financial size Category of "VII" or better, according to the latest edition of Best's Key Rating Guide, published by the A.M. Best Company.

- .3 If, during this period when an Insurer is providing the Insurance required by this Contract, an Insurer shall fail to comply with the foregoing minimum requirements, as soon as the Contractor has knowledge of such failure, the Contractor shall immediately notify the Board and immediately replace the Insurance provided by the Insurer with an Insurer meeting the requirements.

11.1.3 Description of Required Insurance. Without limiting any of the other obligations or liabilities of Contractor, Contractor shall, at Contractor's sole expense, procure, maintain and keep in force the amounts and types of insurance conforming to the minimum requirements set forth in this Article. Except as otherwise specified in this Contract, the insurance shall commence prior to the commencement of Work by the Contractor and shall be maintained in force, without interruption, until Final Completion.

- .1 Commercial General Liability Insurance
Except as otherwise provided, the Commercial General Liability Insurance provided by the Contractor shall conform to the requirements hereinafter set forth in this Clause.

- (a) Contractor's insurance shall cover Contractor for those sources of liability (including, but not by way of limitation, coverage for operations, Products/Completed Operations, independent contractors and liability contractually assumed) which would be covered by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office. In addition the contractor's insurance shall cover premises/operations whereby the explosion, collapse and underground hazard exclusions where applicable shall be deleted as well as Broad Form Property Damage.

- (b) The minimum limits to be maintained by Contractor shall be \$1,000,000.00 per

occurrence for bodily injury and property damage combined and \$1,000,000.00 for personal injury.

- (c) Except with respect to coverage for Property Damage Liability, the Commercial General Liability coverage shall apply on a first dollar basis without application of any deductible or self-insured retention. The coverage for Property Damage Liability may be subject to a maximum deductible of \$10,000 per occurrence. Contractor shall pay on behalf of the Board or the Board's member, officer or employee any such deductible applicable to a claim against the Board or the Board's member, officer or employee for which the Board or the Board's member, officer or employee is insured as an Additional Insured.

.2 General Liability Protection for Board

Except as otherwise provided, the insurance provided by Contractor shall conform to the requirements hereinafter set forth in this Clause.

- (a) Contractor shall provide the Board with Owners Protective Liability insurance which shall cover the Board for all sources of liability which would be covered by the latest occurrence edition of the standard Owners and Contractors Protective Liability Coverage Form, Coverage for Operations of Designated Contractor (ISO Form CG 00 09) (hereinafter OCP Policy), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements.
- (b) The Board shall be the Named Insured on the OCP Policy and, if applicable, the excess policy or policies. The policy or policies shall be endorsed to include the Board's members, officers and employees as insureds. The policy or policies shall include Contractor, its Subcontractors and

its Sub-subcontractors as the contractor designated in the declarations.

- (c) The minimum OCP Policy limits per occurrence and, if subject to an aggregate, annual aggregate to be provided by Contractor shall be \$500,000.00, as the minimum Each Occurrence and General Aggregate limits respectively required for the Commercial General Liability Coverage.
- (d) As an alternative to the OCP Policy, the Contractor may include the Board and the Board's members, officers and employees as "Additional Insureds" on the Commercial General Liability coverage required pursuant to Clause 11.1.3.1 - Commercial General Liability Insurance. If this alternative is selected, the coverage afforded such Additional Insureds shall be no more restrictive than that which would be afforded by adding the Board and the Board's members, officers and employees as Additional Insureds using the latest Additional Insured - Owners, Lessees or Contractors (Form B) Endorsement (ISO Form CG 20 10) or its equivalent. The Certificate of Insurance shall be clearly marked to reflect "The District Board of Trustees of Miami Dade College, Florida and its members, officers and employees as additional insured" for the use of this alternative.

.3 Automobile Liability Insurance

Except as otherwise provided, the Automobile Liability Insurance provided by the Contractor shall conform to the following requirements.

- (a) Contractor's insurance shall cover Contractor for those sources of liability which would be covered by Section II of the latest occurrence edition of the standard Business Auto Policy, (ISO Form CA 00 01) including coverage for liability contractually assumed, as filed for use in

the State of Florida by the Insurance Services Office.

