

**REQUEST FOR PROPOSALS (RFP)
#24-04**

**CONSTRUCTION MANAGEMENT AT RISK (CMAR)
SERVICES FOR NORTHCUTT ELEMENTARY
SCHOOL AND NORTH CLAYTON MIDDLE
SCHOOL**



CLAYTON COUNTY PUBLIC SCHOOLS
"BUILDING A BETTER TOMORROW, TODAY"

Dr. Anthony W. Smith
Superintendent of Schools

Ronick Joseph
Chief Capital Improvement Officer

A handwritten signature in cursive script, appearing to read "Debra B. Brewer".

Debra B. Brewer, Esquire
Certified Public Procurement Officer (CPPO)
Director
Purchasing-Construction/Capital Projects

Release Date: November 2, 2023
Submission Deadline: December 4, 2023, 3:00 p.m. (EST)

SCHEDULE OF EVENTS

EVENT	DATE OR DEADLINE Eastern Standard Time (EST)
RFP Release	November 2, 2023
Mandatory Pre-Proposal Conference Zoom ID# 937 6174 8268	November 10, 2023 @ 11:00 a.m.
Deadline for Submission of Questions Submit questions to: cprocurement@clayton.k12.ga.us	November 16, 2023 @ 3:00 p.m.
Answers posted by Addendum at: Bonfire CCPS Bids and GPR CCPS Bids	November 27, 2023 @ 3:00 p.m.
RFP Submission Deadline	December 4, 2023 @ 3:00 p.m.
Proposal Opening Zoom Meeting ID # 967 0093 3526	December 4, 2023 @ 3:00 p.m.
Oral Presentations/Interviews or Demonstrations, if necessary	December 13 - 14, 2023
Procurement Representative	Jenel McMillian

PROPOSAL SUBMISSION FORM

This form must be completed in its entirety and signed by the authorized representative or official submitting the response. The completed and signed form must be returned with each response. Failure to do so may render a proposal non-responsive.

Company Name:	
Mailing Address: (Street, City, State, Zip Code)	
Email Address:	
Phone Number:	
Fax Number:	
Social Security or Tax ID#:	
Name of Authorized Representative: (printed or typed only)	
Title of Authorized Representative:	
Signature of Authorized Representative:	
Date of Signature:	

TABLE OF CONTENTS

DESCRIPTION	BEGINNING PAGE
Information and Instructions to Proponents	4
Submission of Responses	7
General Information	10
Introduction	10
Background	10
Objectives	10
Intent to Award	11
Term of Agreement	11
Scope of Services	12
Minimum Requirements	12
Evaluation Process	12
Response Preparation and Guidelines	13
Response Format	13
Contents of Technical Response	14
CCPS Standard Draft Agreement	18
Required Form Submittals	19
Appendices	
A. Code of Ethics	20
B. General Terms and Conditions	21
C. Required Forms	35
D. SLBE Required Documents	45
E. General School Holiday Schedule.	55
Attachments	
A. Scope of Services	57
B. Cost Proposal Form	62
C. Draft Construction Management At-Risk Agreement	63
Exhibits	
A. Liquidated Damages	117
B. Partial Waiver and Release Claim Rights	118
C. Final Waiver and Release Claim Rights	119
D. Contractor's Affidavit of Release of Claims	120
E. Required Insurance	121
F. Clayton County Schools Immigration and Security Forms	127

RFP 24-04
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR
NORTHCUTT ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE
SCHOOL

A. INFORMATION AND INSTRUCTIONS TO PROPONENTS

1. **Services Required:** This Request for Proposals (“RFP”) is to solicit proposals from Proponents pre-qualified pursuant to RFQu 011-23 Pre-Qualification for Construction Manager at Risk (CM at Risk) for Clayton County Public Schools to provide Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School. Proponents will provide services to CCPS as needed.
2. **Solicitation Method:** This solicitation is being conducted in accordance with all applicable provisions of the CCPS Purchasing Policies and Procedures. By submitting responses in reference to this solicitation, a Proponent acknowledges familiarity with CCPS Purchasing Policy and Procedures and all laws applicable to this solicitation, which policies, procedures and laws are incorporated into this RFP by reference.
3. **Minimum Qualification:** Each Proponent shall have the minimum qualifications set forth in the RFP.
4. **Criminal Background Check:** By submitting a response in reference to this solicitation, the Proponent acknowledges that a satisfactory criminal background check and history may be required for anyone coming into direct or indirect contact with CCPS students at no cost to CCPS.
5. **Certificate of Authority to Transact Business in Georgia:** Each Proponent must submit with its response documentation that demonstrates it is duly authorized to conduct business in the State of Georgia. This requirement also applies to Joint Venture (JV) Team Members, Sub-Contractors and Sub-Sub-Contractors.
6. **Business License:** The Proponent is requested to submit a copy of its current, valid business license with its submittal. If the Proponent is a Georgia corporation, Proponent is requested to submit a valid county or city business license. If Proponent is a joint venture, Proponent is requested to submit valid business licenses for each member of the joint venture. If the Proponent is not a Georgia corporation, Proponent is requested to submit a Certificate of Authority to Transact Business in the State of Georgia and a copy of its current, valid business license issued by its home jurisdiction.

7. **Professional License:** The Proponent must attach a copy of any professional license required by this RFP with its submittal. All required licenses must be maintained for the duration of any contract award period.
8. **Codes, Permits, Fees, Licenses and Laws:** All permits, fees, arrangements for inspections, licenses, and costs incurred for the same shall be the sole responsibility of the successful Respondent. All services, labor, and materials must comply with all applicable rules and regulations of local, state and/or national codes, laws and ordinances of all authorities having jurisdiction over the project, which shall apply to the contract throughout and will be deemed to be included in the contract the same as though herein written out in full.
9. **No Offer by CCPS and Firm Offer by Proponent:** This solicitation does not constitute an offer by CCPS to enter into an agreement and cannot be accepted by any Proponent to form an Agreement. This solicitation is only an invitation for offers from interested Respondents and no offer shall bind CCPS. A Respondent's offer is a firm offer and may not be withdrawn except as provided in this RFP, CCPS Purchasing Policies and Procedures and other applicable law.
10. **Georgia Open Records Act:** Information provided to CCPS is subject to disclosure under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et. seq. Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A. § 10-1-760 et seq.]"
11. **Illegal Immigration Reform and Enforcement Act:** This RFP is subject to the Illegal Immigration Reform and Enforcement Act of 2011 ("**Act**"), formerly known as the Georgia Security and Immigration Compliance Act. Pursuant to Act, the Proponent must provide with its submittal proof of its registration with and continuing and future participation in the E-Verify Program established by the United States Department of Homeland Security. Completed Contractor Affidavit, Illegal Immigration Reform and Enforcement Act Forms must be submitted with the Response at the time of submission. Under State Law, the CCPS cannot consider any Response which does not include the completed forms. Where the business structure of a Proponent is such that Proponent is required to obtain an Employer Identification Number (EIN) from the Internal Revenue Service, Proponent must complete the Contractor Affidavit on behalf of, and provide a Federal Work Authorization User ID Number issued to, the Proponent itself. Where the business structure of a Proponent does not require it to obtain an EIN, each entity comprising Proponent must submit a separate Contractor Affidavit. It is not the intent of this notice to provide detailed information or legal advice concerning the Act. All Respondents intending to do business with CCPS are responsible for independently apprising themselves of and complying with the requirements of the Act and assessing its effect on CCPS solicitations and their participation in those

solicitations. For additional information on the E-Verify program or to enroll in the program, go to: <https://e-verify.uscis.gov/enroll>.

- 12. Sub-Contractors and Manufacturers:** Proponents are required to submit, in writing, the addresses of any proposed Sub-contractor or equipment manufacturers listed in the response and may be required to submit other material information relative to proposed Sub-contractor. CCPS reserves the right to disapprove any proposed Sub-contractor whose technical or financial ability, or resources, or experience are deemed inadequate.
- 13. Inclusivity in Purchasing Policy:** Proponents are required to comply with the CCPS Inclusivity in Purchasing Policy (DJEAB) and Small Local Business Enterprise Program.
- 14. Minority, Female Business and Local Enterprises:** It is the intent of CCPS that Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and Local and Small Business Enterprises (L/SBE) have an equal opportunity to participate in CCPS procurement opportunities. Proponents are encouraged to use said MBE, WBE and L/SBE's whenever possible in the execution of any contract, however, CCPS does not provide a contracting preference and it is not the intent of CCPS to violate any local, state or federal laws.
- 15. Cooperative Agreement:** CCPS may permit piggybacking or cooperative use of any contract resulting from this RFP by other city, county, local authority, agency, or board of education if the bidder/proponent will extend the same prices, terms, and conditions. This provision shall not apply to any contract where piggybacking or cooperative use is prohibited by law.
- 16. Reasonable Accommodation:** CCPS will provide reasonable accommodations for Proponents with a disability. Proponents should request reasonable accommodations by contacting the CCPS Director of Procurement-Construction/Capital Projects by email with the RFP name and number in the subject line to: cpprocurement@clayton.k12.ga.us If accommodations at the pre-proposal conference are needed, please notify the Purchasing Department by email no later than forty-eight (48) hours in advance.
- 17. Conflict of Interest:** Proponents are advised to read and familiarize themselves with the conflict-of-interest provisions of this RFP contained in Appendix B, General Terms and Conditions, and Required Form Submittals.
 - 17.1** CCPS reserves the right to issue solicitations for specific projects that are independent of this RFP. Except as stated in this RFP, successful Proponents under this RFP are not precluded from responding to such solicitations.
 - 17.2** All interests of CCPS employees, officers or elected officials in Proponent's firm should be listed and disclosed with Proponent's response to this RFP.

B. SUBMISSION OF RESPONSE

- 1. Ownership of Responses:** Each Proposal submitted to CCPS shall become the property of CCPS, without compensation to a Proponent, for use by CCPS, at its discretion. CCPS shall not be liable for any response preparation costs incurred by Proponents, or for any subsequent work on the response or additional documentation required by CCPS.
- 2. Duration:** Proposals submitted in to this RFP must be valid for a period of one hundred-eighty (180) calendar days from the Proposal Submission Deadline and must be marked as such.
- 3. Submission Deadline and Proposal Opening:** Sealed Responses to this RFP will be received by the CCPS Procurement-Construction/Capital Projects until 3:00 P.M., Eastern Standard Time (EST) on **Monday, December 4, 2023**. The proposal opening will be held via Zoom at: [RFP 24-04 CMAR Services for Northcutt ES and N. Clayton MS Proposal Opening](#), Zoom ID **#967 0093 3526**. Attendance during the proposal opening is voluntary for Proponents responding to this RFP; however, Proponents are encouraged to attend.
 - 3.1** Proponents must register in Bonfire as a vendor at: <https://claytonk12ga.bonfirehub.com/portal/?tab=login> in order to submit a proposal prior to the submission deadline.
 - 3.2** Proposals and all required forms must be fully completed, signed in ink and uploaded in Bonfire under the correct solicitation (RFP No. 002-23 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School).
 - 3.3** CCPS will only accept online submissions for this RFP. Oral, telephonic, facsimile, emailed and mailed proposals will not be considered.
 - 3.4** For any technical questions or difficulties, contact Bonfire Support at <https://support.gobonfire.com/hc/en-us>
- 4. Late Responses:** Late Proposals received will not be considered.
- 5. Pre-Proposal Conference:** A Mandatory Pre-Proposal Conference has been scheduled for **Friday, November 10, 2023** at 11:00 a.m., EST. The Pre-Proposal Conference will be held via Zoom at: [RFP 2404 CMAR Services for Northcutt ES and N. Clayton MS Pre-Proposal Conference](#), **Meeting ID: 937 6174 8268**. During the Pre-Proposal Conference, the general requirements of the project will be discussed. Any questions raised by potential Proponents will be discussed. Verbal answers to questions during the Pre-Proposal Conference will not be authoritative. It should be emphasized, however, that nothing stated or discussed during the course of this conference call shall be considered to modify, alter or change the

requirement of the solicitation documents, unless it shall be subsequently incorporated into an addendum to the solicitation documents.

6. **Inspections:** Proponents desiring to perform inspections should send a request to cprocurement@clayton.k12.ga.us. No questions will be answered during inspections.
7. **Solicitation Questions:** Any questions regarding this RFP should be submitted on or before **Thursday, November 16, 2023** at 3:00 p.m., EST. All questions must be submitted in writing to the Director of Procurement-Construction/Capital Projects by email with the RFP name and number in the subject line to cprocurement@clayton.k12.ga.us. Questions received after the designated period may not be considered. Verbal responses are not authoritative. Answers to questions will be made by addendum posted to [Bonfire CCPS Bids](#) and [GPR CCPS Bids](#) no later than 3:00 p.m., EST on **Monday, November 27, 2023**. It is the responsibility of each Proponent to obtain a copy of any Addendum issued for this solicitation.
8. **Prohibited Contacts:** All Proponents and representatives of Proponents are strictly prohibited from contacting CCPS employees, CCPS Officials, Elected Officials or any third-party representatives of CCPS on any matter having to do with this RFP. All communications by any Proponent concerning this RFP must be made in writing and sent to the Director of Procurement-Construction/Capital Projects by email with the RFP name and number in the subject line to: cprocurement@clayton.k12.ga.us.
9. **Oral Presentations/Interviews:** Responsive Proponents may be required to make an oral presentation of their proposed solution to a CCPS Evaluation Committee. Technically competent representatives from the Proponent's team with the ability to respond to questions posed by CCPS must be active participants in the oral presentation. If required, oral presentations and interviews will be held during **Wednesday, December 13, 2023 and Thursday, December 14, 2023**. CCPS will notify responsive Proponents of the date, time and location for the presentation and interview, and will supply an agenda or topics for discussion.
10. **Examination of Response Documents:**
 - 10.1 Each Proponent is responsible for examining with appropriate care the complete RFP and all Addenda and for informing itself with respect to all conditions.
 - 10.2 Each Proponent shall promptly notify CCPS in writing should the Proponent find discrepancies, errors, ambiguities or omissions in their Response Documents, or should their intent or meaning appear unclear or ambiguous, or should any other question arise relative to the RFP. Replies to such notices may be made in the form of an addendum to the RFP, which will be posted on [Bonfire CCPS Bids](#) and [GPR CCPS Bids](#).

- 10.3** CCPS may in accordance with applicable law, by Addendum, modify any provision or part of the RFP at any time prior to the Response due date and time.
 - 10.4** Each Proponent must confirm Addenda have been received and acknowledge receipt by executing the Acknowledgment of Addenda form provided with each Addendum.
 - 10.5** CCPS may waive any technicalities and formalities. CCPS reserves the right to cancel the RFP in its entirety.
- 11. Bonding and Insurance Requirements:** The Bonding and Insurance requirements for any Agreement that may be awarded pursuant to this RFP are set forth in Appendix B, General Terms and Conditions. Proponent must provide a copy of a current certificate of insurance evidencing any existing commercial general liability policies issued for Proponent, if any. For purposes of this section, "Proponent" shall mean an individual, corporation or other corporate entity submitting a response in connection with this solicitation, including each Joint Venture partner if Proponent is a Joint Venture.
- 12. Protests:** Protests dealing with specifications or the solicitation shall be filed not later than three (3) working days prior to the response due date. Other protests shall be filed no later than three (3) working days after the response due date, or if the protest is based on subsequent actions of CCPS, not later than three (3) working days after the aggrieved person knows or should have knowledge, of the facts given rise to the protest. All Protests should specify exactly what is being protested. Protests are considered filed when received by the Director of Purchasing. Protests which are not filed in a timely manner, as set forth above, will not be considered. Proponent agrees to pay for CCPS reasonable attorney's fees and expenses of litigation for any protest arising out of this solicitation in which CCPS is a prevailing party. Only those who participated in the solicitation are eligible to protest.

--BALANCE OF PAGE INTENTIONALLY LEFT BLANK--

RFP 24-04

CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR NORTHCUTT ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE SCHOOL

GENERAL INFORMATION

1. INTRODUCTION

Clayton County Public Schools ("CCPS") is soliciting proposals from Proponents pre-qualified pursuant to RFQu 011-23 Pre-Qualification for Construction Manager at Risk (CMAR) for Clayton County Public Schools to provide Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School. Proponents will provide services to CCPS as needed. A detailed Scope of Services ("SOS") is set forth in this RFP.

2. BACKGROUND

Clayton County Public Schools (CCPS) is fully accredited through Cognia. The District offers a focused world-class program based on a challenging curriculum which is taught from pre-kindergarten through 12th grade. Serving over 52,000 students, Clayton County Public Schools is ranked among the 100 largest school districts in the U.S. Made up of 67 schools and a variety of programs, the school system has over 6,200 employees.

The project known as Northcutt Elementary & North Clayton Middle Renovation and Modernization will be located at two school locations: Northcutt Elementary located at 5451 W. Fayetteville Road, Atlanta, GA 30349 and North Clayton Middle located at 5517 W. Fayetteville Road, Atlanta, GA 30349

CCPS has selected Perkins & Will, Inc. to serve as the architect/engineer ("A/E") firm to provide A/E services for the Project. The A/E has begun the design process so that at the time a firm is awarded pursuant to this RFP, schematic design documents (SD) and 50% Design Documents (DD) will be available for review and use.

The estimated construction cost for the Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School is not to exceed \$12,000,000. The Construction Management Firm is to provide all professional services to deliver the completed facility within the estimated construction budget.

3. OBJECTIVE

The successful Proponent is expected to collaborate and work in unison with the

A/E firm and CCPS to review the design documents and advise on whether they are consistent with the provided budget and schedule for the Project to develop a Guaranteed Maximum Price (GMP). The successful Proponent will also perform the construction of the project and all necessary work for completion and warranty period.

The anticipated project schedule will be as follows:

Board Approval and Contract Execution - January, 2024

Notice to Proceed for Pre-Construction Phase Services - January, 2024

Notice to Proceed for Construction Phase Services - January, 2024

Project Substantial Completion:

Softball & Football Fields and Middle School Gym Floor - August, 2024

Baseball Field - October, 2024

Remainder of Scope - June, 2025

Project Final Completion - July 2025

4. INTENT TO AWARD

CCPS intends to make one (1) award; however, CCPS reserves the right to make one (1) award, multiple awards or no award for RFP No: 24-04 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School.

5. TERM OF AGREEMENT

The Contract shall commence within ten (10) calendar days after receipt of the Notice to Proceed.

The initial term of the Agreement and any renewal terms are collectively referred to as the "Term". The initial term of this Agreement shall be for one (1) year, and may be automatically renewed for five (5) successive one (1) year terms upon the same terms and conditions. The services to be performed under this Agreement shall commence on the effective date of this agreement and terminate absolutely and without further obligation on the part of the CCPS on June 30th of the year in which it was executed and on June 30th of each succeeding and renewed year, as required by O.C.G.A. § 20-2-506 (b), as amended, unless terminated earlier in accordance with the termination provisions of this agreement.

This contract shall not be deemed to create a debt of CCPS for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

6. SCOPE OF SERVICES

Proponents must comply with all Federal, State of Georgia and local regulations and laws applicable to Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School. Proponents must provide all services as requested in this RFP in accordance with Scope of Services attached hereto and incorporated herein by reference.

7. MINIMUM REQUIREMENTS

Proponents that have been qualified pursuant to RFQu 011-23 Pre-Qualification for Construction Manager at Risk (CMAR) for Clayton County Public Schools to meet the minimum requirements must keep their qualifications up-to-date should any requirements change.

8. EVALUATION PROCESS

CCPS desires to select the Proponent(s) whose response(s) are determined to be the most advantageous considering the technical evaluation criteria listed below. All Responses will be evaluated in accordance with CCPS Policies and Procedures, and the criteria specified in this RFP. An Evaluation Committee will evaluate the Responses using the following:

Relative Weight	ITEM FOR EVALUATION	Maximum Points
5%	Executive Summary	5
20%	Experience and Qualifications of Staff	20
25%	Methodology, Approach and Support	25
15%	Experience and Performance on Other Projects	15
10%	Organizational and Financial Capability	10
20%	Cost Proposal	20
5%	Small Local Business Enterprise (SLBE) Participation Commitment	5

100%	TOTAL SCORE	100
Oral Presentations/Interviews Oral presentations/interviews may be required before the final selection and award. Additional points for oral presentations, interviews or site visits will be added to the Proponent's total score.		Scoring Value Maximum Points 10

9. RESPONSE PREPARATION AND GUIDELINES

9.1 RESPONSE FORMAT

Proponents are required to submit the responses in the following format:

9.1.1 Technical Response. The technical response shall include responses to all of the information requested in the RFP and shall be tabbed to identify the specific components. The Proponent should include all strategies, solutions and services proposed in response to the requirements of the RFP. All forms required by CCPS or provided by the Proponent should be included. Any requests for clarification, exceptions or amendments to the RFP must be clearly identified and labeled and submitted with your technical response. CCPS is under no obligation to accept exceptions and any such exceptions may be a basis for disqualification

Please do not include any cost of any kind in this section. Inclusion of cost in the Technical Proposal may cause a proposal to be excluded for non-compliance.

9.1.2 Cost Proposal. The Cost Proposal Form affixed hereto as Attachment B, must be completed in its entirety, signed and **uploaded separately** from the Proponent's Technical proposal. The Cost Proposal Form will become a part of any contract resulting from this RFP. CCPS may solicit Best and Final Offers, and discussions may be conducted with responsible proponents who submit proposals determined reasonably susceptible to being selected for award.

Please do not include exceptions to the RFP in the Cost Proposal. Please do not include any exceptions, assumptions or clarifications to the RFP in the Cost Proposal. Inclusion of exceptions in the Cost

Proposal may cause a proposal to be excluded for non-compliance.

9.2 CONTENTS OF TECHNICAL RESPONSE

The Response shall include a reply to all of the information requested in this RFP. Brevity and specificity are encouraged. Concise presentation of pertinent information and organization of the submittal will be part of the evaluation. CCPS prefers a well-planned, straightforward business presentation with brief explanations. Responses with verbose or disorganized responses will be judged accordingly. The Response format described herein may not fully capture the particulars of all the information requested by the RFP. Should there be any doubt as to where to place any information, use best judgment.

The following is a more detailed description of the requirements of certain portions of the Technical Response. The Technical Response shall be tabbed and organized as follows, with a suggested total page limit of one-hundred (100) (excluding the Required Form Submittals).

9.2.1 Letter of Transmittal. Letter transmitting the Response, identifying the team members and providing a designated point of contact, including name, title, address, email address, telephone and fax numbers of one (1) individual to whom all future correspondence and/or communications should be directed by CCPS concerning this solicitation. The letter should include a narrative statement of the Proponent's approach to providing the goods and services solicited in this RFP.

9.2.2 Executive Summary. The purpose of the Executive Summary is to provide an overview of the Proponent's qualifications to accomplish the project. At a minimum, the Executive Summary must contain the following information:

9.2.2.1 Complete legal name of the Proponent and the name of the legal entities that comprise the Proponent. The Proponent must provide the domicile where each entity comprising it is organized, including entity name, brief history of the entity, contact name, address, phone number, email, and facsimile number, as well as the legal structure of the entity and a listing of major satellite offices;

9.2.2.2 A declarative statement as to whether;

9.2.2.2.1 Proponent or any member of the Proponent's team has an open dispute with CCPS or is involved in any litigation associated with work in progress or completed in both the private and public sector during the past five (5) years;

9.2.2.2.2 Proponent has within the past ten (10) years filed (or had filed against it) any bankruptcy or insolvency proceedings, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee or assignee for the benefit of creditors. If so, please provide an explanation;

9.2.2.2.3 Proponent has failed to complete work or a contract awarded to Proponents. If so, please provide an explanation;

9.2.2.2.4 Proponent or any of the Proponent's personnel, agents, independent contractors or Sub-Contractors have been convicted of, or pled guilty or nolo contendere to any felony. If so, please provide an explanation and details.

9.2.2.2.5 Provide a summary of the other sections of the Response. All sections should fit together into a well-organized highlight of the significant points of the Response.

9.2.3 Experience and Qualifications of Staff. Describe the experience and qualifications of Proponent's key staff. Submission of the names for key staff constitutes a commitment to use these individuals if the Proponent is awarded a contract, and changes may be made only with the prior written consent of CCPS. Information must include, but not limited to, the following:

9.2.3.1 Provide an organizational chart, and a short, narrative overview highlighting the roles of Proponent's proposed team, Key Staff, and Key Sub-Consultants;

9.2.4 Methodology, Approach and Support. The Proponent should describe the procedures and methods that will produce the required outcomes for the project. Such information may include but is not limited to:

- 9.2.4.1** Provide a designated contact, on behalf of the firm, to serve as the single point of contact for the entire Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School process;
- 9.2.4.2** Provide a description of Proponent's proposed implementation for Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School during the Pre-Construction Phase. Include the approach as it pertains to items such as: reviewing the constructability of design documents, providing cost estimates, value engineering, assessing existing conditions of the site and facility, and development of the GMP.
- 9.2.4.3** Provide a description of Proponent's proposed implementation for Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School during the Construction Phase. Include the approach as it pertains to items such: project supervision and coordination, end user communication, progress meetings, subcontractor management, change orders and pay requests.
- 9.2.4.4** Provide your preliminary CPM schedule for the project. Include the design, permitting, construction and closeout phases noting key items such as design milestones, release dates for long lead time items and other pertinent milestones that will impact a timely delivery.
- 9.2.4.5** Provide your firm's provisions for quality control and approach to controlling and correcting deficiencies and punch list items.
- 9.2.4.6** Provide your firm's approach in regards to renovating and constructing on an active campus. Include the measures taken as it relates to safety of school staff, students and contractors.

- 9.2.4.7 Describe your firm's ability and approach to timely close out of a project and strategy for timely responsiveness to warranty requests post construction.
- 9.2.4.8 Provide your plan for complying with the District's SLBE (Small Local Business Enterprise) Program.
- 9.2.4.9 Describe your firm's philosophy and methodology for the use of SLBEs.
- 9.2.4.10 Describe your firm's outreach, recruitment activities, services, mentoring or other interactions with SLBEs.
- 9.2.4.11 Provide any other information deemed important by Proponent.

9.2.5 Experience and Performance on Other Projects. Describe the Proponent's experience and qualifications in providing services as described in the Scope of Services. Such Information may include, but is not limited to:

- 9.2.5.1 Description of previous and current experience providing Construction Management at Risk Services for school districts or other similar organizations. Include firm's key staff, owner's representative, size and cost of project, date of project completion versus initial date and final contract amount versus initial contract.
- 9.2.5.2 Description of previous and current experience providing GC Services for similar size and scope for school districts or other similar organizations. Include firm's key staff, owner's representative, cost of project, date of project completion versus initial date and final contract amount versus initial contract.
- 9.2.5.3 Provide four (4) references for which Proponent has provided services similar in size and scope. References are to be provided utilizing the References and Release Form provided in Appendix D, Required Forms.

9.2.6 Organizational and Financial Capability.

To facilitate the efforts of CCPS to evaluate, verify, and understand the Proponent's financial capacity, capability and stability to undertake and

perform the Services contemplated in this RFP, the Proponent must provide accurate and legible financial disclosures to CCPS as requested below. By definition, a “Proponent” is an individual, entity or partnership submitting a response to this RFP. The Proponent may present additional evidence of financial ability or financial capability it deems appropriate, but must first comply with the following:

- 9.2.6.1 Instructions:** If the Proponent is an individual, financial disclosures for that individual must be provided. If the Proponent is an entity or partnership, financial disclosures for that entity or partnership must be provided. If the Proponent is a newly formed entity or partnership (formed within the last three years), financial disclosures for that entity or partnership must be provided together with full financial disclosure from the entity’s or partnership’s owners. Financial Disclosure includes a full response to all questions and requests for documentation listed below. The Proponent (and its owners, if applicable) must submit copies of all financial disclosures with its response.
- 9.2.6.2 Financial Information:** The Proponent and its owners, if applicable, should demonstrate its financial capability and stability by selecting and providing documentation from one of the following three groups of requests below with the Response.
- 9.2.6.3** Financial statements for the three (3) most recent consecutive fiscal years, audited by a Certified Public Accountant (“CPA”), including: Income Statement; Balance Sheet; and Statement of Cash Flows.
- 9.2.6.4** Financial statements for the three (3) most recent consecutive fiscal years, either reviewed or compiled by a Certified Public Accountant (“CPA”), including: Income Statement; Balance Sheet; and Satisfactory proof of Proponent’s ability to obtain a Performance Bond for the amount described in Appendix B, if applicable.
- 9.2.6.5** Unaudited, self-prepared financial statements for the three (3) most recent consecutive fiscal years, including: Income Statement; Balance Sheet; Satisfactory proof of Proponent’s ability to obtain a Performance Bond for the amount described in Appendix B, if applicable; Letters of Reference; and Dunn and Bradstreet reports for the last two (2) years.

10. CCPS STANDARD AGREEMENT

The Draft Construction Management At-Risk Agreement included as Attachment C is a standard CCPS document which should be thoroughly reviewed by all Proponents prior to submitting a proposal. Any proposed revisions to the terms or language of this RFP must be submitted in writing with Proponent's response. Since proposed revisions may result in a proposal being rejected if the revisions are unacceptable to CCPS, Proponents should review any proposed revisions carefully. Refer to Information and Instructions to Proponents, Award and Execution of Agreement in this RFP. Modifications or additions to the Draft Construction Management At-Risk Agreement will not be entertained after contract award.

11. REQUIRED FORM SUBMITTALS

The forms and documents contained in Appendix D, Required Forms, are mandatory forms required to be submitted with each proposal. Failure to provide the information or documentation required may cause a proposal to be declared non-responsive and rejected. Failure to have an authorized representative sign all documents at the signature line, or failure to have all documents properly notarized as requested, may cause a proposal to be declared non-responsive and rejected.

APPENDIX A



PURCHASING DEPARTMENT CODE OF ETHICS

- I. Give first consideration to the mission and policies of Clayton County Public Schools.
- II. Strive to obtain maximum value for each dollar spent.
- III. Decline personal favors, gifts, and gratuities. Grant all competitive Respondents fair and equal consideration.
- IV. Conduct business with potential and current Respondents in an atmosphere of good faith.
- V. Demand honesty in sales representations whether offered through the medium of a verbal or written statement, an advertisement, or a sample of the product.
- VI. Receive consent from the originator for the use of proprietary ideals and designs.
- VII. Make a reasonable effort to obtain equitable settlement of any controversy with a Contractor.
- VIII. Accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
- IX. Create an environment of fair, ethical, and legal business practices.
- X. Protect Clayton County Public Schools' interest by ensuring that Respondents honor all terms of their contract.

APPENDIX B

GENERAL TERMS AND CONDITIONS

The General Terms and Conditions contained in this Request for Proposal (RFP) apply to all solicitations. Where there are specific or special conditions contained herein that conflict with the General Information and Instructions, the more specific or special conditions will prevail. For the avoidance of doubt, the terms of the Construction Management (At-Risk) Contract set forth in Attachment C shall take precedence over any contrary terms contained in this Exhibit B. The terms Contractor, Supplier, Provider and Proponent may be used interchangeably herein.

- I. **Contract Renewal.** Upon executing its option to renew, CCPS will notify the Contractor of such renewal, at which time the Contractor shall be bound to provide Services during such renewal term, without the need for the Parties to execute any further documents evidencing such renewal, it being acknowledged by the Contractor that its initial execution of this Agreement is deemed its agreement to continue to provide Services during any renewal term.
- II. **Payment.** A purchase order will be issued to authorize the purchase of the services/commodities. Delivery/release of services/commodities is not authorized until the receipt of a purchase order.
 - a. The Contractor shall invoice CCPS on a monthly basis. If payment is to be made by line item, when a single line item has been satisfactorily delivered, complete payment will be made within thirty (30) days from either the date of delivery or the receipt of a satisfactory invoice in triplicate, whichever occurs last. Original invoices should be sent to Clayton County Public Schools, Accounts Payable, 1058 Fifth Avenue, Jonesboro, Georgia 30236 with a copy sent to the CCPS Construction Department, via U.S. mail to: 6635 Lake Drive, Morrow, Georgia 30260 or via email to construction@clayton.k12.ga.us. All invoices must show the contract number, work performed and period of work. Payment will be made via electronic payment or check. CCPS reserves the right to modify these terms should extenuating circumstances prevail.
- III. **Non-Appropriation.** Notwithstanding any other provision of this agreement, the parties hereto agree that the charges hereunder are payable to the Contractor by CCPS solely from appropriations received by CCPS. In the event such appropriations are determined, in the sole discretion of the Chief Financial Officer of CCPS, no longer to exist or to be insufficient with respect to the charges payable hereunder, this agreement shall terminate without further obligation of CCPS at the end of any fiscal period (hereinafter referred to as "Event"). In such Event, the Chief Financial Officer for CCPS shall certify to the Contractor the occurrence thereof, and such certification shall be conclusive.

Scope of Services. Contractor shall provide Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School as requested by CCPS Construction Department in accordance with the RFP and Scope of Services.

- IV. **Compliance with Laws, Licenses, Permits.** Contractor shall comply with all local, state, and federal laws and regulations applicable to its responsibilities under this Agreement. During the term of this Agreement the Contractor shall maintain all licensing and permits required to provide Services. Failure to maintain such licensing shall be cause for termination of this Agreement. Contractor shall obtain and maintain all permits, licenses, certifications and approvals as required by all regulatory agencies with jurisdiction over the assigned Services, including any regulatory agencies of CCPS.

V. **Insurance.**

Proof of insurance shall be provided within 15 days of the date of written notification of award.

- a. The following general requirements apply to any and all work under this contract by all Contractors and Sub-Contractors, where applicable, of any tier.
 1. Any and all insurance required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of Clayton County Public Schools. Any and all insurance must be on an occurrence basis.

No Contractor or Sub-contractor shall commence any work of any kind under a contract until all insurance requirements contained within the solicitation have been complied with and until evidence of all insurance requirements have been received demonstrating such compliance in each and every contract with each and every sub-contractor of any tier.

2. Clayton County Public Schools shall be covered as an Additional Insured under any and all insurance required by the contract. Confirmation of this shall appear on all certificates of insurance and on any and all applicable policies.
3. Clayton County Public Schools shall be given no less than thirty (30)

days' notice of cancellation. Clayton County Public Schools shall be given not less than thirty (30) days prior written notice of material changes of any insurance required under this contract.

4. Each and every agent shall warrant when signing the certificate of insurance that he is acting as an authorized representative on behalf of the companies affording insurance coverage under the contract and that he is licensed by the State of Georgia to conduct insurance business in the State of Georgia and that the companies affording insurance coverage are currently licensed by the State of Georgia and are currently in good standing with the Commissioner of Insurance for the State of Georgia.

5. Any and all companies providing insurance required by a contract must meet the minimum financial security requirements as set forth below. The rating for each company must be indicated on the certificate of insurance.

For all contracts, regardless of risk, companies providing insurance under this contract must have a current:

- a. Best's Rating not less than A, and

- b. Best's Financial Size Category not less than Class VII

6. In the event the Contractor neglects, refuses, or fails to provide the insurance required by the Contract Documents, or if such insurance is cancelled for any reason, CCPS shall have the right, but not the duty, to procure the same, and the cost thereof shall be deducted from monies then due or thereafter to become due to the Contractor or shall have the right to cancel the contract.

- b. Worker's Compensation and Employer's Liability Insurance

The Contractor shall procure and maintain Worker's Compensation and Employer's Liability Insurance in the following limits. Such insurance is to cover each and every employee who is or may be engaged in work under the contract.

Worker's Compensation	Statutory
Employer's Liability	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

c. Comprehensive General Liability Insurance

The Contractor shall procure and maintain Comprehensive Insurance in an amount not less than \$1,000,000.00 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance.

1. Comprehensive Form
2. Contractual Insurance
3. Personal Injury
4. Broad Form Property Damage
5. Premises – Operations
6. Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under the contract. Policy coverage must be on an occurrence basis.

d. Automobile Liability Insurance

The Contractor shall procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000.00 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance.

1. Comprehensive Form
2. Owned, Hired, Leased and non-owned vehicles to be covered. If the Contractor does not own any vehicles in the corporate name, non-owned vehicles coverage shall apply and must be endorsed on either the Contractor's personal automobile policy or the Comprehensive

General Liability coverage required under this contract.

- VI. **Conflict of Interest Notice to Contractors.** All firms, Sub-Contractors, Sub-Contractors and their employees are notified and advised to avoid potential conflicts of interests. Full and prompt disclosure of involvement in any project or services to other clients that may be in conflict with the financing, operation and management of CCPS projects shall be made to the CCPS in the technical response of the firm's response, and in advancement of assignment so that real or potential conflicts of interest can be avoided.

In any circumstance where Contractor, including any joint venture partners, parent or subsidiary companies, or affiliates under common control, is providing Services or work under another contract with CCPS and a dispute, claim or conflict of interest arises between CCPS and such Contractor under this agreement or another contract, CCPS may in its sole determination and discretion, suspend all existing work under this Agreement and may or may not issue any further work to the Contractor under this agreement unless and until such dispute, claim or conflict of interest is resolved to the satisfaction of CCPS. Should CCPS take such action, Contractor shall not be entitled to any additional costs of any kind resulting from such action except that Contractor may be paid for any authorized Services provided to CCPS under this Agreement prior to the effective date of the suspension of the work. This provision shall not be deemed exclusive and shall be supplemental to any rights and remedies available to CCPS under this Agreement, any other contract or as may be available under applicable law.

- VII. **Contractor as Independent Contractor.** In conducting its business hereunder, the Contractor shall act as an independent contractor and not as an employee or agent of CCPS. The selection, retention, assignment, direction and payment of the Contractor's employee shall be the sole responsibility of the Contractor. Nothing in this agreement shall be deemed to constitute Contractor and CCPS as partners, joint ventures, or principal and agent, or be construed as requiring or permitting the sharing or profits or losses. Neither party has authority to represent or bind or create any legal obligations for or on behalf of the other party.

- VIII. **Contractor's Personnel.** The Contractor shall assign sufficient qualified personnel to provide the Services required by CCPS. Contractor shall assign personnel that possess the necessary skill sets to ensure proper installation and operation of the Services. The Contractor will assume all costs associated with the replacement of any Contractor personnel whose continued assignment is not in the best interest of CCPS. Without cost to CCPS, the Contractor agrees to remove any personnel who has engaged in a willful misconduct or had committed a material breach of this agreement.

IX. **Contractor's Authority, Representations and Warranties.** The Contractor represents that the Contractor, its employees, and its sub-Contractors are possessed of the knowledge, training, skills, experience, and financial strength required to provide the services outlined in this Agreement. Contractor further warrants that its integrity, reputation, skills and performance of the Services requested shall be of the highest caliber. Contractor warrants that it will perform its services in a prompt and timely manner, which shall not impose delays in official operation of CCPS; and those services will be performed in accordance with the standards imposed by applicable law and the practices and professional standards used in well managed operations performing similar services. The Contractor warrants that as of the date above written that:

- a. It is duly organized and validly existing in good standing under the laws of the state in which it is organized, is qualified to do business in all jurisdictions in which it is operating, and has the power and authority to execute and deliver and to perform its obligations under this Agreement and the documents to which it is signatory; and
- b. The execution, delivery and performance by Contractor and its undersigned representative(s) of this Agreement and other documents to which Contractor is a signatory do not require the approval or consent of any other person, entity or government agency and do not result in any breach of any agreement to which Contractor is a party or by which it is bound; and
- c. The execution, delivery and performance by Contractor of this Agreement and other documents to which it is a signatory have been duly authorized by all necessary action, and constitute legal, valid and binding obligations of Contractor, and is enforceable against Contractor in accordance with its terms; and
- d. No action, suit or proceeding to which Contractor is a party is pending or threatened that may restrain or question this Agreement, or any other document to which it is a signatory, or the enjoyment of rights or benefits contemplated herein.