- (b) Coverage shall be included on all owned, non-owned and hired autos used in connection with this Contract.
- (c) The minimum limits to be maintained by Contractor shall be \$1,000,000.00 per occurrence for bodily injury and property damage combined.

.4 Workers' Compensation/Employers' Liability Insurance

Except as otherwise provided, the Workers' Compensation/Employers' Liability Insurance provided by the Contractor shall conform to the following requirements.

- (a) Contractor's insurance shall cover Contractor (and to the extent its Subcontractors and its Sub-subcontractors are not otherwise insured, its Subcontractors and Sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law.
- (b) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy. The minimum amount of coverage for those coverages customarily insured under Part

Two of the standard Workers' Compensation Policy shall be \$500,000.00 per accident.

.5 Umbrella Excess Liability Insurance

Except as otherwise provided, the Umbrella Excess Liability Insurance provided by the Contractor shall conform to the following requirements:

- (a) Contractor's insurance shall include all perils covered by the Employer's Liability Insurance, Commercial General Liability Insurance and Comprehensive Automobile Liability insurance described above.
- (b) The minimum limits to be maintained by Contractor shall be \$2,000,000.00 per occurrence for bodily injury and property damage combined.

.6 Property Insurance

The Property insurance provided by Contractor shall conform to the requirements hereinafter set forth in this Clause.

- (a) If this Contract includes (1) construction of new above-ground buildings or structures, or (2) additions, improvements, alterations or repairs to existing above-ground buildings or structures or (3) the installation of machinery or equipment into an existing building or structure, the Contractor shall provide, in a policy acceptable to Board, "all risk" (i.e., Special Form) property insurance on any such new buildings or structures, additions, improvements, alterations repairs, machinery or equipment.
- (b) The amount of the insurance shall be no less than the estimated replacement value at the time of Final Completion of such new buildings or structures, additions, improvements, alterations, repairs, machinery or equipment.

- (c) The coverage shall not be subject to any restriction with respect to occupancy or use by the Board and, subject to thirty (30) day's prior written notice to the Board, shall remain in full effect until Final Completion.
- (d) The Board shall be an insured on this policy.
- (e) The policy shall contain a waiver of subrogation against the Board and the Board's members, officials, officers and employees.
- (f) The maximum deductible for perils other than wind and hail shall be \$5,000 per occurrence. The maximum deductible for the perils of wind and hail shall be the greater of (1) \$50,000 or (2) five percent (5%) of the actual cash value of the covered property. The risk of loss shall remain with the Contractor until Final Completion and Contractor shall pay on behalf of the Board or the Board's officer or employee any deductible(s) applicable. If, after the written request of Contractor, in the opinion of the Board's Office of Risk Management, property insurance with the aforementioned maximum deductibles is not available on commercially reasonable terms, the maximum allowable deductible may be increased, with the express prior written approval of the Office and subject to the conditions of such approval set by the Office, to an amount established by the Office.
- (g) For purposes of this Agreement, if this Contract includes construction of or additions to above-ground buildings or structures located in a floodplain, the Board will provide flood insurance that would cover damage as a result of rising water. Nothing in this Agreement shall be interpreted to relieve Contractor or its agents from liability should any flooding

occurs, whether it be at surface level, below or above surface level, be attributable to negligence on the part of the Contractor.

11.1.4 Contractor's Insurance Primary. The insurance provided by the Contractor pursuant to Paragraph 11.1 shall apply on a primary basis and any other insurance or self-insurance maintained by the Board or all Board's member, officer or employee shall be excess of and not contributing with the insurance provided by or on behalf of Contractor.

11.1.5 Deductible Provisions Except as otherwise specifically authorized by Subparagraph 11.1.3, the insurance maintained by the Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention.

11.1.6 Insurance Is Additional Remedy Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor, its Subcontractors, its Sub-subcontractors, its employees or its agents to the Board or others. Any remedy provided to the Board or the Board's members, officers or employees by the insurance shall be in addition to and not in lieu of any other remedy available under the Contract or otherwise.

11.1.7 Insurance on Subcontractors and Sub-subcontractors Contractor shall require its Subcontractors and its Sub-subcontractors to maintain any and all insurance required by law. Except to the extent required by law and as may be required by Clause 11.1.3.1(c), this Contract does not establish minimum insurance requirements for Subcontractors or Sub-subcontractors.

11.1.8 No Waiver By Approval/Disapproval. Neither approval by Board nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance as required by the Contract.

11.1.9 Default of the Contract for Failure to Maintain Insurance. The Contractor shall be in default of

this Contract for failure to maintain insurance as required by Article 11.

11.1.10 Not Used.

11.1.11 Asbestos - Special Provisions.

.1 If the Contract Documents identify the Contract as an "Asbestos" contract, the minimum requirements for the Commercial General Liability and General Liability Protection for the Board shall be modified as follows:

(a) In addition to the scope of coverage otherwise specified in Clause 11.1.3.1 for Commercial General Liability Insurance, the Contractor's insurance shall cover the Contractor for those sources of liability which would be covered by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) and the Hazardous Materials Contractors Endorsement (ISO Form CG 22 78) as filed for use in the State of Florida by the Insurance Services Office.

(b) The minimum limits to be maintained by Contractor for Commercial General Liability Insurance shall be:

Bodily Injury & property damage \$1,000,000
each occurrence, combined single limit

Products & completed operations \$1,000,000
Aggregate

General aggregate, excluding \$2,000,000
Products & completed operations.

(c) In addition to the scope of coverage otherwise specified in Clause 11.1.3.2, the OCP Policy shall be endorsed to remove the exclusions applicable to the removal, replacement, repair, enclosure or encapsulation of any hazardous material or substance from a building or structure by or on behalf of the Contractor.

(d) The minimum OCP Policy limits per occurrence and, if subject to an aggregate, annual aggregate to be provided by Contractor shall be \$500,000.00, as the minimum Each Occurrence and General Aggregate limits respectively required for the Commercial General Liability Coverage.

.2 If the Contract Documents do not identify this Contract as an "Asbestos" contract, and the Contractor encounters asbestos which has not been rendered harmless (by removal or otherwise), and, pursuant to Subparagraph 10.1.2 of the General Conditions of the Contract for Construction, the Board, by written agreement with Contractor, contracts with Contractor to render the asbestos harmless, the insurance required by Article 11 shall be amended as follows.

(a) Unless Contractor subcontracts the entire Work in connection with the rendering of the asbestos harmless, Contractor shall maintain throughout the duration of such Work, the minimum insurance required by Subparagraph 11.1.3 as modified by Clause 11.1.11.1 in the same manners as if the Contract Documents had identified the Contract as an "Asbestos" contract.

(b) If any Work in connection with the rendering of the asbestos harmless is subcontracted by Contractor, each such Subcontractor shall be licensed as an asbestos contractor. In addition, each such Subcontractor shall fully comply with Paragraph 11.1 of this Article including as modified by Clause 11.1.11.1 in the same manner as if the Subcontractor were the Contractor and the Contract Documents had identified the Contract as an "Asbestos" contract.

(c) If Contractor subcontracts the entire Work in connection with the rendering of the asbestos harmless with subcontractors

licensed as asbestos contractors, and each such Subcontractor complies with the insurance requirements of the preceding paragraph, Contractor shall maintain throughout the duration of such Work, the minimum insurance required by Subparagraph 11.1.3 without the modifications specified in Clause 11.1.11.1.

11.2 **NOT USED**

11.3 **BONDS**

11.3.1 Bonds Required. Within 20 days from the date of the award, Contractor shall provide Board with a Public Construction Payment Bond and Public Construction Performance and Guarantee Bond meeting the standards specified herein, on the forms provided by the Board with Power of Attorney Affidavit attached, each in an amount not less than the maximum cost value of the Agreement. The Bond will guarantee all materials and workmanship installed and performed under the contract for the maximum time allowed by law after final acceptance of the Project by the Board.