X. **Confidential Information.**

- a. **General.** Each Party agrees to preserve as strictly confidential all Confidential Information of the other Party for two (2) years following the expiration or termination of this Agreement; provided, however, that each Party's obligations for the other Party's Confidential Information that constitutes trade secrets pursuant to Applicable Laws will continue for so long as such Confidential Information continues to constitute a trade secret under Applicable Law. Any Confidential Information that may be deemed

Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by CCPS, Contractor will return any trade secrets to CCPS. Each Party agrees to hold the Confidential Information of the other in trust and confidence and will not disclose it to any Person, or use it (directly or indirectly) for its own benefit or the benefit of any other Person other than in the performance of its obligations under this Agreement.

The Contractor shall indemnify and hold harmless the School District/public entity against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District/public entity of materials furnished or work performed under this Contract. The School District/public entity shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

- b. **Disclosure of Confidential Information or Information Other Party Deems to be Confidential Information.** Each Party will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by Applicable Law. Prior to making such a disclosure, to the extent allowed pursuant to Applicable Law, each Party shall provide the other with thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the Person requesting disclosure. Should the non-disclosing Party contest the disclosure, it must: seek a protective order preventing such disclosure; or intervene in such action compelling disclosure, as appropriate. This Section shall be applicable to information that one Party deems to be Confidential Information but the other Party does not.

- XI. **Work Product.** Except as otherwise expressly provided in this Agreement, all reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, all deliverables, and other work product prepared or authored by Contractor or any of its Contractors exclusively for CCPS under this Agreement, and all intellectual property rights associated with the foregoing items (collectively, the "Work Product") shall be and remain the sole and exclusive property of CCPS. Any of Contractor's or its Contractors' works of authorship comprised within the Work Product (whether created alone or in concert with CCPS or Third Party) shall be deemed to be "works

made for hire” and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product shall belong exclusively to CCPS. Contractor and its Contractors grant CCPS a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license to all Work Product not exclusively developed for CCPS under this Agreement

- a. If any of the Work Product is determined not to be a “work made for hire”, Contractor assigns to CCPS, worldwide and in perpetuity, all rights, including proprietary rights, copyrights, and related rights, and all extensions and renewals of those rights, in the Work Product. If Contractor has any rights to the Work Product that cannot be assigned to CCPS, Contractor unconditionally and irrevocably waives the enforcement of such rights and irrevocably grants to CCPS during the term of such rights an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.
- b. CCPS shall have the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name or for its own benefit, all patents, copyrights, applications and registrations, renewals and continuations and all other appropriate protection.
- c. To the extent exclusive title or complete and exclusive ownership rights in any Work Product created by Contractor Personnel may not originally vest in CCPS by operation of Applicable Law, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to CCPS all rights, title and interest in the Work Product.
- d. Without any additional cost to CCPS, Contractor Personnel shall promptly give CCPS all reasonable assistance and execute all documents CCPS may reasonably request to enable CCPS to perfect, preserve, enforce, register and record its rights in all Work Product. Contractor irrevocably designates CCPS as Contractor's agent and attorney-in-fact to execute, deliver and file, if necessary, any documents necessary to give effect to the provisions of this Section and to take all actions necessary, in Contractor's name, with the same force and effect as if performed by Contractor.

XII. Audit Inspection Rights.

- a. **General.** Contractor will provide to CCPS, and any Person designated by CCPS, access to Contractor Personnel and to Contractor owned Facilities for the purpose of performing audits and inspections of Contractor, Contractor Personnel and/or any of the relevant information relating to the

Services and this Agreement. Such audits, inspections and access may be conducted to: verify the accuracy of Charges and invoices; examine Contractor's performance of the Services; monitor compliance with the terms of this Agreement; and any other matters reasonably requested by CCPS. Contractor shall provide full cooperation to CCPS and its designated Persons in connection with audit functions and examinations by regulatory authorities.

- b. All audits and inspections will be conducted during business hours (except with respect to Services that are performed during off-hours). Contractor shall promptly respond to and rectify the deficiencies identified in and implement changes suggested by any audit or inspection report. If any audit or inspection of Charges or Services reveals that CCPS has overpaid any amounts to Contractor, Contractor shall promptly refund such overpayment and Contractor shall also pay to CCPS interest on the overpayment amount at the rate of one-half percent (0.5%) per month (or such maximum rate permissible by Applicable Law, if lower) from the date the overpayment was made until the date the overpayment is refunded to CCPS by Contractor.

XIII. **Open Records.** The Contractor acknowledges that all records relating to this Agreement and the services to be provided under this Agreement may be a public record subject to Georgia's Open Records Act (O.C.G.A. § 50-18-70, et seq.). Contractor shall cooperate fully in responding to such request and making all records, not exempt, available for inspection and copying as provided by law. Contractor shall notify CCPS immediately of any request made under the Open Records Act and shall furnish CCPS with a copy of the request and the response to such request.

XIV. **Contractor Affidavit and Compliance.**

- a. Pursuant to O.C.G.A. §13-10-91 and Georgia Department of Labor Rule 300-10-1-.02, CCPS cannot enter a contract for the physical performance of services unless the Contractor and its Sub Contractors register and participate in the Federal Work Authorization Program to verify specific information on all new employees.
- b. The Contractor certifies that it has complied and will continue to comply with O.C.G.A. §13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.
- c. The Contractor agrees to sign an affidavit evidencing its compliance with O.C.G.A. §13-10-91 and Georgia Department of Labor Rule 300-10-1-.02. The signed affidavit is attached hereto as Appendix C, Required Form Submittals, and incorporated herein by reference.
- d. The Contractor agrees that in the event that it employs or contracts with any Sub-contractor(s) in connection with this Contract, the Contractor will secure from each Sub-contractor an affidavit that indicates the employee-

number category applicable to that Sub Contractor and certifies the Sub-contractor's current and continuing compliance with O.C.G.A. §13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

XV. **Inclusivity in Purchasing Policy.** Contractors are required to comply with the CCPS Inclusivity in Purchasing Policy (DJEAB) and Small Local Business Enterprise Program.

XVI. **Performance of Agreement.**

- a. CCPS reserves the right to enforce the Contractor's performance in any manner prescribed by law or deemed to be in the best interest of CCPS in the event of breach or default of the Agreement.
- b. The Contractor shall execute the entire work described in the Agreement Documents, except to the extent specifically indicated in the Agreement documents to be the responsibility of others.
- c. The Contractor accepts the relationship of trust and confidence established by the award of this Agreement. The Contractor covenants with CCPS to utilize the Contractor's best skill, efforts and judgment in furthering the interest of CCPS; to furnish efficient business administration and supervision; to make its best efforts to furnish at all times an adequate supply of workers and materials; and to complete the Services in the best way and most expeditious and economical manner consistent with the interest of CCPS.
- d. The Contractor acknowledges that this Agreement and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners.

XVII. **Indemnification.** Contractor shall indemnify, defend, save and otherwise hold harmless CCPS, its elected and appointed officials, departments, agencies, boards, authorities, directors, officers, employees, and volunteers from and against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs, attorneys' fees and any other costs associated and/or related in any way to any claim or litigation for or on account of any property damage, injury or death to any person or action related to such brought by any person and/or estate which may arise or which may be alleged to have arisen out of or in connection with the work covered by this Agreement, except to the extent that such loss results from the negligence of CCPS. Contractor shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor waives all rights of subrogation and/or financial recovery of any kind in favor of CCPS, its departments, all elected and appointed officials, to include, but not limited to, its directors, officers, agents, boards, volunteers and employees for losses arising or alleged to have arisen out of any work performed in relation to the Agreement.

XVIII. **Controlling Law, Venue.** The Contract Documents shall be governed by and construed in accordance with the substantive laws of the State of Georgia without regard to its choice of law principles.

a. **Jurisdiction and Venue.** The Parties hereby submit and consent to the exclusive jurisdiction of the Superior Court of Clayton County, Georgia or in the United States District Court for the Northern District of Georgia and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or forum non- convenience to the conduct of any such action or proceeding in such court.

b. **Equitable Remedies.** The Parties agree that, notwithstanding the provisions of this Section, due to the unique nature of either Party's Confidential Information, there may not be an adequate remedy at law for a breach of the Section titled "Confidential Information", which breach may result in irreparable harm to the non-disclosing Party. Accordingly, in such instance, the non-breaching Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

XIX. **Assignment.** Except as other provided herein, this Agreement shall not be sold, assigned or transferred by Contractor by process or operation of law or in any other manner whatsoever, including intra-corporate transfers or reorganizations between or among a subsidiary of Contractor, or with a business entity which is merged or consolidated with Contractor or which purchases a majority or controlling interest in the ownership or assets of Contractor without the prior written consent of CCPS.

Contractor may subcontract to an Affiliate or a third-party work to be performed under this Agreement or otherwise assign the rights and obligations hereunder to such Affiliate, but will remain financially responsible for the performance of such obligations.

XX. **Non-Discrimination.** Notwithstanding any other provision of this Agreement, during the performance of this Agreement Contractor, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration of this Agreement does hereby covenant and agree, that:

- a. No person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- b. In the furnishing of products and the Contractor of services herein or hereon, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, or denied the benefits of, such activities, or otherwise be subjected to discrimination.

XXI. **Default and Termination.**

- a. **Termination by CCPS.** This Agreement shall be subject to termination by CCPS at any time if any one or more of the following events occurs:
- i. The default by the Contractor in the performance of any of the terms, covenants or conditions of the Agreement, and the failure of the Contractor to remedy, or undertake to remedy with sufficient forces and to CCPS's reasonable satisfaction. CCPS shall provide the Contractor with notice of any conditions which violate or endanger the performance of the Agreement. If, after such notice, the Contractor fails to remedy such conditions within ten (10) days, or such other term set forth in such notice, to the satisfaction of CCPS, CCPS may exercise its option in writing to terminate the Agreement without further notice to the Contractor and order the Contractor to stop work immediately with no additional expense to CCPS.
 - ii. Contractor files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of the Contractor and such receivership is not vacated within thirty (30) days after the appointment of such receiver.
 - iii. Contractors' failure to conduct services according to the approved specifications.
 - iv. Contractor's failure to keep, perform, or observe any other term or condition of the Agreement shall default to Termination for Convenience;
 - v. Contractor's performance of the Agreement is unreasonably delayed.
 - vi. Should the Contractor fail to provide the or services when ordered, and in accordance with the Specifications and any other requirements contained herein, the CCPS reserves the right to purchase services covered by this Agreement elsewhere if available from an alternate source.
- b. **Termination for Convenience.** CCPS may, at its sole option, terminate the Agreement with or without cause at any time upon a ten (10) day written notice by certified mail to the Contractor without prejudice to any other right or remedy it may have. CCPS reserves the right to terminate the Agreement if funding is unavailable for the Services or if any applicable grant funding

is terminated or expires.

XXII. **Payment and Performance Bonds**

As set forth in the Contract, following the Owner's acceptance of the Guaranteed Maximum Price, the Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Guaranteed Maximum Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Guaranteed Maximum Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to write surety bonds in the State of Georgia.

XXIII. **Miscellaneous Provisions**

- a. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and as of its Effective Date supersedes all prior or independent Agreements between the parties covering the subject matter hereof for the services to be provided, and all representations, warranties, inducements, promises or Agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.
- b. CCPS hereby engages the Contractor and Contractor hereby agrees, to perform the services hereinafter set forth in accordance with this Agreement, consisting of the following documents:
 - i. Any amendments as mutually agreed and signed by both parties;
 - ii. Any subsequent Change Orders as mutually agreed to and approved by CCPS;
 - iii. Contractor's insurance certificates;
 - iv. Contractor's licenses and permits;
 - v. Contractor's Affidavit of Compliance; and
 - vi. Appendices A, B, C and D; and Exhibits A - H.
- c. **Change Orders.** CCPS and the Contractor hereby agree that no modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, conforms to CCPS's policies and procedures governing change orders, and is signed by CCPS and the Contractor's duly authorized representatives.
- c. **Severability.** If a provision or term hereof shall be finally declared void or

illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

- d. **Headings.** The headings used in these General Terms and Conditions are intended for convenience and reference only and do not define or limit the scope or meaning of any provision.
- e. **Force Majeure.** Neither party shall be held to be in breach of this Agreement because of any failure to perform any of its obligations hereunder if said failure is due to any act of God, fire, flood, accident, strike, riot, insurrection, war, or any other cause over which that party has no control. Such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event and the obligation of the party giving such notice shall endeavor to remove or overcome such inability with all reasonable dispatch.
- f. **Waiver.** The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.
- g. **Notice.** Any notice or consent required to be given by or on behalf of any party hereto to any other party hereto shall be in writing and shall be sent by (a) registered or certified United States mail, return receipt requested, postage prepaid, (b) personal delivery to CCPS (c) overnight courier service, or (d) delivered in person to the Contractor or its authorized representative on the work site. All notices sent to the addresses listed below shall be binding unless said address is changed in writing no less than two (2) weeks before such notice is sent. Future changes in address shall be effective upon written notice being given by the Contractor to CCPS or by CCPS to the Contractor's authorized representative via certified first-class U.S. mail, return receipt requested. Such notices will be addressed to CCPS as follows: Director, Clayton County Public Schools (CCPS) Purchasing Department, 1098 Fifth Avenue, Jonesboro, GA 30236.

--BALANCE OF PAGE INTENTIONALLY LEFT BLANK--

APPENDIX C
REQUIRED FORMS

CONTRACTOR AFFIDAVIT AND AGREEMENT

CCPS, Req. Form 1, 08/2016

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance for services on behalf of **Clayton County Board of Education**. (name of public employer), has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the contract period and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with sub-Contractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

RFP 24-04 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School
Name of Project

Clayton County Board of Education
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____,
20_____.

NOTARY PUBLIC

My Commission Expires:

SUB-CONTRACTOR AFFIDAVIT AND AGREEMENT

CCPS, Req. Form 1, 08/2016

By executing this affidavit, the undersigned Sub-contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of Contractor) on behalf of the Clayton County Board of Education has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Sub-contractor will continue to use the federal work authorization program throughout the contract period and the undersigned Sub-contractor will contract for the physical performance of services in satisfaction of such contract only with Sub-Sub-Contractors who present an affidavit to the Sub-contractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned Sub-contractor will forward notice of the receipt of an affidavit from a Sub-Sub-contractor to the Contractor within five business days of receipt. If the undersigned Sub-contractor receives notice of receipt of an affidavit from any Sub-Sub-contractor that has contracted with a Sub-Sub-contractor to forward, within five business days of receipt, a copy of such notice to the Contractor. Sub-contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

RFP 24-04 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School
Name of Project

Clayton County Board of Education
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE ____ DAY OF
20__.

NOTARY PUBLIC

My Commission Expires:

SUB-SUBCONTRACTOR AFFIDAVIT AND AGREEMENT

CCPS, Req. Form 1, 08/2016

By executing this affidavit, the undersigned Sub-contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of Contractor) on behalf of the Clayton County Board of Education has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Sub-contractor will continue to use the federal work authorization program throughout the contract period and the undersigned Sub-contractor will contract for the physical performance of services in satisfaction of such contract only with Sub-Sub-Contractors who present an affidavit to the Sub-contractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned Sub-contractor will forward notice of the receipt of an affidavit from a Sub-Sub-contractor to the Contractor within five business days of receipt. If the undersigned Sub-contractor receives notice of receipt of an affidavit from any Sub-Sub-contractor that has contracted with a Sub-Sub-contractor to forward, within five business days of receipt, a copy of such notice to the Contractor. Sub-contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

RFP 24-04 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School
Name of Project

Clayton County Board of Education
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE ____ DAY OF
20__.

NOTARY PUBLIC

My Commission Expires:



Clayton County Public Schools Substitute W-9 Form

Request for Taxpayer Identification Number and Certification

Vendor Number if previously assigned:

* Name (List legal name. If joint names, list first the name of the person whose TIN you enter in Part I)

Business Name, if different from above. Example: Doing Business As "J. Doe Construction"

Check appropriate box: ☐ Individual ☐ Sole Proprietor ☐ Corporation ☐ Partnership ☐ Other

Please check the type of services rendered by the vendor.

☐ Materials Only ☐ Services Only ☐ Materials and Services

Legal Address: number, street, and apt. or suite no.

City, state and ZIP code

 GA

Phone #

 ()

Fax #

 ()

Email Address

Remittance Address: If different from legal address.

Remittance City, state and ZIP code

 --

Remittance Phone #

 ()

Remittance Fax #

 ()

Contact Person

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN).

Social Security Number

 - -

OR

Tax Payer Identification Number

 - **Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number, and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding and
3. I am a U.S. citizen (including a U.S. resident alien).

Certification Instructions. ☐ Please check this box if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, this does not apply.

Part III Potential Conflict Disclosure

Please disclose any relationships with current or former Clayton County Public Schools employees to include employees with vested interest in your organization.

Employee Name

Relationship

Certification Instructions. ☐ I certify that the above statement is true and I have disclosed any and all relationships with county employees. Additionally, I am aware that CCPS has the right to terminate this relationship if it is determined that this information is false.

Sign Here

Authorized Signature ►

Date ►

RFP 24-04
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR NORTHCUTT
ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE SCHOOL
PROPONENT REPRESENTATIONS AND DECLARATIONS

This Acknowledgement of Representations and Declarations and Agreement must be properly signed and notarized, and returned with Proponent's response to this RFP.

- 1. Anti-Lobbying Provision.** All respondents, including agents, personnel, representatives, lobbyists, attorneys and proposed partner(s), subcontractor(s) or joint venturer(s), will refrain, under penalty of the respondent's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process.
- 2. Certification of Independent Price Determination/Non-Collusion.** Collusion and other anticompetitive practices among offerors are prohibited by state and federal laws. All Respondents shall identify a person having authority to sign for the Respondent who shall certify, in writing, as follows:

"I certify that this bid/proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid or offer for the same supplies, labor, services, construction, materials or equipment to be furnished or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damages awards. By signing this document, I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent/Offeror."

- 3. Prohibition on Kickbacks or Gratuities/Non-Gratuity.** The undersigned acknowledges the following prohibitions on kickbacks and gratuities:
 - a. It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
 - b. It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, content of any specification or procurement standard, rendering of advice, investigation, auditing or

(Page 1 of 4)

in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

- c. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- 4. Debarment.** The undersigned Service Provider/Contractor provides this assurance and certification that they are not currently debarred from submitting proposals or proposals on contracts by any agency in the State of Georgia and the federal government, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the State of Georgia or the federal government.
- 5. Covenant of Non-Discrimination.** The undersigned understands that it is the policy of CCPS to promote full and equal business opportunity for all persons doing business with the CCPS. The undersigned covenants that we have not discriminated, on the basis of race, color, religion, sex, gender, national origin or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities.
- 6. Small Local Business Enterprise (SLBE) Program.** The undersigned bidder/proponent hereby state that they have read and understand the requirements and conditions as set forth in the CCPS Inclusivity in Purchasing, Small Local Business Enterprise Program, and that reasonable effort were made to support the CCPS in providing the maximum practicable opportunity for the utilization of SLBEs consistent with the efficient and economical performance of this contract. The Bidder/Proponent and any subcontractors shall file compliance reports at reasonable times and intervals with CCPS in the form and to the extent prescribed by CCPS. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of Bidders/Proponents and their subcontractors/suppliers. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder/Proponent knowing them to be false, or if there is a failure of the successful Bidder/Proponent to implement any of the stated agreements, intentions, objectives, goals and commitments set forth herein without prior approval of CCPS, then in any such events the Bidder/Proponent's act or failure to act shall constitute a material breach of contract, entitling CCPS to terminate the Contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies CCPS may have for other defaults under the Contract. Additionally, Bidder/Proponent will be subject to the loss of any future contract awards by the CCPS for a period of one year.

(Page 2 of 4)

7. Certify Satisfaction of all Underlying Obligations. (If Applicable). If a Contract is awarded through this solicitation, then such Contractor should know that before final payment is made to a Contractor by CCPS, the Contractor shall certify to CCPS in writing, in a form satisfactory to CCPS, that all subcontractors, materialmen suppliers and similar firms or persons involved in the CCPS contract have been paid in full at the time of final payment to the Contractor by CCPS or will be paid in full utilizing the monies constituting final payment to the Contractor.