11.3.2 Sureties' Qualifications: All Bonds required under this Contract, including, but not by way of limitation, and Bid Bond, Public Construction Payment Bond or Public Construction Performance and Guarantee Bond, shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Florida and with a surety which holds a certificate of authority authorizing it to write surety bonds in Florida meeting the following requirements:

A. Ratings by A.M. Best

Unless the Contract price is \$500,000 or less and the surety qualifies pursuant to Clause C. below, the surety company or corporation shall have the following minimum ratings by The A.M. Best Company:

Contract Amount:	Best's Rating
From: \$ 200,000.00	A or better, Class V
To: \$ 5,000,000.00	
From: \$ 5,000,000.01	A or better, Class VI
To: \$10,000,000.00	
From: \$10,000,000.01	A or better, Class VII
or more	

B. Maximum Construction Cost Value of \$500,000 or Less

Notwithstanding the foregoing in Clause A, in the event the Contract price does not exceed \$500,000, in accordance with Section 287.0935, Florida Statutes, bond with a surety company in compliance with the following requirements shall be acceptable:

(i) The surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. ss. 9304 to 9308.

In order to qualify as an acceptable surety company under this Clause B, an Affidavit for Surety Company shall be executed by an Officer of the surety bond insurer as evidence that a surety company is in compliance with the foregoing requirements.

11.3.3 Additional or Replacement Bond. It is further mutually agreed between the parties hereto that if, at any time, the Board shall deem the surety or sureties upon any bond to be unsatisfactory, or if, for any reason, such bond (because of increases in the work or otherwise) ceases to be adequate, the Contractor shall, at its expense within five (5) days after receipt of notice from the Board so to do, furnish an additional or replacement bond or bonds in such form, amount, and with such surety or sureties as shall be satisfactory to the Board. There shall be no lapse in surety coverage and failure to do so

shall be a material breach of this contract. In such event, no further payments to the Contractor shall be deemed to be due under this Contract until such or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Board.

11.3.4 Florida Resident Agent: The surety company shall have a Florida resident agent whose name shall be listed in the prescribed space on the forms provided by the Board for all bonds required by the Board.

11.3.5 Alternate Form of Security: In lieu of the Public Construction Performance Bond and Public Payment and Guarantee Bond, Contractor may, pursuant to Section 255.05, Florida Statutes, provide an alternate form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond for which the alternative form of security is being substituted. The determination of the value of an alternative form of security shall be made by the Board.

11.3.6 Other Bonds. If the Work includes connections to infrastructure, including but not limited to water and/or sewer facilities within local and state dedicated right-of-ways, canal crossings and FDOT infrastructure, Contractor, at its expense and in a timely manner, will comply with all Bond requirements set forth by Miami-Dade County, State of Florida and other applicable jurisdictional agencies.

11.3.7 Co-Sureties: Subject to the following requirements, the bonds required by this Contract may be provided by more than one surety.

A. Each surety may, by setting forth the limits of its liability in the bond as a definite and specified sum, limit its liability to such amount. If no such limit of liability is indicated, the surety shall be jointly and

several liable for the full amount of the bond required.

- B. The entire amount of the bond must be provided by one or more sureties who meet the requirements of Subparagraph 11.3.2.
- C. If one or more of the co-sureties do not meet the requirements of Subparagraph 11.3.2, those co-sureties who do not meet the requirements of Subparagraph 11.3.2 must be jointly and severally liable for the entire amount of the bond required.
- D. If the liability of a co-surety is less than the entire amount of the bond required, the co-surety must, for the purposes only of allowing a joint action or actions against any of its co-sureties, bind itself jointly and severally with such other co-sureties.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to A/E's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by A/E, be uncovered for A/E's observation and be replaced at Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which A/E has not specifically requested to observe prior to its being covered, A/E may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Board. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by Board or a separate contractor in which event Board shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK, GUARANTEE AND WARRANTY

- 12.2.1 Contractor shall promptly correct Work rejected by A/E or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for A/E's services and expenses made necessary thereby.
- 12.2.2 Except as otherwise provided in Contract Documents, Contractor shall guarantee the Work for four (4) years and, if within four (4) years after the date of Acceptance of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Board to do so, unless Board has previously given Contractor a written acceptance of such condition. This obligation under this Subparagraph 12.2.2 shall survive final payment, Acceptance of the Work under the Contract and termination of the Contract and Contractor shall not be relieved or responsibility for negligence, defects of manufacture, faulty materials and/or workmanship within the extent and period herein provided and, upon written notice, Contractor shall remedy any defects due thereto and pay all expenses for any damage to other portions of the Work resulting therefrom.
- 12.2.3 Contractor shall remove from the site portions of the Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Board.
- 12.2.4 If Contractor, after notice, fails to promptly correct nonconforming Work in order to comply with the terms of the guarantee, Board may correct it in accordance with Paragraph 2.4 and Contractor and its surety shall be liable for all expenses incurred. Such action by Board shall not relieve Contractor of further guarantee liability.
- 12.2.5 The provisions of Paragraph 12.2 apply to nonconforming Work of the Subcontractors and others

under the Contractor's supervisions as well as to Work performed directly by Contractor.

12.2.6 Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Board or separate contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.7 Contractor specifically warrants and guarantees the integrity of structure provided by the Contractor and/or any elements thereof to be free of water intrusion and/or excessive moisture inside the building as a result of the Contractor's work for a period of five years.

12.2.8 Nothing contained in Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations, which Contractor might have under the Contract Documents. Establishment of the time period of four (4) years as described in Subparagraph 12.2.2 relates only to the specific obligation of Contractor to correct the deficiencies discovered in the Work in that period, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If Board prefers to accept Work, which is not in accordance with the requirements of the Contract Documents, Board may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the laws of the State of Florida.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 Board and Contractor respectfully bind themselves, their successors and legal representatives to the other party hereto and to successors and legal representatives of the other party in respect to covenants, agreements and obligations contained in the Contract Documents. This Contract may not be assigned nor may any assignment of monies due or to become due to Contractor be assigned. If Contractor attempts to make such an assignment, Contractor shall still remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail, regular mail or facsimile to the last business address known to the party receiving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by Board, A/E or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.

13.5 TESTS AND INSPECTIONS

- 13.5.1 Tests, inspections and approval of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Contractor shall permit and facilitate inspection of the Work by Board, its agents and public authorities having the legal right of entry on the premises at all times. Board's agents include A/E and the FBC Consultants hired by the Board. Contractor shall notify A/E and arrange a schedule for the required inspection or test. Board shall provide for the inspection or testing and shall bear the actual cost of performing the test, unless the tests prove unsatisfactory and then Contractor will bear costs associated with re-testing.
- 13.5.2 Work shall not be covered up until Contractor has received notice from A/E that the inspection or test results are satisfactory. If any Work is covered up by Contractor without receipt of notice of satisfactory testing, Contractor shall, if required by A/E, uncover said Work for examination and recover same in a workerlike manner at Contractor's expense.
- 13.5.3 If A/E, Board or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, A/E, upon written authorization from Board, may order such additional testing, inspection or approval. Board shall bear such costs, except as provided in Subparagraph 13.5.4.
- 13.5.4 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.3 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure including those of repeated procedures, costs involved in preparing for the tests, uncovering and recovering related Work, damage to any existing or new Work, and compensation for A/E's services and expenses.

- 13.5.5 Contractor shall bear its own administrative costs related to tests and inspections.
- 13.5.6 Tests and inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
- 13.5.7 If mill or factory inspection is called for, Contractor shall notify the suppliers that the material shall not be produced or fabricated without due notice to the inspector employed by Board.
- 13.5.8 The Contractor shall obtain inspections from the Building Official at least during the following construction phases:
- (a) Soil compaction or driving piles for foundation, any field soil compaction tests, batterboard in place, open footings with reinforcing steel in place.
 - (b) Concrete slabs and forms with reinforcing steel in place, just prior to pouring concrete.
 - (c) Structural steel framing in place, or if a concrete structure, all reinforcing steel in place prior to pouring. The Building Official or representative shall also be present during all structural pours.
 - (d) All underground and subsurface piping prior to burial.
 - (e) Installation of ceramic tile work.
 - (f) Installation of HVAC (Heating, Ventilating and Air Conditioning) equipment and duct work, smoke detectors and HVAC controls.
 - (g) Installation of electrical conduit, wiring and equipment.
 - (h) Installation of pipe fittings, valves, piping and plumbing equipment and conducting of all pressure tests.
 - (i) Installation of roof deck and roofing.