8. Proponent Declarations:

- a. I, the undersigned, have carefully examined and fully understand the CCPS General Terms and Conditions and this solicitation in its entirety, including all required forms and Proponent Representations, and agree to conform with every requirement. I certify that I am legally authorized to make the statements and representations herein and sign this quote for the Proponent. Signing this form affirms that the Original Request for Proposal Document has not been altered in any way.
- b. I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Proponent.

--BALANCE OF PAGE INTENTIONALLY LEFT BLANK--

(Page 3 of 4)

Sign here if you are an individual:

Printed Name: _____

Signature: _____

Date: _____

Subscribed and sworn to or affirmed by _____ **(name) this** ____
day of _____, **20**__.

Notary Public of _____(state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity or partnership:

Printed Name of Entity or Partnership: _____

Signature of authorized representative: _____

Title: _____

Date: _____, **20**__

Subscribed and sworn to or affirmed by _____

(name), as the _____ **(title) of** _____

(entity or partnership name) this ____ **day of** _____, **20**__.

Notary Public of _____ (state)

My commission expires: _____

(Page 4 of 4)

REFERENCE AND RELEASE FORM

Please provide the information and contact person who will verify Contractor's experience and ability to perform the services listed in the RFP. Submission of this form grants CCPS the authority to contact each reference listed.

Proponent Name: _____

Project Name: Project Number: Contract Period:	Company Name: Contact Person: (Name and Title)		
Email Address:	Address		
Telephone Number:	City	State	Zip Code
Fax Number:			

Project Name: Project Number: Contract Period:	Company Name: Contact Person: (Name and Title)		
Email Address:	Address		
Telephone Number:	City	State	Zip Code
Fax Number:			

Project Name: Project Number: Contract Period:	Company Name: Contact Person: (Name and Title)		
Email Address:	Address		
Telephone Number:	City	State	Zip Code
Fax Number:			

Project Name: Project Number: Contract Period:	Company Name: Contact Person: (Name and Title)		
Email Address:	Address		
Telephone Number:	City	State	Zip Code
Fax Number:			

Authorized Signature: _____ Date: _____

APPENDIX D

SLBE PROGRAM - REQUIRED DOCUMENTS



CLAYTON COUNTY PUBLIC SCHOOLS

INCLUSIVITY IN PURCHASING

SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM

It is the policy of Clayton County Public Schools (CCPS) to promote full and open opportunity for all persons and businesses to participate in CCPS procurement. To help accomplish this goal, the Clayton County Board of Education has enacted an Inclusivity in Purchasing Policy. A race, ethnicity and gender neutral Small Local Business Enterprise (SLBE) Program has been developed to promote the growth and development of local small businesses, strengthen the local CCPS economy, contribute to the local tax base and expand employment opportunities for local residents. The SLBE program is designed to ensure that those seeking to participate in solicitations valued at \$50,000 or greater are not precluded or discriminated against based on race, color, religion, national origin, disability, ethnicity, sex or gender. For all qualified solicitations, the program also requires that SLBE Contracting Goals be met, or Good Faith Efforts (GFE) to meet the goals be demonstrated.

SLBE Contracting Goals	
Construction and Construction Management Services	30%
Professional Services	20%
Goods or Services	20%

The SLBE program identifies for-profit Small Local Business Enterprises located and operating within the geographical boundaries of Clayton County, Georgia and for-profit Small Locally Based Businesses located and operating outside of the geographical boundaries of Clayton County, Georgia but within the surrounding Atlanta Metropolitan Statistical Area (MSA) that includes the following counties: Barrow, Bartow, Carroll, Cherokee, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, and Walton. To be located means to have a physical presence within the geographical boundaries of Clayton County or the MSA such as an office, warehouse or other business facility, but specifically excluding the existence of a post office box without any other presence, for at least one (1) year prior to the date of the submission of a bid or proposal. To operate means to be the holder of a current business license issued by the local government within Clayton County or the MSA for at least one (1) year prior to submission of a bid or proposal.

Since this is a new program and CCPS is currently establishing a database of certified SLBEs, bidders/proponents may utilize any SLBE(s) certified by one of the official certifying agencies in Clayton County or from one of the listed counties within the MSA to meet SLBE Contracting Goals. SBEs qualified by the SBA with a current business license from Clayton County or one of the listed counties within the MSA may also be utilized. Proof of certification and current

business license must be submitted with Bidder's/Proposer's response to any qualified solicitation.

Certified SLBEs located and operating within Clayton County, Georgia that contribute to the local tax base are granted a preference on bids and proposals submitted in response to qualified solicitations.

Preference for SLBEs located and operating within Clayton County (SLBE-CLAYTON)	
Request for Proposals (RFP)	5 Points in Initial Evaluation
Invitations for Bids(IFB)	5 Percentage Points (5%)

For qualified sealed bids, if the otherwise responsive and responsible lowest bidder that utilizes SLBE-CLAYTON subcontractors/suppliers submits a bid that meets the required SLBE participation percentage goal and is within five percent (5%) of the of the overall lowest bid that documented good faith efforts but failed obtain the required SLBE participation percentage goal, the lowest bidder meeting the required SLBE participation goal shall be provided with the opportunity to match the lower bid within the timeframe provided by CCPS.

Opportunity for Bidders Utilizing SLBE-CLAYTON Subcontractors/Suppliers to Match Low Bid
Must be otherwise responsive and responsible
Must submit the lowest bid utilizing SLBE-CLAYTON subcontractors/suppliers to meet the SLBE Participation Percentage Goal
Must be within 5% of overall lowest bid not meeting SLBE Participation Goal
Must match overall lowest bid in timeframe prescribed by CCPS

The bid preference/bid-match provisions do not apply to solicitations or bids where applicable procurement laws prohibit or restrict these types of preferences, including construction projects covered by the Georgia Local Government Public Works Construction Law.

Without exception all bidders/proponents, including those that are SLBEs, must comply with all SLBE program requirements. Each bidder/proponent, including SLBE bidders/proponents, must submit documentation showing that the required SLBE contracting percentage goal will be performed by a certified SLBE. Please find attached hereto the mandatory forms and requirements for this particular solicitation. The mandatory documents include:

1. SLBE Subcontractor/Supplier Utilization Plan;
2. Letter of Intent describing the work, material, equipment and/or services to be provided by each SLBE and the agreed percentage of participation; and
3. Subcontractor/Supplier Contact List and Documentation of Good Faith Efforts (GFE).

Bidders/Proponents failing to meet the SLBE contracting goal must document contacts and demonstrate GFE on the prescribed form. GFE may include, but are not limited to, the following:

- a) Identifying scope(s) of work which may be available for the inclusion of SLBEs or making efforts to divide work into subcontracting areas wherein SLBEs are likely to be successful;

- b) Assisting potential SLBEs with bonding, insurance or other contracting requirements;
- c) Attending pre-solicitation meetings to meet potential SLBEs;
- d) Reviewing SLBE registry and contacting those that can perform a Commercially Useful Function on a specific project;
- e) Advertisement in a trade publication or journal to target SLBEs for a specific project.
- f) Hosting a virtual or in-person event to solicit SLBEs; and
- g) Outreach to advocacy groups/trade associations where SLBEs might be members.

Failure to achieve SLBE contracting goals or demonstrate GFE shall result in a bid or proposal being deemed non-responsive. Protests of a non-responsive determination must be made in accordance with the protest provisions provided in the solicitation.

Following contract award, Prime Contractors are required to report SLBE usage with each request for payment but not less than once each month in the form and method to be prescribed by CCPS. To remain compliant, all Prime Contractors must submit proof of payment to all SLBE sub-contractors within seven (7) days of receipt of payment from CCPS. SLBE sub-contractors must submit proof of receipt of payment to CCPS within seven (7) days of receipt of payment from each Prime Contractor in the form and method to be prescribed by CCPS. False statements or representations, or the failure to provide required reporting and documentation shall constitute a material breach of contract entitling CCPS to pursue remedies for default, including termination of contract and debarment from future awards.

SLBE participation shall be counted by calculating the value of the commercially useful function provided. Suppliers shall receive full SLBE participation credit if they regularly manufacture or warehouse materials, supplies or equipment supplied for use; otherwise the maximum amount of participation credited shall be sixty percent (60%).

SLBEs bidders/proponents may meet up to fifty percent (50%) of the SLBE goal when it self-performs at least fifty percent (50%) of the scope of work.



SLBE SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

Directions to Bidder/Proponent: Please complete this form in its entirety and submit with bid/proposal documents. Attach a copy of each SLBE'S proof of certification and current business license. A signed Letter of Intent from each SLBE listed must be completed and attached.

Bidder/Proponent: [REDACTED]

Solicitation: Name: [REDACTED]

Solicitation Number: [REDACTED]

1. My firm, as the prime bidder/proponent on this unit of work, is a certified (check all that apply):

☐ SLBE-CLAYTON ☐ SLBE-MSA

2. If you are a certified SLBE-CLAYTON or SLBE-MSA, please indicate the percentage of work that your firm will carry out directly: [REDACTED]

3. If the prime bidder/proposer is a joint venture, please describe the nature of the joint venture and the work and percentage of participation to be provided by the SLBE-CLAYTON or SLBE-MSA. [REDACTED]

4. List the SLBE-CLAYTON or SLBE-MSA subcontractors and/or firms (including suppliers) to be utilized on this contract, if awarded. No changes can be made in the subcontractors listed below without the prior written approval of CCPS. [REDACTED]

4a) Name of Company: [REDACTED]

Address: [REDACTED]

Contact Person: [REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

Indicate certification:

☐ SLBE-CLAYTON ☐ SLBE-MSA

Please indicate if the SLBE-CLAYTON/SLBE-MSA is also a: (please check all that apply and attach any proof of certification available):

☐ Minority Owned Business Enterprise (MBE)
☐ Woman Owned Business Enterprise (WBE)
☐ Disadvantaged Business Enterprise (DBE)
☐ Veteran or Service Disable Veteran Owned

☐ African American
☐ Caucasian American
☐ Hispanic American
☐ Asian Pacific
☐ Native American

Description of services to be performed: [REDACTED]

Percentage of total work to be performed: [REDACTED]

Dollar Value of work to be performed:

4b) Name of Company:

Address:

Contact Person: Email:

Telephone:

Indicate certification status and attach proof of certification:

☐ SLBE-CLAYTON ☐ SLBE-MSA

Please indicate if the SLBE-CLAYTON/SLBE-MSA is also a: (please check all that apply and attach any proof of certification available):

- | | |
|---|---|
| <input type="checkbox"/> Minority Owned Business Enterprise (MBE) | <input type="checkbox"/> African American |
| <input type="checkbox"/> Woman Owned Business Enterprise (WBE) | <input type="checkbox"/> Caucasian American |
| <input type="checkbox"/> Disadvantaged Business Enterprise(DBE) | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Veteran or Service Disable Veteran Owned | <input type="checkbox"/> Asian Pacific |
| | <input type="checkbox"/> Native American |

Description of services to be performed:

Percentage of total work to be performed:

Dollar Value of work to be performed:

4c) Name of Company:

Address:

Contact Person: Email:

Telephone:

Indicate certification status and attach proof of certification:

☐ SLBE-CLAYTON ☐ SLBE-MSA

Please indicate if the SLBE-CLAYTON/SLBE-MSA is also a: (please check all that apply and attach any proof of certification available):

- | | |
|---|---|
| <input type="checkbox"/> Minority Owned Business Enterprise (MBE) | <input type="checkbox"/> African American |
| <input type="checkbox"/> Woman Owned Business Enterprise (WBE) | <input type="checkbox"/> Caucasian American |
| <input type="checkbox"/> Disadvantaged Business Enterprise(DBE) | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Veteran or Service Disable Veteran Owned | <input type="checkbox"/> Asian Pacific |
| | <input type="checkbox"/> Native American |

Description of services to be performed:

Percentage of total work to be performed:

Dollar Value of work to be performed:

4d) Name of Company:
Address:
Contact Person: Email:
Telephone:
Indicate certification:
☐ SLBE-CLAYTON ☐ SLBE-MSA

Please indicate if the SLBE-CLAYTON/SLBE-MSA is also a: (please check all that apply and attach any proof of certification available):

- | | |
|---|---|
| <input type="checkbox"/> Minority Owned Business Enterprise (MBE) | <input type="checkbox"/> African American |
| <input type="checkbox"/> Woman Owned Business Enterprise (WBE) | <input type="checkbox"/> Caucasian American |
| <input type="checkbox"/> Disadvantaged Business Enterprise(DBE) | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Veteran or Service Disable Veteran Owned | <input type="checkbox"/> Asian Pacific |
| | <input type="checkbox"/> Native American |

Description of services to be performed:
Percentage of total work to be performed:
Dollar Value of work to be performed:

4e) Name of Company:
Address:
Contact Person: Email:
Telephone:
Indicate certification:
☐ SLBE-CLAYTON ☐ SLBE-MSA

Please indicate if the SLBE-CLAYTON/SLBE-MSA is also a: (please check all that apply and attach any proof of certification available):

- | | |
|---|---|
| <input type="checkbox"/> Minority Owned Business Enterprise (MBE) | <input type="checkbox"/> African American |
| <input type="checkbox"/> Woman Owned Business Enterprise (WBE) | <input type="checkbox"/> Caucasian American |
| <input type="checkbox"/> Disadvantaged Business Enterprise(DBE) | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Veteran or Service Disable Veteran Owned | <input type="checkbox"/> Asian Pacific |
| | <input type="checkbox"/> Native American |

Description of services to be performed:
Percentage of total work to be performed:
Dollar Value of work to be performed:



**LETTER OF INTENT TO PERFORM AS SUBCONTRACTOR/SUPPLIER PROVIDING
MATERIALS OR SERVICES**

*(A Letter of Intent Must Be Submitted For Each Subcontractor/Supplier)
Proof of Certification and current Business License must be attached.*

Solicitation Name: _____

Solicitation Number: _____

Bidder/Proponent: Name: _____

Subcontractor/Supplier: Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact Person: Name: _____ Phone: _____

Email: _____

Subcontractor/Supplier is performing as: ☐ SLBE-Clayton ☐ SLBE-MSA ☐ Non -SLBE

☐ Joint Venture Team Member

NIGP Code for Work Performed	Description of Work to be Performed	Dollar(s) Value of Work	Percentage (%) of Total Bid Amount
TOTAL SLBE Credit Claimed for this Subcontractor/Supplier		\$	%

AFFIRMATION:

The above-named Subcontractor/Supplier firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____

(Print Name)

(Title)



(Signature)

(Date)

*** In the event the bidder/proponent does not receive award of the prime contract, all representations in this Letter of Intent and Affirmation shall be invalidated.**



SLBE Subcontractor/Supplier Contact Form

1. List *all subcontractors or suppliers* (SLBEs and Non-SLBEs) that were contacted regarding this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	Ethnicity & Gender of Majority Owner(s)	NIGP Codes	Type of Work Being Solicited	SLBE (Yes or No)	Results of Contact

ETHNICITY AND GENDER LEGEND: AA - African American, HA - Hispanic, AP - Asian Pacific, NA - Native American
CA-Caucasian American M - Man, W - Woman

2. Were Any Of The Following Good Faith Efforts Taken?

	Yes	No	Good Faith Effort	Details of Activities
1.			Identifying scope(s) of work which may be available for the inclusion of SLBEs or making efforts to divide work into subcontracting areas wherein SLBEs are likely to be successful.	
2.			Assisting potential SLBEs with bonding, insurance or other contracting requirements.	
3.			Attending pre-solicitation meetings to meet potential SLBEs.	
4.			Reviewing SLBE registry and contacting those that can perform a Commercially Useful Function on a specific project.	
5.			Advertisement in a trade publication or journal to target SLBEs for a specific project.	
6.			Hosting a virtual or in-person event to solicit SLBEs.	
7.			Describe in detail any other Good Faith Efforts taken. Attach any supporting documentation. Use additional sheets if necessary.	

Bidder/Proponent Name:

Solicitation Name:

Solicitation Number:

General School Holiday Schedule Appendix E

Clayton County Public Schools 2023-2024 School Calendar



2023 (87)

2024 (93)

Monday	Tuesday	Wednesday	Thursday	Friday
	3	4	5	6
	10	11	12	13
17	18	19	20	21
N-T-O	N-T-O	N-T-O	N-T-O	N-T-O
24	25	26	27	28
Pre-Planning	Pre-Planning	Pre-Planning	Pre-Planning	Pre-Planning
31				
Pre-Planning				

July

Monday	Tuesday	Wednesday	Thursday	Friday
		1	2	3
	Pre-Planning	First Day 1	2	3
7	8	9	10	11
4	5	6	7	8
14	15	16	17	18
9	10	11	12	13
21	22	23	24	25
14	15	16	17	18
19	20	21	22	31

August

Monday	Tuesday	Wednesday	Thursday	Friday
				1
				ELBC Day
4	5	6	7	8
Labor Day	24	25	26	27
11	12	13	14	15
27	29	30	31	32
18	19	20	21	22
33	34	35	36	37
38	39	40	41	42

September

Monday	Tuesday	Wednesday	Thursday	Friday
43	44	45	46	47
9	10	11	12	13
16	17	18	19	20
48	49	50	51	52
23	24	25	26	27
53	54	55	56	57
30	31			
58	59			

October

Monday	Tuesday	Wednesday	Thursday	Friday
		1	2	3
		60	61	ELBC Day
6	7	8	9	10
63	64	65	66	67
13	14	15	16	17
68	69	70	71	72
20	21	22	23	24
THANKSGIVING				
27	28	29	30	
73	74	75	76	

November

Monday	Tuesday	Wednesday	Thursday	Friday
				1
4	5	6	7	77
78	79	80	81	82
11	12	13	14	15
83	84	85	86	87
18	19	20	21	22
SEMIESTER BREAK				
25	26	27	28	29
SEMIESTER BREAK				

December

Monday	Tuesday	Wednesday	Thursday	Friday
1	2	3	4	5
BREAK	Staff Development	1	2	3
8	9	10	11	12
4	5	6	7	8
15	16	17	18	19
MLK's B'day	9	10	11	12
22	23	24	25	26
13	14	15	16	17
29	30	31		
18	19	20		

January

Monday	Tuesday	Wednesday	Thursday	Friday
			1	2
5	6	7	8	9
23	24	25	26	27
12	13	14	15	16
28	29	30	31	ELBC Day
19	20	21	22	23
Presidents's Day	33	34	35	36
26	27	28	29	
37	38	39	40	

February

Monday	Tuesday	Wednesday	Thursday	Friday
				1
				41
4	5	6	7	8
42	43	44	45	46
11	12	13	14	15
47	48	49	50	ELBC Day
18	19	20	21	22
52	53	54	55	56
25	26	27	28	29
57	58	59	60	61

March

Monday	Tuesday	Wednesday	Thursday	Friday
1	2	3	4	5
SPRING BREAK				
8	9	10	11	12
62	63	64	65	66
15	16	17	18	19
67	68	69	70	71
22	23	24	25	26
72	73	74	75	76
29	30			
77	78			

April

Monday	Tuesday	Wednesday	Thursday	Friday
		1	2	3
		79	80	81
6	7	8	9	10
82	83	84	85	86
13	14	15	16	17
87	88	89	90	91
20	21	22	23	24
92	93	Post planning	Post planning	
27	28	29	30	31
Memorial Day				

May

Monday	Tuesday	Wednesday	Thursday	Friday
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
		Juneteenth		

June

ATTACHMENT A

RFP 24-04

CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR NORTHCUTT ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE SCHOOL

SCOPE OF SERVICES AND SPECIFICATIONS

Clayton County Public Schools is requesting proposals from qualified proponents to provide Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School.

1. PROJECT SCOPE. Components of the Project Scope include, but are not limited to, the following:

1.1 Northcutt Elementary School

- 1.1.1 Removal and replacement of exterior metal panels
- 1.1.2 Canopy Replacement
- 1.1.3 HVAC Replacement
- 1.1.4 Roof Replacement at Gym
- 1.1.5 Addition of Monument Sign
- 1.1.6 New Kitchen Equipment
- 1.1.7 Interior modifications to administrative office area
- 1.1.8 New Playgrounds
- 1.1.9 New Paint and Flooring within facility

1.2 North Clayton Middle School

- 1.2.1 Roof Replacement
- 1.2.2 Canopy Replacement at Front Entry and Gym
- 1.2.3 Gym Floor Replacement
- 1.2.4 New Turf Softball and Baseball Fields with dugouts
- 1.2.5 New Turf Football Fields with Fieldhouse
- 1.2.6 Lighting for sports fields
- 1.2.7 Locker Room and Weight Room Renovations

- 2. CONSTRUCTION SERVICES.** The construction management scope of work will be divided into two phases: Preconstruction Phase and Construction Phase.