(j) Final inspection of building finishes.

13.5.9 The Building Official may also inspect the work at any other time during construction.

13.5.10 The cost of reinspection by the Building Official and its representatives for work previously found to be in noncompliance may be deducted from payments due Contractor.

13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.6.1 As between Board and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by Contractor pursuant to any warranty provided pursuant to Paragraph 3.6, the date of any correction of the Work or failure to correct the Work by Contractor under Paragraph 12.2 or the date of actual commission

of any other act or failure to perform any duty or obligation by Contractor or Board, whichever occurs last.

13.7 PROVISION OF SITE AMENITIES

13.7.1 When directed by Board, the Contractor shall provide a temporary water line sufficient to supply all water needed for the Work and shall pay for all permits and for all charges for water used by Contractors or Subcontractors.

13.7.2 When directed by Board, the Contractor shall provide sufficient toilet facilities for all workers employed under the Contract.

13.7.3 Contractor shall pay for any electrical installation, service or power lines used for the Work. If Contractor desires to use the power metered to Board, permission will be granted provided Contractor connects a power line to the place designated by A/E and pays for the power in accordance with a rate set by Board. Contractor shall give Board seven (7) days written notice prior to disconnecting.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY CONTRACTOR

14.1.1 Contractor may terminate the Contract (or any work order, if CM Miscellaneous) if the Work (or the Work for the Work Order) is stopped for a period of sixty (60) days through no act or fault of Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with 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 Board has failed to pay Contractor any payment which has been certified by A/E and

authorized by Board within forty-five (45) days after the first regular payment date after certification and approval after notice and subsequent to an additional thirty (30) days after receipt of said notice.

14.1.2 If one of the above reasons exists, Contractor may, upon seven (7) additional days' written notice to Board and A/E to cure, terminate the Contract and recover from Board payment for Work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

14.2 **TERMINATION BY BOARD FOR CAUSE**

14.2.1 Board may terminate the Contract if Contractor:

- .1 Persistently or repeatedly performs non-conforming, defective or deficient work;
- .2 Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .3 Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and Subcontractor;
- .4 Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .5 Persistently or repeatedly refuses or fails to correct Work rejected by A/E or failing to conform to the requirements of the Contract Documents;
- .6 Fails to submit schedules pursuant to the provisions of Subparagraph 3.10;
- .7 Persistently fails to adhere to the Contract schedule; or
- .8 Otherwise is guilty of substantial breach of a provision of the Contract or Contract Documents.

14.2.2 When any of the above reasons exist, Board, upon certification by A/E that sufficient cause exists to justify such action, or if the position of A/E is vacant at its own initiative may without prejudice to any other rights or remedies of Board and after giving Contractor and its surety, if any, seven (7) days' written notice, terminate employment of Contractor and may:

- .1 Take possession of the Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor;
- .2 Accept assignment of subcontracts pursuant to Paragraph 5.4;
- .3 Finish the Work by whatever reasonable method Board may deem expedient;
- .4 In lieu of the above the Board may call upon the Surety to perform under the terms and conditions of the Public Performance and Guarantee Bond.

14.2.3 When Board terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for A/E's services and expenses made necessary thereby, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Board. Should Contractor fail to promptly render such payment, surety shall, upon demand by Board, make said payment to Board. The amount to be paid to Contractor or Board, as the case may be, shall be certified by A/E, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 **SUSPENSION BY BOARD FOR CONVENIENCE**

14.3.1 Board may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in

whole or in part for such period of time as Board may determine.