2.1. Pre-Construction Phase Services:

- 2.1.1. Assessment of Existing Site: The Proponent must assist the Architect in preparing a report outlining the condition of the existing site, code deficiencies, energy use and life expectancy of other systems.
- 2.1.2. Project Meetings: The Proponent must attend all project-related meetings with A/E firm, owner and stakeholders.
- 2.1.3. Progress Document Review: The Proponent must review all contract documents at the (50% and 100%) stages and the building site to ensure proper coordination, constructability, and completeness, in an effort to minimize conflict, errors, omissions, and unforeseen conditions and in return eliminate change orders due to the previously noted items.
- 2.1.4. The Proponent must agree specifically that no change orders may be requested by the Proponent or considered by Clayton County Public Schools for reasons that were or should have reasonably been known by the Proponent involving unforeseen conditions, conflicts, or questions of clarity in the contract documents, or between the contract documents and the existing conditions, utilities, and unforeseen underground conditions which were known or could have been discovered during the Pre-Construction Phase.
- 2.1.5. Cost Estimates and Value Engineering: The Proponent must prepare detailed cost estimates for design development and construction documents (90% and 100%). Estimates must include value engineering recommendations to remain within and to maximize the provided budget.
- 2.1.6. Schedule: The Proponent must provide a Critical Path Method (CPM) schedule which exhibits the path to project completion by the contracted Substantial Completion or earliest date possible within budget. The schedule must include: release of long lead time items, obtaining of permits and phasing that while not impact the operations of the facility.

- 2.1.7. Guaranteed Maximum Price (GMP): Upon completion of the Pre-Construction Phase, the Proponent must present to CCPS the GMP based on the 100% Construction Documents for review and approval.

2.2 Construction Phase Services:

- 2.2.1 Approved plans and specifications: The Proponent must construct the Project. Construction Phase Services include, but are not limited to:
 - 2.2.1. Furnishing and paying for all management, supervision;
 - 2.2.2. Equipment;
 - 2.2.3 Insurance;
 - 2.2.4 Permits;
 - 2.2.5 Labor;
 - 2.2.6 Materials;
 - 2.2.7 Tools;
 - 2.2.8 Fuel;
 - 2.2.9 Supplies;
 - 2.2.10 Utilities; and
 - 2.2.11 All services necessary to perform and complete the construction of the entire project.
- 2.2.2 Meetings: The Proponent must participate and conduct bi-weekly Owner Architect Contractor (OAC) and all applicable Pre-Construction Meetings, during all phases and provide meeting minutes
- 2.2.3 Temporary Facilities: The Proponent must provide and maintain a fully equipped office on-site to perform all required Contractor duties and meetings.
- 2.2.4 Supervision: The Proponent must maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, and coordination of various trades, record drawings, and daily work log for the duration of the project (e.g., Contractor Project Manager, Superintendent).

- 2.2.5 Subcontractors: The Proponent must conduct weekly subcontractor progress meetings with all trades.
- 2.2.6 Schedule: The Proponent must provide monthly updated Critical Path Method (CPM) schedule and cost analysis.
- 2.2.7 Change Order Management: The Proponent must manage the change order process with the trade subcontractors to verify validity, purpose, cost and contingency use.
- 2.2.8 Pay Requests: The Proponent must prepare schedules of values, payment requests, verify accuracy and provide to CCPS for approval and payment.
- 2.2.9 Project Closeout: The Proponent must conduct project closeout process which include but are not limited to assembling close out documents (Operations and Maintenance (O&M) manuals, warranties), delivery of attic stock and trainings.
- 2.2.10 Temporary Classrooms: The Proponent must provide setup, ongoing maintenance and removal of temporary (modular classrooms) when applicable for renovations including all associated fees.
- 2.2.11 Warranty: The Proponent must provide assistance and resolutions to CCPS during warranty period.
- 2.2.14 Permitting: The Proponent must pay all permits and fees associated with the project, other than the building permit fees
- 2.2.15 Bonds: The Proponent must provide performance and payment bonds and general liability insurance.
- 2.2.16 Substantial Completion: The Proponent must meet contracted Substantial Completion and Final Completion 30 Days from the Substantial Completion. This includes completion of all closeout items and punch lists.
- 2.2.17 Demobilization: The Proponent must remove the balance of construction debris off site in accordance with all applicable rules and regulations of those jurisdictions having authority.
- 2.2.18 Eleventh-Month Inspection: The Proponent must schedule a joint inspection of the project during the eleventh-month after Substantial Completion is achieved with a CCPS representative

- 2.2.19 HVAC Start-Up: In conjunction with the mechanical subcontractor the Proponent must provide support to CCPS during system start-up and in initial operation for the first heating and cooling season after Substantial Completion is achieved.

--BALANCE OF PAGE INTENTIONALLY LEFT BLANK--

**ATTACHMENT B
COST PROPOSAL FORM
RFP 24-04**

**CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR
NORTHCUTT ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE SCHOOL**

The Proponent will furnish a firm percentage fee to complete satisfactorily the Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School requested in this RFP. Please reference 9.4 Cost of Work section of Attachment C, CMAR Agreement, for information pertaining to all costs associated with providing services to CCPS. The District will not be responsible for charges that are not included on this Cost Proposal Form.

Proponent must upload the completed and signed Cost Proposal Form in BONFIRE for RFP 24-04 Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School.

Please do not make modifications to this form as any change may render Proponent's proposal non-responsive. Please complete the form in its entirety. Any alternate or optional fee structures must be submitted on a separate sheet and shall not be submitted in lieu of this Cost Proposal Form.

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>TOTAL FIXED RATE</u>
1.	Pre-Construction Phase Services	\$ _____
<u>ITEM</u>	<u>DESCRIPTION</u>	<u>TOTAL PERCENTAGE FEE</u>
2.	CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR NORTHCUTT ELEMENTARY SCHOOL AND NORTH CLAYTON MIDDLE SCHOOL	_____ %

Proponent/Firm Name: _____

Authorized Signature: _____ Printed Name: _____

Title: _____ Date: _____

ATTACHMENT C

**STANDARD FORM OF
CONSTRUCTION MANAGEMENT (AT-RISK) AGREEMENT
BETWEEN
THE CLAYTON COUNTY SCHOOL DISTRICT
AND**

PROJECT:

Address:

ARCHITECT:

**Architect's
Address:**

CONSTRUCTION MANAGEMENT (AT-RISK) AGREEMENT

This CONSTRUCTION MANAGEMENT (AT-RISK) AGREEMENT (the "Agreement") is made and entered into by and between the CLAYTON COUNTY SCHOOL DISTRICT (the "Owner") and _____ (the "Contractor"). This Contract is executed under seal, and shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Construction Management at Risk Services for Northcutt Elementary School and North Clayton Middle School (the "Project").

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

ARTICLE 1

CONTRACT DOCUMENTS

1.1 Contract Documents. The Contract Documents consist of this Agreement, the General Conditions, Supplementary Conditions, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, the Bonds, the Owner's Request for Proposals, the Contractor's Proposal, any Exhibits attached hereto, Change Orders, Construction Change Directives, and amendments signed by Owner relating thereto (the "Contract Documents"). Upon Owner's acceptance of Contractor's Guaranteed Maximum Price proposal, the Contract Documents will also include the Guaranteed Maximum Price Amendment and all Attachments thereto. All of the foregoing Contract Documents are sometimes referred to herein as the "Contract".

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

ARTICLE 2

REPRESENTATIONS OF THE CONTRACTOR

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

2.1.1 The Contractor is fully qualified to act as the Construction Management and contractor for the Project and has, and shall maintain, any and all licenses and permits required by the State of Georgia and any local governmental authority where the Project is located, or other authorizations necessary to act as the general contractor for, and to construct, the Project.

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

2.1.3 The Contractor has received, reviewed and carefully examined all of the Contract Documents.

2.1.4 The Contractor shall perform the Work in accordance with the Contract Documents.

2.1.5 The Contractor and, to the best of its knowledge, its subcontractors and material suppliers are financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.

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

ARTICLE 3

CONTRACT INTERPRETATION

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

3.1.1 The Contract Documents constitute the entire and exclusive agreements between the parties with reference to the Project, and the Contract Documents supersede any and all prior discussions, communications, representations, understandings, negotiations, or agreements with respect to the subject matter hereof.

3.1.2 The Contract Documents are complementary and are to be read as a whole; what is called for by one is as binding as if called for by all. In the event of a discrepancy in the Contract Documents, the more specific and more detailed descriptive information will take precedence over the general and less detailed description. In cases of doubt, the Contractor shall assume that the Owner intends that the more complete method, system or process is required. 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, labor, materials or equipment that may be required, implied or inferred by the Contract Documents as being required to product the intended result shall be provided by the Contractor for the compensation set forth herein.

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

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

3.1.5 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals. Each of the documents is complementary and shall be interpreted so that what is called for by one shall be as binding as if called for by all. Before undertaking each part of the Work and as necessary throughout the performance of the Work, the Contractor shall take field measurements and verify field conditions and the Contractor shall carefully review, inspect and compare the Contract Documents, field conditions (including subsurface conditions, underground facilities and existing structures) and work of others (including work performed by the Owner's own forces) in order to check and verify pertinent materials, figures, measurements and conditions necessary for proper execution and coordination of the Work and all other work on the Project. The Contractor shall promptly report in writing to the Architect and the Owner any conflict, error or discrepancy, including any variance with applicable laws or regulations, which the Contractor may discover at any time and shall obtain a written

interpretation or clarification from the Architect before proceeding with any of the Work affected thereby. If the Contractor proceeds with any of the Work affected by and discovered conflict, error or discrepancy, the Contractor shall be liable for all extra costs and delay incurred thereby and shall be deemed to have waived any and all claims it may have against the Owner with respect thereto. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with the Contract Documents. (For the avoidance of doubt, shop drawings and/or other submittals are not Contract Documents). The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, believes them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

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

3.1.7 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which cannot be resolved in accordance with Paragraph 3.1.2, interpretation will be based on the following priority:

- 3.1.7.1 The Guaranteed Maximum Price Amendment
- 3.1.7.2 Addenda (if any), with those of later date having precedence over those of earlier date.
- 3.1.7.2 This Contract.
- 3.1.7.3 Supplemental or Special Conditions (if any).
- 3.1.7.4 Specifications.
- 3.1.7.5 Plans, with the following priority:
 - (a) As between figures given on plans and scaled measurements, the figures shall govern.
 - (b) As between large scale plans and small-scale plans, the large scale plans shall govern.

3.1.7.6 Solicitation Documents.

3.1.7.7 Contractor's Proposal.

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

3.1.9 References to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of the opening of the proposals (or the date of the Contract if there were no proposals), unless otherwise specifically stated. However, no provision of any standard specification, manual or code shall be effective to change the duties and responsibilities of the Owner, the Contractor or the Architect or any of their respective consultants, agents or employees from those set forth in the Contract Documents. The Contractor shall make itself aware of the contents of such standards and shall furnish the field office with one (1) full set of each.

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

3.1.11 Organization of the Specifications into divisions, sections and articles, and arrangement of plans and drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Various sections of the Specifications identify related work specified elsewhere. Such listings are to serve solely as guidelines and are NOT to be constructed as the only areas of related work or otherwise limit the duties of the Contractor hereunder.

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

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

3.1.14 Wherever the terms "necessary", "suitable", "as directed", "when directed", "satisfactory", "good and sufficient", "approved", or other general qualifying terms are used on the plans, they are deemed to be followed by the words "in

the opinion of the Architect”, or “by the Architect”, as the case may be.

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

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

3.1.17 "Work" means any and all services, labor, supervision, work, supplies, fixtures, appliances, furnishings, vehicles, equipment, services, facilities, tools, materials, computers, transportation, storage, power, fuel, heat, light, cooling, utilities, insurance, bonds, items, documents and things required by the Contract Documents to be performed, obtained, furnished, provided, or supplied by Contractor, including without limitation all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purposes. The Work to be provided by Contractor pursuant to the Contract shall be performed in two phases: the Pre-Construction Phase Services and the Construction Phase Services. At the discretion of Owner, those two phases may overlap.

3.2 Ownership. Each of the Contract Documents, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner's prior written authorization. Any such use, whether permitted by the Owner or not, shall be at Contractor's sole risk.

ARTICLE 4

RELATIONSHIP OF THE PARTIES

4.1 Performance of the Work. The Contractor accepts the relationship of trust and confidence established by this Agreement. Contractor covenants with Owner to cooperate with the Architect; to utilize Contractor's best skill, efforts and judgment in furthering the interest of Owner; to perform the Work in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner and set forth in the Contract Documents; to furnish efficient business administration and supervision to the Work; to furnish at all times an adequate supply of workers and materials to the Work; and to perform the Work in an expeditious, efficient and economical manner, consistent with the interests of Owner.

4.2 Contractor's Means and Methods. Contractor represents and warrants to Owner that Contractor has specific expertise in the planning, management and construction of school and educational facilities similar to the Project, and acknowledges and agrees that such representation is a material inducement to Owner to enter into the

Contract. Notwithstanding anything to the contrary in the Contract Documents, Contractor is fully responsible to Owner for all duties of Contractor under the Contract Documents, including the construction means, methods, techniques, sequences and procedures in performing the Work, and for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. In addition, if the Work required under the Contract Documents requires Contractor to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Contractor shall be directly responsible to Owner for any portion of the Work so required. In no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents.

4.3 Owner's Representative. Wherever the terms of the Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive, the Guaranteed Maximum Price Amendment or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner's Director of Construction unless otherwise stated herein.

4.4 Independent Contractor. Contractor is an independent contractor at all times during the performance of the Work and no provision in the Contract shall create an employment or agency relationship between the parties.

ARTICLE 5

THE PROJECT ARCHITECT

5.1 Architect. The architect for this Project is _____ (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

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

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

- 5.1.3 When requested by the Contractor in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.
- 5.1.4 The Architect shall draft proposed Change Orders.
- 5.1.5 The Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.
- 5.1.6 The Architect shall be authorized to reject Work which is defective or otherwise fails to comply with the requirements of the Contract Documents. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of the Contract Documents.
- 5.1.7 The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in the Contract Documents.
- 5.1.8 The Architect shall, upon written request from the Contractor, perform the inspections required in Article 12.
- 5.1.9 The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Guaranteed Maximum Price or in the Contract Time for the Contractor's consistent with the intent of the Contract Documents.
- 5.1.10 The duties, obligations and responsibilities of the Contractor under the Contract Documents shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

5.2 Architect's Contract. The Owner shall provide the Contractor with a copy of the executed agreement between the Owner and the Architect, and any modifications to such agreement.

ARTICLE 6

OWNER'S PROGRAM AND RESPONSIBILITIES

6.1 Owner's Program. The Owner shall provide Contractor with written program information for the Project which shall set forth the Owner's objectives, constraints and criteria, including schedule, budget, design standards/education specifications, space requirements, special equipment and systems, characteristics of the site, and flexibility and expandability requirements.

6.2 Owner's Budget. The Owner shall establish and periodically update the budget for the Project, including the Cost of the Work (as defined in Section 9.4), other costs, and reasonable contingencies related to the foregoing. If the Owner materially increases or decrease its budget for the Cost of the Work, the Owner shall notify the Contractor and Architect, and the Owner and Architect, in consultation with the Contractor, shall thereafter agree to a corresponding modification to the Project's scope and/or quality.

6.3 Surveys. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Project site, which shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

6.4 Consultant Services. The Owner, when such services are reasonably requested by the Contractor and required by the scope of the Work or the Project and as approved by the Architect and the Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

6.5 Other Testing. The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

6.6 Non-Reliance by Contractor. The Owner shall furnish such information or services with reasonable promptness. Notwithstanding the foregoing, such documents and services are provided for informational purposes only and are not warranted or represented to show the conditions at the Project site accurately. Contractor may use the information at its own risk, shall use customary precautions relating to the performance

of the Work, and shall perform all Work in a non-negligent manner so as to avoid damaging any structures at the Project site or on any adjoining properties.

ARTICLE 7

CONTRACTOR'S PRE-CONSTRUCTION PHASE SERVICES

7.1 **Design Review.** The Contractor shall review and comment upon the Plans, Specifications and other Contract Documents being developed by the Architect, and shall participate in meetings with the Owner and the Architect to discuss such items as procedures, progress, coordination, and scheduling of the Work. Contractor shall advise the Owner and the Architect on proposed site use and improvements, selection of materials and building systems and equipment. The Contractor shall provide recommendations consistent with the Owner's requirements as to constructability, availability of materials and labor, time requirements for procurement, installation and completion, all of which shall satisfy the Owner's time requirements, and factors related to cost including, but not limited to, value engineering, costs of alternative designs or materials, possible cost reductions, preliminary budgets, and life-cycle data.

7.2 **MEP Systems.** During its review, the Contractor shall ascertain whether the components of the plumbing, electrical and mechanical systems can be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems (if any). In the event that conflicts between the systems are discovered, the Contractor shall promptly notify the Owner and the Architect in writing. The Contractor shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Pre-Construction Phase through the exercise of reasonable diligence. Notwithstanding the foregoing, the Contractor's review is made in its capacity as a contractor and not as a licensed design professional.

7.3 **Schedule Review.** The Contractor shall prepare and periodically update the preliminary Project schedule for the Architect's review and the Owner's approval. The Project schedule shall coordinate and integrate the Contractor's services and activities (including those of its subcontractors), the Architect's services, the Owner's consultant's services, and the Owner's responsibilities, and shall identify items that could affect the Project's timely completion. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations of the components of the Work; milestone dates for receipt and approval of pertinent information; submittal of the Guaranteed Maximum Price proposal; preparation and processing of shop drawings and samples; delivery of materials or equipment requiring long lead-time procurement; the Owner's occupancy requirements showing portions of the Project having occupancy priority; and proposed dates of Substantial Completion and Final Completion acceptable to the Owner. If any preliminary Project schedule update indicates that previously approved schedules may not be met, the Contractor shall make appropriate

recommendations to the Owner and the Architect and shall implement necessary corrective action.

7.4 Cost Estimates. Additionally, the Contractor shall prepare and periodically update the estimates of the Cost of the Work. As the Architect progresses with the preparation of the Plans, Specifications and other design documents, the Contractor shall prepare and update estimates of the Cost of the Work, using increasing detail and refinement and allowing for the further development of the design, until such time as the Owner and the Contractor agree upon a Guaranteed Maximum Price for the Work. All such estimates shall be provided for the Architect's review and the Owner's approval. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Contractor shall make appropriate recommendations to the Owner and Architect for cost reductions including, but not limited to, substitution of materials or revision or alteration of the design documents to bring the Cost of the Work within the Owner's budget, but no necessary components of the Project shall be deleted without the Owner's consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's budget, the Contractor shall work with the Architect to develop options that are acceptable to the Owner and which are within the Owner's budget.

7.5 Procurement Schedules. The Contractor shall also prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for long lead-time equipment, materials or systems. The Contractor shall expedite and coordinate the ordering of such items and, if the Owner agrees to procure any such items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts or purchase orders for such items to the Contractor, who shall accept responsibility therefore.

7.6 Bidder Interest. Consistent with applicable law, Contractor shall develop bidders' interest in the Project.

7.7 Standard of Performance for Pre-Construction Phase Services. The Contractor shall exercise reasonable care in preparing all estimates and schedules hereunder. For the avoidance of doubt, the Contractor does not warrant or guarantee any estimates or schedules other than those items expressly set forth in the Guaranteed Maximum Price Amendment. The Contractor is not required to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of governmental authorities, but the Contractor shall promptly notify the Owner and Architect of any non-conformity discovered by or made known to Contractor.

ARTICLE 8

GUARANTEED MAXIMUM PRICE

8.1 Guaranteed Maximum Price Proposal. When all design elements of the Plans and Specifications are at least ninety percent (90%) complete as determined by the Architect and the Contractor, the Contractor shall propose a Guaranteed Maximum Price, which shall be the sum of the Cost of the Work, including contingencies described in Section 8.2 below, the General Conditions and the Contractor's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Contractor shall make appropriate recommendations to the Owner and Architect for cost reductions including, but not limited to, substitution of materials or revisions or alterations to the Construction Documents, in order to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's budget, the Contractor shall work with the Architect to develop options that are acceptable to the Owner, that are within the Owner's budget and that meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Contractor shall propose separate Guaranteed Maximum Prices for separate Work within the Project, as schedules and efficiencies dictate. The Contractor will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to the Owner and is within the Owner's budget for the Work and the Project.

8.2 Contingencies. In the event the Plans or Specifications are anticipated to require further development by the Architect, the Contractor shall include in the Guaranteed Maximum Price proposal a contingency for such further development consistent with the Contract Documents and reasonably inferable therefrom; provided, however, that such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, or other similar items, all of which, if required, shall be incorporated by Change Order.

8.3 Basis for Guaranteed Maximum Price Proposal. Contractor's Guaranteed Maximum Price proposal shall include the basis for such proposal, including:

8.3.1 A list of the Plans and Specifications;

8.3.2 A list of any clarifications or other assumptions;

8.3.3 A breakdown of the Guaranteed Maximum Price by trade or division, the General Conditions, and including all allowances, contingencies and detailing the Contractor's Fee; and

8.3.4 The anticipated dates of Substantial and Final Completion.

The Guaranteed Maximum Price proposal shall not be based in any part on any subcontract or material supply agreement which would require the Owner to compensate the Contractor on other than a maximum cost basis.

8.4 Construction Contingency. The Guaranteed Maximum Price proposal will contain a separately identified contingency factor (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Contractor's use as may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the Contractor at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Contractor, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work and without any resulting in any change in the Guaranteed Maximum Price. Any foreseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Contractor at the Contractor's sole risk and expense. All savings will accrue and be available for use only as detailed above, by the Contractor until the Contractor's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to the Owner. Upon the final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include an Owner's Contingency, which is defined as an allowance by the Owner for the Owner's exclusive use. Monies from the Owner's Contingency may be spent in the discretion of the Owner. If the Contractor fails to include a specific line item for the Owner's Contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: fifty percent (50%) shall be the Construction Contingency and fifty percent (50%) shall be the Owner's Contingency.

8.5 Acceptance by Owner. The Owner shall be allowed not less than forty-five (45) days after receipt to review and take action on the Guaranteed Maximum Price proposal. Unless the Owner's Board of Education accepts the Guaranteed Maximum Price proposal by Board action on or before such deadline and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective. Acceptance of the Guaranteed Maximum Price proposal by the Owner's Board of Education shall constitute notice to the Contractor of acceptance of the Guaranteed Maximum Price proposal and shall constitute a notice to proceed. The Contractor will be allowed a maximum of five (5) business days from the date of Owner's Board of Education's approval to obtain the required Bonds and insurance certificates, policies and endorsements, and return the same to the Architect for review and transmittal to the Owner for Owner's final review and approval. Upon acceptance by the Owner's Board of Education of the Guaranteed Maximum Price proposal, the Contractor shall execute the Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date inserted on the Guaranteed Maximum Price Amendment shall be the date the Owner's Board of Education formally accepts the Guaranteed Maximum Price proposal. The Guaranteed Maximum Price shall be subject to additions and deductions

by a change in the Work as provided in the Contract Documents, and the dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contract Documents. The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to acceptance of the Guaranteed Maximum Price Proposal by the Owner's Board of Education, unless the Owner provides prior written authorization for such costs.

8.6 Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price for the Project shall be added to this Agreement by the execution of the Guaranteed Maximum Price Amendment, as approved by the Owner's Board of Education, which Amendment shall thereafter be incorporated into this Agreement for all purposes. The sum of the Cost of the Work and the Contractor's Fee are guaranteed by the Contractor not to exceed the amount provided in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Changes in the Work as provided in the Contract Documents. Such maximum price as adjusted by approved Change Orders is referred to in the Contract Documents as the "Guaranteed Maximum Price." Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement or additional compensation by the Owner. Should the Contractor complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. The Contractor shall also return to the Owner all unused funds from any contingency account as a deduction from the Guaranteed Maximum Price. The Contractor shall not participate in any savings, all of which shall be credited to the Owner.

8.7 Adjustment to Guaranteed Maximum Price by Change Order. The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided herein.

8.8 Diligent Performance of the Work. The Contractor shall diligently prosecute and achieve Substantial Completion and Final Completion of the Work as provided in the Guaranteed Maximum Price Amendment.

ARTICLE 9

CONTRACT AMOUNTS

9.1 Pre-Construction Phase Services. For all Pre-Construction Phase Services, the Owner shall pay to Contractor the fixed, lump-sum amount of \$_____ as full compensation for its Pre-Construction Phase Services. The fee for the Pre-Construction Phase Services shall be billed in monthly installments based on the estimated length of the Pre-Construction Phase. The balance

of the fee due (if any) for the Pre-Construction Phase may be billed upon execution of the Guaranteed Maximum Price Amendment.

9.2 Construction Phase Services. For the Contractor's performance of the Construction Phase Services, the Owner shall pay to the Contractor an amount equal to the sum of (1) the Contractor's Fee plus (2) the Cost of the Work, subject to the limitations set forth herein.

9.3 Contractor's Fee. The "Contractor's Fee" is equal to _____ (\$_____) / _____ percent (____%) of the Cost of the Work.

9.4 Cost of the Work. The "Cost of the Work" means all costs necessarily and reasonably incurred by Contractor in the proper performance of the Construction Phase Services portion of the Work and properly chargeable against the Guaranteed Maximum Price. Cost of the Work shall not include any costs or expenses incurred by the Contractor related to or incurred during the performance of the Pre-Construction Phase Services. Such costs shall be incurred at rates not higher than the standard industry rates paid at the place of the Project except with the prior written consent of Owner, and only after Contractor has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. Items of Work not included in this Paragraph are compensable only as part of the Contractor's Fee and are otherwise not reimbursable. The Cost of the Work includes only those items set forth below:

9.4.1 Labor Costs:

9.4.1.1 Actual wages of construction workers directly employed by Contractor to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops.

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

9.4.1.3 Wages and salaries of Contractor's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement.

9.4.1.4 Actual costs paid or incurred by Contractor for all taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements

and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such amounts are assessed only upon those wages and salaries included in the Cost of the Work above, and such costs specifically shall not include amounts for items set forth below which are specifically excluded from the Cost of the Work.

9.4.2 Subcontract Costs: Payments made by Contractor to Subcontractors in accordance with the requirements of the applicable written subcontracts. Any subcontract work to be performed by Contractor's own forces on the basis of a bid or proposal submitted by Contractor shall be treated as work performed by a Subcontractor; provided, however, that Contractor's compensation for such subcontract work performed shall be based on the lump-sum amount of the bid or proposal submitted by Contractor for such work, rather than the "actual cost" provided elsewhere herein.

9.4.3 Cost of Materials:

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

9.4.2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by Contractor and any amounts realized from such sales, shall be credited to the Owner as a deduction from the Cost of the Work.

9.4.4 Cost of Temporary Items and Rental Equipment:

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

consumed, whether sold to others or retained by Contractor.

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

9.4.5 Miscellaneous Costs:

- 9.4.5.1 Cost of removal and proper disposal of debris from the Project site.
- 9.4.5.2 Costs of long-distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.
- 9.4.5.3 That portion of any separate premiums for (i) bonds directly attributable to the Contract, and (ii) with the Owner's prior written approval, any additional insurance coverages purchased by Contractor in excess of those required under this Contract. For the avoidance of doubt, the insurance coverages required under this Contract are not reimbursable to Contractor and are included in the Contractor's Fee.
- 9.4.5.4 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Contractor is liable.
- 9.4.5.5 Fees and assessments for the building permit and for other permits, licenses and inspections for which Contractor is required by the Contract Documents to pay.
- 9.4.5.6 Fees of testing laboratories for tests required by the Contract Documents and which are actually paid by the Contractor, except those related to defective or

nonconforming Work for which reimbursement is excluded pursuant to the terms of the Contract.

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

9.4.5.8 Deposits lost for causes directly resulting from the Owner's actions or decisions.

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

9.5 Costs Not Included. The Cost of the Work shall not include the following items:

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

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

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

9.5.4 Overhead and general expenses, except as may be expressly included in the Cost of the Work above.

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

9.5.6 Rental costs of machinery and equipment, except as specifically provided in Paragraph (D)(4) above.

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

9.5.8 Any costs not specifically and expressly described in Paragraph (D) above.

9.5.9 Delay damages or claims.

9.5.10 Storage costs, unless expressly agreed to in writing by the Owner.

9.5.11 Costs for services incurred during the Pre-Construction Phase.

9.6 Excess Costs Borne by Contractor. Costs of the Work that exceed the Guaranteed Maximum Price shall be borne by the Contractor.

9.7 Rebates. Contractor shall take advantage of all available discounts, rebates and refunds for suppliers, materials and equipment connection with the Work and which conform to the Contract Documents, which discounts, rebates and refunds shall accrue to the benefit of the Owner.

9.8 Records and Accounting. Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as necessary to substantiate all costs incurred hereunder and for the proper financial management of the Work. The Owner, its auditors and any governmental authorities shall have the right, at any time upon reasonable advance notice, to be afforded access to, and be permitted to copy, all of Contractor's books of account and records, including complete documentation supporting accounting entries, books of account, correspondence, instructions, drawings, receipts, subcontracts, subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract and the performance of the Work. Contractor shall maintain all such records for a period of six (6) years after the making of final payment to the Contractor or for such longer period as may be required by law.

9.9 No Fee on Self-Performed Work. The Contractor shall not be entitled to a fee on any Work that Contractor self-performs for the Project, nor shall any portion of the Contractor's Fee be paid on the contingency amounts until funds are allocated from the contingency accounts to the Cost of the Work. All reimbursements for profit, indirect costs, home office personnel and benefits, home office overhead and expenses, relocation, travel, meals, lodging, home office accounting, audit, legal, duplication and data processing fees and expenses shall be deemed to be included in the Contractor's Fee.

ARTICLE 10

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR FOR CONSTRUCTION PHASE SERVICES

10.1 Commencement of Construction Phase Services. Following execution of the Guaranteed Maximum Price Amendment, Contractor shall commence providing the construction phase services which includes furnishing all management, supervision,

labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work in accordance with all of the terms and conditions of the Contract Documents. For the avoidance of doubt, Contractor shall have the responsibility to perform the Work and build the entire Project in accordance with the Contract Documents, except any work as may specifically be stated in the Contract Documents to be the responsibility of others.

10.2 Administration. The Contractor shall solicit through competitive purchasing, as required by Georgi law, competitive sealed proposals or bids from Subcontractors for the performance of all major elements of the Work. The Contractor shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and Architect, which proposals or bids will be accepted. The Contractor shall not be obligated to contract with any Subcontractor to whom the Contractor has reasonable objection. The Contractor may seek to perform portions of the Work by submitting its own proposal or bid in the same manner as required of all Subcontractors. The Owner shall decide whether or not the Contractor's proposal for self-performing portions of the Project offer the best value to the Owner. In opening the bids or proposals, neither the Contractor nor the Owner shall disclose the contents thereof. All bids or proposals shall be made public within seven (7) days after the Owner's final selection. If the Contractor's bid or proposal is selected by the Owner, the cost for such self-performed work shall be paid to the Contractor as if it were a Subcontractor. Such payments shall be included in the Cost of the Work, but the Contractor shall not receive an additional Contractor Fee for self-performed work.

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

- 10.3.1 The Contractor shall not perform Work without adequate plans and specifications or, as appropriate, approved shop drawings or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract Documents without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such Work and pay the cost of correcting same.
- 10.3.2 All Work shall strictly conform to the requirements of the Contract Documents.
- 10.3.3 The Work shall be strictly supervised and directed using the Contractor's best skill and attention. The Contractor shall be solely and fully responsibility for, and have control over, all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. If the Contract

Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. The Contractor shall be responsible to the Owner for any and all acts or omissions of those engaged in the Work on behalf of the Contractor including, without limitation, the Contractor's employees, Subcontractors and their agents and employees, and all other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. In the event the Owner or the Architect notifies the Contractor of any such acts or omissions, the Contractor shall immediately cure such acts or omissions or the results thereof.

- 10.3.4 The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all laws and legal requirements applicable to the Work. The Contractor shall pay all sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.
- 10.3.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent must be satisfactory to the Owner. The superintendent shall represent the Contractor and communications given to the superintendent shall be as binding as if given to the Contractor. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION

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

- 10.3.6 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit the employment of unfit persons or persons not properly skilled in the tasks assigned to them, and Contractor shall immediately remove from the Work any unfit person or persons not skilled in the tasks assigned to them.
- 10.3.7 The Contractor shall keep an updated copy of the Contract Documents at the Project site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon Final Completion of the Work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.
- 10.3.8 Shop drawings and other submittals from the Contractor do not constitute a part of the Contract Documents. The Contractor shall not do any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. The Owner and the Architect shall have no duty to review partial or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall carefully review, inspect and examine any and all submittals before submission of same to the Owner or the Architect.
- 10.3.9 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

- 10.3.10 The Contractor shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the Work without formality or other procedure at all times.
- 10.3.11 The Contractor shall record the progress of the Work. ON a monthly basis, or as otherwise required by the Owner, the Contractor shall submit written progress reports to the Owner and the Architect, showing percentage of completion and other information required by the Owner. The Contractor shall also keep and make available to the Owner and the Architect a daily log containing a record of each day's weather, portions of the Work underway, number of workers on the Project site, identification of equipment on the Project site, accidents, injuries, hindrances to the progress of the Work and other information required by the Owner.
- 10.3.12 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for Work-in-progress (including Changes to the Work approved by the Owner) and estimates for uncompleted tasks and proposed changes. The Contractor shall note any variances between actual and estimated costs and report such variances to the Owner and the Architect in the monthly reports.
- 10.4 Warranty.
- 10.4.1 The Contractor hereby represents, warrants and covenants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Paragraph, including substitutions not properly approved and authorized, shall be considered defective. Defective work must be restored immediately at Contractor's expense upon notification by Owner or Architect.
- 10.4.2 The Contractor shall provide any and all specific or special warranties or guarantees of materials, equipment, items, systems and other things as required elsewhere in the Contract Documents.
- 10.5 Schedule for Completing Work. The Contractor, within fifteen (15) days of commencing the Work, shall provide to the Owner and the Architect, and comply with, the Contractor's schedule for timely completing the Work. Such schedule shall be in a form acceptable to the Owner. The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing)

and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. Strict compliance with the requirements of this Paragraph 9.3 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

- 10.5.1 In the event the Contractor inexcusably fails to comply with the time limits established in the Contractor's schedule with respect to any task on the critical path of the Project, then, in addition to any other rights and remedies of the Owner under the Contract Documents, the Contractor shall, within seven (7) days after receipt of written demand of the Owner, commence working not less than a twelve-hour day and not less than six (6) days a week until such time as Contractor shall have overcome the delinquency and brought the amount of critical path Work in place into compliance with the Contractor's schedule, all at no additional cost to the Owner. Any such acceleration of the work hereunder shall be at Contractor's sole cost and expense. Nothing herein shall relieve the Contractor from liability for failure to timely prosecute the Work or any other breach of the Contract Documents.

10.6 Acceleration of the Work.

- 10.6.1 The Owner may direct the Contractor to accelerate the Work in writing. In the event such Owner-directed acceleration causes the Contractor to incur extra costs, the Contractor expressly agrees that its sole and exclusive remedy for such Owner-directed acceleration shall be (1) direct non-labor jobsite costs and approved direct job-related material, equipment and fabrication costs (not to include overhead and profit) incurred as a result of such acceleration and net of savings occasioned by such acceleration, and (2) the difference in the wage rates and benefits, if any, between premium wage rates and benefits incurred and wage rates and benefits charged during normal working hours. The Contractor expressly waives any claim for inefficiencies which might result from any acceleration of the Work for less than thirty (30) days duration in the aggregate, regardless of fault. Nothing in this Paragraph shall imply that the Owner will be required to pay any cost differential for premium time for material, equipment or fabrication costs unless such time is expended in response to a written directive from the Owner which acknowledges that the Owner will pay such costs.
- 10.6.2 The Owner and the Architect expressly reserve the right to order the Contractor to accelerate the Work in the event that the Contractor will not meet the approved milestone dates set forth in the Project schedule or the date of Substantial Completion due to the fault of the Contractor.

The Owner shall not be liable for any extra costs incurred by acceleration of the Work ordered because the Contractor will not meet the approved milestone dates set forth in the Project schedule or the date of Substantial Completion due to the Contractor's fault. In the event of acceleration due to concurrent or joint fault of the Contractor and the Owner or the Architect, the Contractor agrees that such fault shall be apportioned between the Contractor and the Owner, and that the Contractor's exclusive remedies set forth in the Contract Documents shall apply to the net period of acceleration.

- 10.7 Liens. In the event that a lien is filed by anyone in relation to the Work, the Owner shall have the right (1) to require the Contractor to have the same discharged by posting a bond with the appropriate authorities within five (5) calendar days of notice by the Owner to the Contractor or (2) to retain out of any payment due or thereafter to become due an amount sufficient to indemnify the Owner against said lien or claim of lien, including bond premiums and attorneys' fees, and to apply the same in such manner as the Owner deems necessary to secure protection and/or satisfy such claims and liens. Prior to receipt of partial or final payment, as appropriate, the Contractor shall provide the Owner a partial or final release of its liens and claims and partial or final releases of all liens and claims of all persons furnishing labor and/or materials for the Work, and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work. This provision shall not apply if the Owner is not current in the payment of properly certified pay applications.

10.8 Work Relating to Existing Facilities.

- 10.8.1 The Contractor shall not perform work in or on existing buildings which will interfere with normal school operations, teaching or normal traffic flow, or produce excessive noise, without twenty-four (24) hours' notice to the school principal and then only with his/her concurrence.

- 10.8.2 ALL MEANS OF EGRESS SHALL BE MAINTAINED AT ALL TIMES DURING SCHOOL OCCUPANCY TO COMPLY WITH EXIT REQUIREMENTS IN THE NFPA 101 LIFE SAFETY CODE.

- 10.8.3 The Contractor shall not allow his traffic or operations to encumber school vehicular or pedestrian traffic during school hours. Space for parking of the Contractor's personnel may be off site.

- 10.8.4 Any work required to be completed by the Contractor before the opening of school, but that has not been completed by the opening of school, shall be performed by the Contractor after the opening of school at no additional cost

to the Owner. Overtime work after normal school hours and on weekends may be required to accomplish the work necessary to maintain or recover the construction schedule and/or complete the Work. This does not prohibit operations during normal work hours as the Owner's primary use of the school buildings for educational purposes may allow.

- 10.9 Work by Owner or Others. The Contractor shall afford the Owner and any separate contractors proper and safe access to the Project site and a reasonable opportunity for the introduction and storage of material and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. The Contractor shall do all cutting, fitting and patching of the Work that may be required to make it come together properly and integrate with such other work. The Contractor shall not endanger any work by others by cutting, excavating or otherwise altering their work and will only cut their work with the written consent of the Owner and the others whose work will be affected.
- 10.10 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting or patching shall be restored to the condition existing prior to the cutting, fitting or patching, unless otherwise required or permitted by the Contract Documents. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner by cutting, patching or otherwise altering such construction, or by excavation.
- 10.11 Materials Furnished by Owner. The Owner may furnish materials or equipment to the Project site to be incorporated into the Work. If the Owner furnishes any equipment or materials to be incorporated into the Work, the Contractor shall perform such tasks as are necessary to coordinate and install the Owner-furnished materials or equipment to make the Work function completely. If the Contractor contends that such Owner-furnished materials or equipment constitute an extra to the Work, the Contractor may request reimbursement for the direct field costs incurred in installing such Owner-furnished materials or equipment in accordance with the procedures for making a Claim.
- 10.12 Use of Project Site. The Contractor shall confine its operations at the Project site to areas permitted by applicable laws and the Contractor Documents, and shall not unreasonably encumber the Project site with materials or equipment. The Contractor shall have inspected the Project site prior to submitted its bid or proposal and agrees that the areas for parking, storage and laydown of materials and access to the site are acceptable to the Contractor and that the Owner will not be required to alter or interrupt any other operations ongoing at the Project site. The

Contractor shall not permit any part of the Work or the Project site to be loaded so as to cause damage or create an unsafe condition.