14.3.2 An adjustment shall be made in the cost of performance of the Contract, including profit on any increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.4. TERMINATION BY BOARD FOR CONVENIENCE

14.4.1 The Board may, by written notice to the Contractor, terminate this Contract in whole or in part when it is in the interest of the Board and at the sole discretion of the Board.

14.4.2 The Contractor shall be paid for all work executed and reasonable termination expenses and a reasonable allowance for profit and overhead on Work executed, provided that such payments exclusive of termination expenses shall not exceed the total contract price as reduced by other payments made to the Contractor and as further reduced by the value of Work as not completed at the time of termination.

14.4.3 The Contractor is not entitled to profit and overhead on work not performed.

ARTICLE 15 - WATER AND SEWER

15.1 The following language is to be used if this project has onsite water and sewer systems and/or offsite water and sewer systems which require an offsite permit by the Utility having jurisdiction or are constructed with the intent of conveying these water and/or sewer facilities to the Utility having jurisdiction.

15.2 The Contractor has ninety (90) days from GMP award and/or plan approval whichever is later to secure a Public Works permit for offsite work related to water and sewer and paving and drainage, from the Utility having jurisdiction. The Contractor must commence work on that portion of the project applicable to the offsite permit immediately after securing a Public Works permit or obtain written permission from the owner to reschedule said work. The Board will not consider any time extension due to the inability of the Contractor to secure a Public Works permit after plan approval.

15.3 Immediately after the Contractor has secured said permit and prior to commencing work he shall notify MDC Project Manager and arrange a pre-construction meeting with MDC Project Manager, Building Code Compliance Officer and the Utilities having jurisdiction and/or governmental agencies having jurisdiction, including but not limited to, Public Works, Miami-Dade Water and Sewer Authority, the Department of Health, Florida Department of Transportation, the Department of Environmental Resource Management and the subcontractor responsible for the work.

At that meeting, the Contractor shall review the scope of work with, and obtain approval from, the Utilities having jurisdiction and/or governmental agencies having jurisdiction and shall comply with all the requirements, bonds and securities that are imposed by the Utilities having jurisdiction. Once the work has commenced the Contractor shall coordinate key inspections with the Utilities having jurisdiction, MDC, the Engineer and the subcontractor responsible for the work. The Contractor shall submit a signoff and acceptance letter from the inspector of the Utilities having jurisdiction with his requisition for payment, assuring the Board that the portion of the offsite work which he is submitting payment for has been accepted by the Utilities having jurisdiction. The Contractor shall secure this letter of acceptance from each governmental agency having jurisdiction performing these inspections. At no time will the Board pay the Contractor for work that has

not passed inspection by the Utilities having jurisdiction.

- 15.4 Once the offsite work has been completed subject to the above permit the Contractor shall call for a final inspection from the Utilities having jurisdiction. At this time, the Contractor shall submit to each Utility having jurisdiction and/or the Board the following documentation which is part of the conveyance package and are the requirements for a final inspection and meter installation by the Utility having jurisdiction.

Signed and sealed approved as-builts by a licensed surveyor or engineer of record. As-builts shall comply with the requirements imposed by the Utility having jurisdiction. As-builts submitted to the Miami-Dade Water and Sewer Department (MDWASD) shall comply with the requirements of the Department and this contract. This includes a requirement to show on the as-built drawings, the Florida State Plane Coordinate (current readjustment) of at least two horizontal control points on or parallel to the centerline of a street within the project boundary. Florida State Plane Coordinate (current readjustment) shall also be shown for all manholes and value boxes constructed, modified or installed as part of the project (some exemptions apply, please see Section 01725 of the MDWASD Construction Standard Specifications and Details). (Submit four (4) blueprints and one (1) set of Mylar to the Utility having jurisdiction and two (2) blue prints to the Offsite Utilities Planning and Development).

1. Original DOH Letter of Release with attached bacteriological results. (Submit four (4) originals to the MDC Project Manager).
2. Original Final Construction Report Water. (Submit four (4) originals to the MDC Project Manager).
3. Original DERM Release Letter. (Submit four (4) originals to the MDC Project Manager).
4. Operating and Maintenance manuals for pump stations and onsite sewage collection systems

either gravity or force main as required by DERM and prepared by licensed engineer. Including an application for an operating permit for a pump station and the operating permit fee. (Submit four (4) originals to the MDC Project Manager).