10.13 Safety.

- 10.13.1 Safety Precautions and Program. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
- 10.13.2 Safety of Persons and Property. The Contractor shall take reasonable precautions for the 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 the care, custody or control of the Contractor or any Subcontractor; and (3) other property at the Project site or adjacent thereto.
- 10.13.3 Indoor Air Quality. The Contractor shall take precautions in maintaining the indoor air quality of buildings where students, teachers, employees and visitors occupy the areas immediately adjacent to or near the Work, and shall further ensure that exhaust systems and dust caused by the Work do not enter into the existing fresh air intake devices.
- 10.13.4 Legal Notices. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.13.5 Danger Signs. The Contractor shall implement, erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including danger signs and other warnings against hazards, promulgating safety regulations, and notifying the owners and users of adjacent sites and utilities of the safeguards and hazards.
- 10.13.6 Use of Explosives or Hazardous Materials. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel. The Contractor shall not bring any such materials onto the Project site or use such materials without providing written notice thereof to the Architect and Owner and obtaining their approval for the use thereof.

- 10.13.7 Remedy for Damage. The Contractor shall promptly repair, remedy

and/or correct any damage or loss to property caused in whole or in part by the Contractor, a Subcontractor or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable, at its own cost and expense. The Contractor shall promptly perform such repairs, remedies and/or corrections, notwithstanding that such damage or loss may be insured under property insurance. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect 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 the Contractor.

- 10.13.8 Safety Coordinator. The Contractor shall designate a responsible employee at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- 10.13.9 Subcontractor Safety. The Contractor shall ensure that each subcontract requires the Subcontractors to participate in and enforce the safety and loss prevention programs established by the Contractor for the Work and the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a competent person whose duties shall include loss and accident prevention and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with such programs. All Subcontractors and suppliers shall cooperate fully with the Owner, Architect, Contractor and insurance carriers and loss prevention personnel. The Contractor shall further require its Subcontractors to promptly report in writing to the Contractor all incidents and/or accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Project site, and whether or not they caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious property damage results, the accident shall be reported immediately by telephone, and the Contractor shall thereafter promptly report the facts in writing to the Owner and Architect giving full details of the incident.
- 10.13.10 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act at its discretion to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of emergency shall be determined in accordance with the Claim procedures contained herein.

- 10.14 Immigration Compliance. In order to ensure compliance with the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90 *et seq.*, and all regulations promulgated thereunder, the Contractor will provide, prior to the start of any Work, and immediately from time to time upon Owner's request during performance of the Work, a signed and executed Contractor Affidavit and provide a copy of the applicable Subcontractor Affidavit for all Subcontractors, regardless of tier, performing Work on the Project site, all in the form of Exhibit "F". Contractor's failure and/or inability to provide all such required affidavits shall constitute a substantial breach of this Agreement and give the Owner the right to terminate this Agreement pursuant to Paragraph 18.2.

ARTICLE 11

TIME FOR CONTRACTOR'S PERFORMANCE

11.1 Time for Performance. The Contractor shall commence the performance of the Work on the day the Contractor receives a written Notice to Proceed from the Architect or Owner, or such later date as may be set forth therein, and shall vigorously continue its performance to and until Final Completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before _____ and shall achieve Final Completion no later than thirty (30) days following Substantial Completion. The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time", and which shall not be modified except by a Change Order as provided in this Contract.

11.2 Substantial Completion. The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner can enjoy beneficial use or occupancy and can use and operate it in all respects for its intended purpose.

11.3 Partial Occupancy or Use. Should the Project, or any portion thereof, be incomplete for Substantial Completion or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner's normal use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project. Further, the Contractor shall not be relieved of any responsibilities of the Contractor, including the required time of completion. Such occupancy by the Owner does not, in and of itself, constitute Substantial Completion or Final Completion.

11.4 Time Is Of The Essence. All limitations of time set forth herein are material and are of the essence of this Contract. By executing the Contract, the Contractor

confirms that the Contract Time is a reasonable period for performance of the Work.

11.5 Liquidated Damages for Delay. The Contractor acknowledges and agrees that any delay in the performance of the Work may inconvenience the Owner, its employees, students and parents, the public and other stakeholders, and interfere with and disrupt school operations. For this reason, it is important that the Work be pressed vigorously to completion. Should the Contractor fail to achieve Substantial Completion of the Work within the time stipulated in the Contract Documents or within such extra time as may be allowed, liquidated damages shall be assessed against any money due or that may become due to the Contractor in accordance with the amounts set forth on Exhibit "A" attached hereto and by reference made a part hereof. These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the Owner and the Contractor due to the uncertainty and impossibility of making a determination as to the actual and consequential damages which are incurred by the Owner, its employees, students and parents, the public and other stakeholders, as a result of the Contractor's failure to achieve Substantial Completion of the Work on time. The Owner may, but shall not be obligated to, waive such portions of the liquidated damages as may accrue after the Work is in a condition for safe and convenience use by the Owner and its students for the purposes intended. For the avoidance of doubt, the Owner's exercise of its rights to partially occupy or use the Work prior to Substantial Completion set forth above shall not relieve the Contractor of its obligations under this Paragraph.

ARTICLE 12

PAYMENTS FOR CONSTRUCTION PHASE SERVICES

12.1 Generally. For the Contractor's performance of the Construction Phase Services, the Owner shall pay to the Contractor an amount equal to the sum of (1) the Contractor's Fee plus (2) the Cost of the Work, subject to the limitations set forth herein.

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

12.3 Payment Procedures.

12.3.1 On or before the 5th day of each month during the Construction Phase, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending on the last day of the previous month. Said Payment Request shall include payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or the Architect to evidence that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, less that portion of those payments attributable to the Contractor's Fee, plus payrolls for the present Payment Request. Each Payment Request shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which Subcontractors and suppliers, and in the next payment cycle, proof of each payment to the Subcontractors and suppliers, shall also be provided.

12.3.2 Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both. Therein, the Contractor may request payment for ninety-five percent (95%) of the sum of:

12.3.2.1 That part of the Guaranteed Maximum Price properly allocable to completed Work, as determined by multiplying the percentage of completion for each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values.

12.3.2.2 That part of the Guaranteed Maximum Price properly allocable to materials or equipment necessary for the Project and properly stored at the Project site.

12.3.2.3 That part of the Guaranteed Maximum Price properly allocable to the Contractor's Fee.

12.3.2.4 Minus the total amount of previous payments received from the Owner.

12.3.3 Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by Subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the

manufacturer or the distributor.

- 12.3.4 Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the Contract Documents, and that the Contractor knows of no reason why payment should not be made as requested. Each Payment Request shall be accompanied by 8" x 10" photographs of good quality depicting the then-current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require.
- 12.3.5 Thereafter, the Architect shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner, after the approval of the Georgia Department of Education if so required, shall make payment to the Contractor within thirty (30) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 6.6 herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person or entity whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of claim or lien in the form attached hereto as Exhibit "B" or such other form and manner as may be required by Owner from time to time, from Contractor and from all Subcontractors, materialmen, suppliers or others having claim or lien rights, wherein Contractor and said Subcontractors, materialmen, suppliers or others having claim or lien rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.

12.4 Payments by Contractor. When payment is received from the Owner, the Contractor shall immediately pay all Subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes aware that the Contractor has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

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

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

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

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

12.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price.

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

12.6.6 Claims made, or likely to be made, against the Owner or its property.

12.6.7 Loss or damage caused by the Contractor.

12.6.8 The Contractor's failure or refusal to perform any of its obligations relating to safety.

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

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Section 12.6, the Contractor shall promptly comply with such demand.

12.7 Untimely Payments. If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease Work until receipt of proper payment after first providing ten (10) days written notice of its intent to cease Work to the Owner. Payments due from the Owner to the Contractor under the terms of this Contract shall not bear interest. As provided in O.C.G.A. § 13-11-7(b) and to the fullest extent allowed by law, the terms and conditions of the Contract Documents shall supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.* in all respects.

12.8 Inspection and Payment at Substantial Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect in writing and shall furnish to the Architect a listing of those matters yet to be finished, and the Architect will conduct an inspection to confirm that the Work is in fact substantially complete. Upon its confirmation that the Contractor's Work is substantially complete, the Architect will so certify to the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Architect, through its inspection, fails to find that the Contractor's Work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Subject to the condition precedent set forth in the immediately succeeding sentence, upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Cost of the Work plus the Contractor's Fee, less any amounts attributable to liquidated damages, and less two hundred percent (200%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling any outstanding or threatened claims. Prior to being entitled to receive the payment described in the immediately preceding sentence, and as a condition precedent thereto, Contractor shall furnish Owner, in the form of AIA Document G707A or in such other form as Owner may require from time to time, consent(s) of surety to release retainage, together with an original current power of attorney with current certificate attached thereto.

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

12.10 Final Inspection; Final Approval for Payment. When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder, including submission of the items in Paragraph 6.12, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid amounts due hereunder, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment.

12.11 Time for Final Completion; Liquidated Damages for Delay in Final Completion. If the Contractor fails to achieve final completion within 30 days of the date of Substantial Completion, the Contractor shall pay the Owner one-tenth (1/10) of the sum indicated at Exhibit "A" per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.

12.12 Final Accounting. The Owner's auditors will review and report in writing on the Contractor's final accounting within thirty (30) days of the delivery thereof to the Owner. Based upon the Cost of the Work as they report to be substantiated by the Contractor's final accounting, and provided that the other terms hereof have been satisfied, the Architect will notify the Owner whether it approves of the making of the final payment to the Contractor (subject to satisfaction of the additional requirements set forth below) or whether other reasons exist for withholding some or all of the final payment amounts hereunder. If the Architect denies some or all of the Contractor's final payment application, or if Owner's auditors report that the Cost of the Work as substantiated by the Contractor's final accounting are less than claimed by the Contractor, the Contractor shall be entitled to make a request for mediation in accordance with Section 16.5. Pending final resolution of such mediation, and upon the satisfaction of the additional requirements set forth below, the Owner shall make payment of all undisputed amounts (if any) to the Contractor within thirty (30) days of the receipt by Owner of the Architect's certification.

12.13 Additional Conditions Precedent to Final Payment. In addition to receipt and agreement upon the final accounting required by Section 12.12 above, prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

12.13.1 An affidavit, in the form of AIA Document G706 or in such other form and manner required by the Owner from time to time, that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.

12.13.2 If required by the Owner, separate releases of claims and liens and claim and lien waivers, in the form attached hereto as Exhibit "C" or in such other form and manner required by Owner from time to time, from Contractor and from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have, a claim against Owner or Owner's property and an affidavit, in the form attached hereto as Exhibit "D" or in such other form and manner required by Owner from time to time, from Contractor that all such releases and waivers have been provided.

12.13.3 In the form of AIA Document G707 or in such other form and manner required by Owner from time to time, consent(s) of Surety to final payment, together with an original current power of attorney with current certificate attached thereto.

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

12.14 Final Payment. The Owner shall, after the approval of the Georgia Department of Education if so required, and subject to its rights set forth in Section 12.6 above and receipt of items listed in Sections 12.12 and 12.13, make final payment of all sums due the Contractor within thirty (30) days of the Architect's execution of a final Approval for Payment.

ARTICLE 13

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

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

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

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

ARTICLE 14

STOP WORK ORDER

In the event the Contractor repeatedly fails or refuses to perform the Work as required herein, the Owner may instruct the Contractor to suspend performing further Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately stop and suspend its Work as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to stop work, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. In such case, an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 15

INDEMNITY

The Contractor shall indemnify, defend and hold the Owner, its Board of Education, officers, employees and agents harmless from and against any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Contractor's performance of this Contract, provided that such Claim, liability, damage, loss, cost or expense is due (1) to sickness, bodily injury, disease or death, or to (2) loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, in each case to the extent caused by the Contractor, or anyone for whose acts the Contractor is or may be responsible or liable (including, without limitation, any employees or agents of Contractor

or any Subcontractors, Sub-subcontractors or materials suppliers), regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Contractor shall not be obligated to indemnify or hold harmless the Owner against Claims for damages, losses, or expenses, including attorneys' fees, arising out of sickness, bodily injury, disease or death, or to loss or destruction of tangible property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, the preceding limitation concerning the sole negligence of the Owner or its officers, agents or employees shall not limit or affect any obligation of the Contractor under workers' compensation coverage or insurance specifically relating to workers' compensation, nor any requirement that one party to this Contract purchase a project specific insurance policy, including owner's or contractor's protective insurance, builder's risk insurance, installation coverage, project management protective liability insurance, an owner controlled insurance policy, or a contractor controlled insurance policy.

ARTICLE 16

CLAIMS

16.1 Claims Generally. "Claim" or "Claims" shall mean any demand, assertion or position that the Owner or the Contractor, or any Subcontractor or other third-party, seeks or is entitled to compensation, payment of money, damages, a change in the Guaranteed Maximum Price, a change in the Contract Time or other relief arising out of or related to this Contract or the Project.

16.1.1 All Claims by Contractor against the Owner shall be initiated by a written Notice of Claim submitted to the Owner and the Architect. Except as provided in Paragraph 16.3.3 for Claims for usually severe weather, such written Notice of Claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the Claim, and such notice shall set forth in detail all known facts and circumstances supporting the Claim.

16.1.2 In the event the Contractor seeks to make a Claim for any increase in the Guaranteed Maximum Price or any increase in the Contract Time, as a condition precedent to any liability or obligation of the Owner therefor, the Contractor shall strictly comply with the requirements of Paragraph 16.1.1 above and, except as provided in Paragraph 16.3.3 for Claims for unusually severe weather, such Claim shall be made by the Contractor before proceeding to execute any additional Work or changes in the Work. Failure to satisfy this condition precedent shall constitute a waiver by the Contractor of any such Claim.

16.1.3 In connection with any Claim by the Contractor against the Owner,

the maximum liability of the Owner to the Contractor shall be strictly limited to the reasonable actual costs incurred by the Contractor, as identified, defined and limited by Paragraph 18.1.3.2, that arise out of or that are related to this Contract or the Project. The Owner shall have no liability to the Contractor for, and the Contractor hereby waives all rights to, the following Claims: all costs that are not "reasonable actual costs" as identified, defined and limited by Paragraph 18.1.3.2; loss of financing; loss or impairment of bonding; loss of business; loss of profit and overhead on Work not yet performed; and loss of future or anticipated profits from other work or other loss of profits. Notwithstanding the foregoing first two sentences of this Paragraph 16.1.3, the Owner's limitation of liability shall not apply to the Owner's liability to the Contractor, if any, for Claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. The Owner shall not be liable to the Contractor for Claims of Subcontractors for extra Work or changes in the Work unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

16.1.4 The Contractor and the Owner shall continue their performance hereunder regardless of existence of any Notice of Claim submitted by the Contractor unless specifically provided otherwise in this Contract.

16.2 Concealed and Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that 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, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than twenty-one (21) days after the first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Time or Contract Sum or both. If the Architect 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, the Architect shall promptly notify the Owner and the Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed with filing a Claim as permitted under this Article 16. The failure by the Contractor to give the written notice and make the Claim as required by Paragraph 16.1.1 and this Section 16.2 shall constitute a waiver by the Contractor of such Claim, any increase in the Guaranteed Maximum Price and any increase in the Contract Time or other relief arising out of relating to such concealed and unknown condition.

16.3 Delays Generally. In the event the Contractor is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) unusually severe weather, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Contractor, (vi) acts of war, or (vii) acts of terrorism, then the date for achieving Substantial Completion, or, as applicable, Final Completion, Contractor shall submit a Claim to the Owner and the Architect as provided in this Article 12 and subject to the remedies set forth herein. A task is critical within the meaning of this Section 16.3 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay Substantial Completion of the Project. Any Claim for an extension of time by the Contractor shall strictly comply with the requirements of Paragraph 16.1.1 above; provided, however, that any Claim under Paragraph 16.3.3 shall be made within seven (7) days of the date that the Project, or applicable portion thereof, is enclosed. If the Contractor fails to make such Claim as required in this Section 16.3, any Claim for an extension of time shall be waived.

16.3.1 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will ensure full completion thereof within the time required by the Contract Documents. It is understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those set forth in clauses (i) through (vii) of Paragraph 16.3, and after consideration of all such contingencies and factors, Contractor has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those set forth in clauses (i) through (vii) of Section 16.3.

16.3.2 The date for achieving Substantial Completion or, as applicable, Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes execution of the Work at the Project site) after the Project, or applicable portion thereof, is enclosed or due to normal severe weather. For the purpose of Section 16.3, the term "enclosed" is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. No change in the Guaranteed Maximum Price shall be due because of weather.

16.3.3 The date for achieving Substantial Completion will not be extended for normal severe weather. The Contractor agrees that the date for achieving Substantial Completion includes due allowance for calendar days on which the Work cannot be performed. The Contractor agrees that the number of calendar days expected to be lost each month due to normal severe weather is: January -- 22 days; February -- 16 days; March -- 11 days; April -- 7 days; May -- 4 days; June -- 6 days; July -- 8 days; August -- 6 days; September -- 4 days; October -- 5 days; November -- 9 days; and December -- 15 days. The Contractor agrees that the measure of unusually severe weather during the period from the Notice to Proceed until the Project, or applicable portion thereof, is enclosed, shall be the number of days in excess of those stated for each month above, during which precipitation exceeded 0.10 inches or the average temperature failed to exceed 35 degrees F, or both. If the total accumulated number of calendar days lost to severe weather from the start of the Work until the Project, or applicable portion thereof, is enclosed exceeds that total accumulated number to be expected for the same period, as provided in this Paragraph 16.3.3, the time for Substantial Completion shall be extended by the number of excess calendar days lost.

16.4 Remedies for Delay.

16.4.1 For delays within the Contractor's control or which could have been anticipated by the Contractor, the Contractor shall not be entitled to any extension of the Contract Time nor any increase in the Guaranteed Maximum Price incurred on account of such delay, and the Contractor shall finish the Work in accordance with the Contract Documents.

16.4.2 For delays to the Work caused by an event outside the control of the Contractor or the Owner, the Contractor's sole and exclusive remedy shall be an extension of the Contract Time; provided, however, that the Contractor shall not be entitled to any extension of the Contract Time if such delay could have been reasonably anticipated by the Contractor. Any delays caused in part by the Owner and in part by the Contractor, to the extent not subject to the provisions of Paragraph 16.4.1 above, shall be deemed concurrent delays and shall be subject to the provisions of this Paragraph.

16.4.3 For delays to the Work caused solely by the Owner, the Contractor's sole and exclusive remedy against the Owner shall be an extension of the Contract Time and an increase in the Guaranteed Maximum Price equal to the direct field costs and approved direct, job-related material and equipment costs which the Contractor could not

reasonably avoid, incurred on account of such delay.

16.4.4 Under no circumstances in which a delay has occurred will the Contractor be entitled to any indirect field or home overhead costs, including home office overhead, or any costs which result from any subsequent acceleration or recovery of the Work, except as specifically set forth in Paragraph 9.4.

16.4.5 The Contractor and the Owner acknowledge and agree that damages arising from unreasonable and unforeseen delays, disruptions, interferences, hindrances and/or accelerations on a complex construction project involve an enormous amount of factual information, are very expensive in terms of time and money to address and/or litigate, and irreparably deprive and detract from the time and attention required of the project participants to successfully complete the project. The Contractor and the Owner agree that the Project is such a project. Therefore, the Contractor and the Owner establish the procedures set forth in this Paragraph and elsewhere in this Contract as the exclusive procedures for fully and finally resolving any and all damages to the Contractor, its Subcontractors and/or any other person who may claim under and/or through them, of every nature, type and kind, arising in whole or in part from such delays, disruptions, interferences, hindrances and/or accelerations.

16.5 Mediation. Any dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Contractor shall endeavor to resolve disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or a court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Subject to the express approval of the Owner and/or its Board of Education and/or Superintendent, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. No mediation shall be held or conducted until such time as the Project has achieved Substantial Completion.

ARTICLE 17

SUBCONTRACTORS

The Contractor shall comply with Owner's Policy DJEAB in connection with the selection of its Subcontractors. The Contractor shall identify to the Owner and the Architect, in writing, those parties intended as Subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such Subcontractors as set forth herein. The Contractor shall not enter into a subcontract with an intended subcontractor with whom the Owner objects. All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth hereinbelow. The Architect will not enter into disputes between the Contractor and any Subcontractor or supplier, nor shall the Architect be called upon to settle same.

ARTICLE 18

CHANGE ORDERS

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

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

18.3 No Changes Except in Writing. A change in the Work (excepting only changes required by the Architect pursuant to Paragraph 5.1.9 of this Contract) or the time for the Contractor's performance may be made only by Change Order. The Owner will not be responsible for any change in the Work involving extra costs unless approval in writing is furnished by the Owner before such Work is begun. The Architect does not have authority to order changes in the Work that involve changes in cost or time.

18.4 Methods of Changes to the Guaranteed Maximum Price. Contractor's proposals for changes in the Guaranteed Maximum Price shall be accompanied by a complete itemization in such format, and with such content and detail, as the Owner or the Architect require. Any change in the Guaranteed Maximum Price resulting from a Change Order shall be determined as follows:

18.4.1 By mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Guaranteed Maximum Price

being set forth in the Change Order, and (2) the Contractor's execution of the Change Order; or,

18.4.2 If no mutual agreement occurs between the Owner and the Contractor, the Contractor shall proceed with the changes set forth in the Change Order, and the change in the Guaranteed Maximum Price, if any, shall be established on the basis of, and shall be limited to, the reasonable actual costs incurred or savings achieved, as defined below, resulting from the change, plus a component for overhead and profit. If, and to the extent, the change involves Work of one or more Subcontractors, the overhead and profit component for Subcontractors shall be fifteen percent (15%) and the overhead and profit component for the Contractor shall be seven and one-half percent (7.50%) of the amount allocable for subcontracted Work; provided, however, that the foregoing fifteen percent (15%) overhead and profit component for Subcontractors is intended to cover all Subcontractors of any tier, and there shall be no additional overhead and profit component for Subcontractors below first-tier Subcontractors of the Contractor. If the change involves only Work of the Contractor, the component for overhead and profit shall be fifteen percent (15%). Any such costs or savings shall be documented in the format, and with such content and detail, as the Owner or the Architect require. As used in Paragraph 18.1.3 and this Paragraph, reasonable actual costs incurred or savings achieved means, and shall be limited to, the following:

18.4.3 Actual, reasonable costs of materials and the use of heavy construction equipment;

18.4.4 Actual, reasonable costs of supervision and labor for those directly involved in performing the Work, plus social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

18.4.5 Actual, reasonable rental costs of machinery and equipment (exclusive of small tools or hand tools) whether rented from Contractor or others; and

18.4.6 Actual, reasonable costs of premiums for bonds, permit fees, and sales, use or other taxes related to the Work.

18.5 Other Costs Excluded. All costs not set forth in the immediately preceding subsections shall be considered as overhead, including without limitation insurance other than that set forth above, travel (including transportation, meals and lodging), administrative staff, watchmen, hand tools, small power tools, incidental job burdens, engineering, drafting, and office expense (including costs of preparing Change Order

proposal estimates). In no event shall any costs or savings associated with Contractor's home office overhead or other indirect costs be considered to be actual costs incurred or savings achieved resulting from a Change Order.

18.6 Change by Reference to Unit Prices. If unit prices are provided in the Contract, and if the quantities contemplated are materially changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed would cause inequity to the Owner or the Contractor, then, subject to the three (3) immediately succeeding sentences, the applicable unit prices shall be equitably adjusted at the request of either party made in accordance with such other provisions of this Contract as are applicable to such party. No such equitable adjustment shall be made with respect to the quantities contemplated in the Contract. Any equitable adjustment to unit prices pursuant to this Section 18.6 shall be made only with respect to the difference between the quantity of applicable units of Work contemplated in the Contract and the quantity of applicable units of Work resulting after giving effect to such a proposed Change Order, and an equitable adjustment shall be made only if such difference is a material difference from the quantities contemplated in the Contract. Any increase to unit prices pursuant to this Section 18.6 shall be conditioned and contingent upon the Contractor demonstrating proof, satisfactory to the Owner and the Architect, that such increase in the unit price is due solely to increased cost per unit caused solely by such a material change in quantities.

18.7 Changes to the Contract Time. Any extension of the time for the Contractor's performance requested by Contractor for performance of any change in the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Contractor's performance shall be requested by Contractor pursuant to the terms and conditions of Article 16 and any such request for extension of time shall be subject to Paragraph 16.1.1. The failure of Contractor to provide notice in writing to Owner in accordance with Article 16 of this Contract of any request for extension of time, or the Contractor's execution of a Change Order, shall constitute a waiver by Contractor of any entitlement to an extension of time arising out of or relating to such Change Order or the work to be performed thereunder.

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

18.9 Consent of Surety to Change. The Contractor shall notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's Surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the Surety has been notified of,

and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

18.10 Prior Approval Required. Changes in the Work performed by the Contractor without the prior approval of the Owner shall be performed AT NO COST TO THE OWNER or result in any adjustment to the Contract Time.

18.11 Additions and Deductions. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

ARTICLE 19

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

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

19.2 Work in Conformity with Contract. If any of the Work is covered, concealed or obscured in a manner not covered by Section 19.1 above, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with the Contract Documents, the costs incurred by the Contractor to uncover and subsequently, replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

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

19.4 Duty to Correct Defective or Nonconforming Work. In addition to its warranty obligations set forth elsewhere herein: (i) the Contractor shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from the Owner; and (ii) the Contractor shall be specifically obligated to correct any and all defective or nonconforming roof Work for a period of twenty-four (24) months following final completion upon written direction from the Owner. The Owner shall promptly notify Contractor of any noted defective or nonconforming Work. Contractor shall within two (2) business days respond by visiting the site and commencing, and promptly completing, any necessary remedial

Work including needed maintenance instructions to Owner's personnel.

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

ARTICLE 20

TERMINATION BY THE CONTRACTOR

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

ARTICLE 21

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

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

21.2 Compensation. In the event the Owner directs a suspension of performance under this Article 21, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

21.2.1 demobilization and remobilization, including such costs paid to Subcontractors;

21.2.2 preserving and protecting Work in place; and

21.2.3 storage of materials or equipment purchased for the Project, including insurance thereon.

ARTICLE 22

TERMINATION BY THE OWNER

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

22.1.1 The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within ninety (90) days from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Paragraph 22.1.3 below.

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

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

22.1.3.1 Contract prices for labor, materials, equipment and other services completed and accepted under this Contract;

22.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work in place, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit on Work not completed or

consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and

- 22.1.3.3 Reasonable documented costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 18.1 of this Contract. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Paragraph 22.1 shall not exceed the total Guaranteed Maximum Price, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.

22.2 Termination for Cause. If the Contractor fails to perform the Work, or any part thereof, in a timely manner, fails to supply adequate labor, supervisory personnel or proper equipment or materials, fails to timely discharge its obligations for labor, equipment and materials, proceeds to violate applicable laws, or otherwise breaches a material provision of this Contract or any other provision of the Contract Documents, then the Owner, in addition to any other rights it may have, may terminate the Contractor for cause and assume possession of the Project site and of all materials and equipment at the site in order to complete the Work by any means as Owner shall deem necessary or appropriate. In such case, the Contractor shall not be paid any further amounts until the Work achieves Final Completion. After final completion has been achieved, if any portion of the Guaranteed Maximum Price, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid by the Owner to the Contractor. If the costs and expenses of completing the Work exceed the remaining portion of the Guaranteed Maximum Price, the Contractor shall pay and make whole the Owner for such excess cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Paragraph 22.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.1 and the provisions of Paragraph 22.1 shall apply.

22.3 Termination Not Subject to Article 16. Termination of this Contract by the Owner is not subject to the procedures set forth in Article 16.

ARTICLE 23

INSURANCE

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

ARTICLE 24

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount equal to the Guaranteed Maximum Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Guaranteed Maximum Price is increased by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to write surety bonds in the State of Georgia.

ARTICLE 25

PROJECT RECORDS

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

ARTICLE 26

GOVERNING LAW/VENUE AND JURISDICTION

26.1 Governing Law. This Contract shall be governed by the laws of the State of Georgia, without regard to its conflicts of laws principles.

26.2 Jurisdiction and Venue. The Contractor and its Surety(ies) irrevocably consent to the exclusive venue and jurisdiction of the Superior Court of Clayton County,

Georgia, regarding any matter or dispute arising out of or relating to this Contract, the payment of any monies due hereunder or the performance of the Work. The Contractor agrees that it shall file any lawsuit or other action, including any third-party practice lawsuit, against the Owner arising out of or related to this Contract or the Project only in the Superior Court of Clayton County.

26.3 Timing of Litigation. If the mediation required by Paragraph 12.4 has been completed and any claim or dispute remains unresolved, then (and only then) may the Contractor or Owner file a lawsuit in the Superior Court of Clayton County, Georgia; provided, however, that in no event can a lawsuit be filed before Final Completion.

26.4 Commencement of Statutory Limitations Period. As between Owner and Contractor:

26.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitation 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.

26.4.2 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 the issuance of the final Certificate of 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 of Payments.

26.4.3 After final Certificate of 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 the Contractor pursuant to any warranty provided hereunder, the date of any correction of the Work, or failure to correct the Work by the Contractor hereunder, or the date of actual commission of any other act or failure to perform any duty or obligations by the Contractor or Owner, whichever occurs last.

ARTICLE 27

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms

and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

ARTICLE 28

MISCELLANEOUS PROVISIONS

28.1 Insertion of Legally Required Provisions. Each and every provision required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein.

28.2 Interpretation. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained therein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof.

28.3 No Waiver. The failure of Owner to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Contract Documents or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in any other instance.

IN WITNESS WHEREOF, the Owner and the Contractor have executed this Construction Management (At-Risk) Agreement to be effective as of the date first set forth above.

OWNER:

CONTRACTOR:

CLAYTON COUNTY SCHOOL DISTRICT

By: _____[Seal]

By: _____[Seal]

[SIGNATURE]

[SIGNATURE]

Ms. Jessie Goree, Chairperson

[TYPED NAME & TITLE]

[TYPED NAME & TITLE]

By: _____[Seal]

[SIGNATURE]

[ADDRESS]

Dr. Anthony W. Smith, Interim Superintendent

[TYPED NAME & TITLE]

Clayton County School District

1058 Fifth Avenue

Jonesboro, Georgia 30236

[ADDRESS]

[DATE OF EXECUTION]
EXECUTION]

[DATE OF

EXHIBIT "A"

LIQUIDATED DAMAGES

Liquidated damages applicable to Sections 11.5 and 12.11 of this Contract shall be the amount stated in the right column below which is directly opposite the applicable Guaranteed Maximum Price range stated in the left column below.

If The Original Contract Price Is:

Daily Liquidated Damages Shall Be:

Up to \$49,999.99
\$50,000.00 to \$99,999.99
\$100,000.00 to \$299,999.99
\$300,000.00 to \$599,999.99
\$600,000.00 to \$999,999.99
\$1,000,000.00 to \$1,999,999.99
\$2,000,000.00 to \$4,999,999.99
\$5,000,000.00 to \$9,999,999.99
\$10,000,000.00 to \$14,999,999.99
\$15,000,000.00 to \$19,999,999.99
\$20,000,000.00 or above

\$50
\$100
\$200
\$300
\$400
\$500
\$750
\$1,500
\$2,500
\$3,500

The product of .0002 multiplied by the Guaranteed Maximum Price (as the same may be adjusted by Change Order).

EXHIBIT "B"

PARTIAL WAIVER AND RELEASE OF CLAIM RIGHTS ☐ B ☐

PROJECT: _____ OWNER: Clayton County
School District

CONTRACTOR: _____

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all lien rights and claims, any and all bond rights and claims, and any and all equitable rights and claims for all labor, work, subcontract work, equipment, materials and services supplied in respect of the above PROJECT through the date set forth below.

This RELEASE and WAIVER shall inure to the benefit of, and may be relied upon by, OWNER.

The undersigned further acknowledges receipt of all sums due pursuant to prior pay requests and warrants that all persons employed by the undersigned, all persons supplying materials to the undersigned, and all persons renting equipment to the undersigned have been paid in full.

DATED: _____ FIRM: _____

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 20__.

Notary Public

My commission expires:

____/____/____

EXHIBIT "C"

FINAL WAIVER AND RELEASE OF CLAIM RIGHTS ☐ **C** ☐

PROJECT: _____

OWNER: Clayton County School District

CONTRACTOR: _____

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all lien rights and claims, any and all bond rights and claims, and any and all equitable rights and claims for all labor, work, subcontract work, equipment, materials and services supplied in respect of the above PROJECT.

This FINAL RELEASE and FINAL WAIVER shall inure to the benefit of, and may be relied upon by, OWNER.

The undersigned further acknowledges receipt of all sums due pursuant to prior pay requests and warrants that all persons employed by the undersigned, all persons supplying materials to the undersigned, and all persons renting equipment to the undersigned have been paid in full.

DATED: _____

FIRM: _____

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 20__.

Notary Public

My Commission expires:

____/____/____

EXHIBIT "D"

CONTRACTOR'S AFFIDAVIT OF RELEASE OF CLAIMS

STATE OF: _____
COUNTY OF: _____

This Contractor's Affidavit of Release of Claims is for the Contract dated _____, for construction of _____ *[Insert Project Description]*

between _____ ("Contractor") and the Clayton County School District ("Owner").

As to said Contract, the undersigned hereby certifies that to the best of undersigned's informed knowledge, information and belief, except as listed below, the Releases or Waivers of Claims attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all suppliers of Work, labor or services who have or may have claims or liens or the right to assert claims or liens arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

CONTRACTOR:
(Name and Address)

By: _____
(signature of authorized representative)

(printed name and title)

Subscribed and sworn to before me on this
____ day of _____, ____.

Notary Public

My Commission Expires:
____/____/____

EXHIBIT “E”

REQUIRED INSURANCE

1 Contractor’s Liability Insurance

1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers’ compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor’s indemnity obligations under the Contract.

1.2 The insurance required by Paragraph 1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

1.2.1 The insurance required by Paragraph 1.1 shall be written for not less than the following, or greater if required by law:

Worker’s Compensation:

State: Statutory

Applicable Federal (e.g., Longshoremen’s): Statutory

Employer’s Liability: Bodily Injury by Accident \$100,000 each accident

Bodily Injury by Disease \$100,000 each employee with \$500,000 Policy Limit

Comprehensive General Liability (including Personal Injury; Premises-Operations; Independent Contractors' Protective; Products and Completed Operations, Broad Form Property Damage):

\$1,000,000. Each Occurrence

\$2,000,000. Annual Aggregate Limit

Products and Completed Operations to be maintained for three (3) years after final payment.

Property Damage Liability Insurance will provide X, C, or U coverage as applicable.

Contractual Liability (Owner's Protective Liability- Separate Policy; policy shall be separate from Contractor's general liability policy and shall name the Clayton County Board of Education and Clayton County School District as additional insureds):

\$1,000,000. Each Occurrence

Comprehensive Automobile Liability:

\$1,000,000. Each Occurrence

1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least a 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment, as a condition precedent to final payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

2 Owner's Liability Insurance

2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

3 Project Management Protective Liability Insurance

3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for

construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Guaranteed Maximum Price to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clause 1.1.2 through 1.1.5.

3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 1, except as otherwise set forth in the Contract Documents.

4 Property Insurance

4.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Project. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto.

4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition, occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

4.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, with the concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the

Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

4.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

4.1.4 Partial occupancy or use of the Work shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

4.1.5 The insurance required by Paragraph 4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Paragraph 4.7.

4.2 Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, subcontractors and sub-subcontractors in the Work, and the Owner and Contractor shall be named insured. This coverage shall include testing of boiler, machinery and similar equipment. The Builders Risk Policy shall contain installation floater coverage.

4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused. Any provision to the contrary notwithstanding, nothing herein shall constitute, or be deemed or construed to constitute, a waiver of the Owner's right to recover damages for delay in completion of the Project.

4.4 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Paragraph 4.6 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

4.5 Before an exposure to loss may occur, the Contractor shall file with the Owner two certified copies of the policy or policies providing this Property Insurance coverages, each containing those endorsements specifically related to the Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.

4.6 Waivers of Subrogation. The Owner and Contractor, to the extent allowable by law, waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

4.7 A loss insured under this property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Paragraph 4.9. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner.

4.8 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with the Contract.

4.9 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection be made,

settlement will be made in accordance with Paragraph 12.4 of the Contract and by litigation as necessary.

--BALANCE OF PAGE INTENTIONALLY LEFT BLANK--

EXHIBIT “F”

CLAYTON COUNTY SCHOOLS IMMIGRATION AND SECURITY FORMS

If you are providing services, performing work or delivering goods to the Clayton County School District including, but not limited to schools, warehouses and central offices, the applicable Georgia Security and Immigration Compliance documents found here must be completed, signed, notarized and submitted with your bid/proposal/contract. Failure to provide this document with your bid/proposal/contract will result in the disqualification of the bid/proposal/contract.

- 1) The Clayton County School District complies with the Georgia Security and Immigration Compliance Act, as amended, O.C.G.A. § 13-10-90 *et. seq.*
- 2) In order to ensure compliance with the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 and the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011, O.C.G.A. § 13-10-90 *et. seq.* (collectively the “Act”), the Contractor **MUST INITIAL** the statement applicable to contractor below:
 - (a) _____ **(Initial here)** Contractor warrants that contractor has registered at <https://e-verify.uscis.gov/enroll/> to verify information of all new employees in order to comply with the Act, is authorized to use and uses the federal authorization program and will continue to use the authorization program throughout the contract period. Contractor further warrants and agrees that contractor shall execute and return any and all affidavits required by the Act and the rules and regulations promulgated by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 *et seq.* **[Contractors who initial (a) must attach and return a signed, notarized Contractor’s Affidavit and Agreement]; or**
 - (b) _____ **(Initial here)** Contractor represents and warrants that it does not and will not physically perform, or subcontract for the performance of, any service covered by the Act within the State of Georgia and thus does not have to comply with the foregoing Georgia law.
- 3) _____ **(Initial here)** Contractor will not employ or contract with any consultant in connection with a covered contract unless the consultant is registered, authorized to use, and uses the federal work authorization program and provides contractor with all affidavits required by the Act and the rules and regulations promulgated by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 *et. seq.*

- 4) _____ (**Initial here**) Contractor agrees that, if contractor employs or contracts with any consultant in connection with the covered contract under the Act and Department of Labor Rule 300-10-1-.02, that Contractor will secure from each subcontractor at the time of the contract, the subcontractor's name and address, the employee or employer identification number (as applicable) of the subcontractor, the date the authorization to use the federal work authorization program was granted to the consultant, the consultant's attestation of its compliance with the Act and Georgia Department of Labor Rule 300-10-1-.02, the subcontractor's agreement not to contract with any sub-subcontractors unless the sub-subcontractor is registered, authorized to use, and uses the federal work authorization program, and the subcontractor provides consultant with all affidavits required by the Act and the rules and regulations promulgated by the Georgia Department of Labor as set forth at Rule 300-10-1-.01 *et. seq.*
- 5) _____ (**Initial here**) Contractor agrees to provide the Clayton County School District with all affidavits of compliance as required by O.C.G.A. § 13-10-90 *et seq.* and Georgia Department of Labor Rules 300-10-1-.02, -.03, -.07 and -.08 within five (5) business days of Contractor's receipt of any such affidavits.

Signature

Date

Firm Name: _____

Street/Mailing Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email Address: _____