Two weeks after the day the Board requests the remainder of the conveyance package the Contractor shall submit the remainder of the original conveyance documents to the Board in quadruplicate. These shall include but not be limited to the following:

- Cost breakdown water
- Cost breakdown sewer
- Warranty
- Maintenance Bond
- Waiver and release of lien
- Legal Description of easements signed and sealed by a licensed surveyor engineer of record

Legal description of easements signed and sealed by a licensed surveyor or engineer of record.

- 15.5 The Board will not release final payment for offsite or onsite work unless the Contractor has submitted these conveyance documents.

The Contractor is responsible for paying each Utility having jurisdiction all construction connection charges and permits associated with the offsite or onsite work.

The Contractor shall coordinate all offsite water taps for domestic, irrigation and fire line services with the Utility having jurisdiction and shall bear the cost for the installation of these services directly with the Utility having jurisdiction. The Contractor shall schedule this work with the Utility having jurisdiction in a timely manner. The Board shall not be responsible for the Contractor's inability to schedule the placement of meters in a timely manner.

The Contractor shall coordinate all offsite sewer connections with the Utility having jurisdiction and shall bear the cost for the installation of these

services directly with the Utility having jurisdiction. The Contractor shall schedule this work with the Utility having jurisdiction in a timely manner. The Board shall not be responsible for the Contractor's inability to schedule the sewer connections in a timely manner.

The Contractor shall be responsible for pulling a permit to abandon or remove all septic tanks according to HRS standards. The Contractor shall schedule and phase the installation of the waste sewage disposal system in a manner that does not interfere with the college's normal operations or disable the college in any way.

The Contractor shall secure trenches with chain-link fence and in accordance with the O.S.H.A. Trench Safety Act.

- 15.6 The Building Official will not grant a certificate of occupancy without the permanent water meters for a college facility installed by the Utility having jurisdiction in place and in full compliance with the Utility having jurisdiction's requirements. College Facilities shall not be permitted to open with floating or construction meters. The Contractor shall bear any and all penalties and fines associated with having an illegal construction or floating meter at the College site at the time of occupancy and shall take all the necessary precautions to secure said floating and construction meter from illegal tampering that can lead to the contamination of the domestic water supply.
- 15.7 If the Contractor, through his own fault, has not secured a DERM Release Letter before facility opening he shall provide and maintain for the Board temporary portable restrooms at the Contractor's sole expense in sufficient time for them to be utilized by opening. These shall remain until the permanent facilities are in use. The number of restrooms provided shall comply with the Florida Building Code and any and all other applicable codes and shall be located in a manner acceptable to and approved by the Board. A water meter for a college facility shall not be installed until the Utility having jurisdiction and MDC receives a DERM Release Letter.

ARTICLE 16 - FORMS

16.1 This section contains the latest version of the following forms:

- Work Order
- GMP Proposal, GMP Amendment and Notice to Proceed
- Construction Payment Bond
- Construction Performance and Guarantee Bond
- Contract Price Proposal (General Contractor and Trades Contractor)
- Public Entity Crimes Form
- Trench Safety Act Compliance Statement
- Construction Change Directive (CM only)
- Request for Contingency Expenditure (CM only)
- Change Order
- Application for Payment
- Contractor's Partial Waiver and Release
- Sub-contractor or Material Supplier Partial Waiver and Release
- Contractor's Final Waiver and Release
- Sub-Contractor or Material Supplier Final Waiver and Release
- Affidavit for Final Payment
- Release of Retainage Form
- Certificate of Occupancy/Substantial Completion
- Certificate of Final Inspection/Acceptance

The forms included herein may be modified as to format. New forms may be added or forms deleted from use by the Board by notification in writing to the Contractor. Such modification, addition or deletion of forms will not effect the Contractor's duties, responsibilities or rights, but only will go to the presentation of information and authorization.