

STANDARD CONSTRUCTION MANAGEMENT CONTRACT

BETWEEN THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA

AND

Ajax Building Corporation

FOR

Transportation/Internal Services Facility

DATE: June 28, 2018

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CONSTRUCTION MANAGEMENT AGREEMENT

THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA a body corporate existing under the laws of the State of Florida ("Owner"), hereby contracts with Ajax Building Corporation ("Construction Contractor"), a Florida corporation, to perform all work ("Work") in connection with the management and construction of a Transportation/Internal Services Facility ("Project"), located in Monroe County, Florida said Work being set forth in the plans and specifications being prepared by Harvard Jolly, Architect and/or Engineer of Record ("Design Professional"), and all other Contract Documents hereafter specified and having an estimated construction cost of dollars TBD ("Construction Budget").

Owner and Construction Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, Field Orders and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project ("Construction Documents") being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. All of the foregoing Contract Documents are sometimes referred to herein as the "Contract".

B. Owner shall furnish Construction Contractor with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Contractor for execution of the Work, shall be made by Construction Contractor from its reproducible set. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work or termination of the Contract, whichever occurs first. Provided, however, Owner is furnishing Construction Contractor a reproducible set of Construction Documents for Construction Contractor's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Document. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

Section 2. Scope of Work

The Work to be provided by Construction Contractor pursuant to this Contract shall be performed essentially in two phases, with those phases being Pre-Construction Phase Services and Construction Phase Services. At the discretion of Owner, those two phases may overlap.

A. **Pre-Construction Phase Services.** Construction Contractor shall review and comment upon the Construction Documents being developed by Design Professional. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Agreement between Design Professional and Owner ("Design Agreement"), Construction Contractor shall provide Owner with detailed construction cost estimates with respect to those documents. Construction Contractor agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project. Construction Contractor shall provide all other services during the Pre-Construction Phase of the Project as set forth in the Contract Documents.

B. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Contractor have agreed in writing upon the guaranteed maximum price to be paid Construction Contractor and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Contractor shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully performed and completed in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Contractor shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price (GMP) and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid Construction Contractor and the performance time for such portion of the Work.

Section 3. Relationship of Parties

A. Construction Contractor accepts the relationship of trust and confidence established by this Agreement. Construction Contractor covenants with Owner to cooperate with Design Professional; to utilize Construction Contractor's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Contractor acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management and construction of school facilities and (ii) that such representation is a material inducement to Owner to enter into this Contract.

B. Wherever the terms of this Contract refer to some action, consent, or approval to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such staff or designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

C. Owner may utilize the services of a Program Manager to assist it with the management of the design and construction of the Project. In the event Owner does utilize the services of a Program Manager with respect to this Project, Owner shall notify Construction Contractor in writing of such decision and the Program Manager shall be deemed to be an Owner designee as referenced in Paragraph B above. Further, to the extent Construction Contractor is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Contractor pursuant to the terms of the Contract Documents, Construction Contractor shall cause the Program Manager to also be named as an additional insured party under all such policies. If so designated for this Project, Program Manager shall be Owner's representative with respect to the Project, with authority to transmit instructions, receive information, and interpret and define Owner's policies and decisions with respect to the Work. However, except as may be otherwise expressly authorized in writing by Owner, the Program Manager is not authorized on behalf of Owner to issue any verbal or written orders or instructions to Construction Contractor that would have the effect, or be interpreted to have the effect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the: (1) scope or quality of Work to be performed and provided by Construction Contractor as set forth in the Contract Document; (2) the time within which Construction Contractor is obligated to complete the Work; or (3) the amount of compensation Owner is obligated or committed to pay Construction Contractor as set forth in the Contract Documents.

D. Construction Contractor hereby designates Mike Wilson as its Project Manager, with full authority to bind

and obligate Construction Contractor on all matters arising out of or relating to the Work or the Contract Documents. Construction Contractor agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the Work and further agrees that the Project Manager shall not be removed or replaced by Construction Contractor without Owner's prior approval, which approval shall not be unreasonably withheld.

Section 4. Contract Amount

In consideration of the full and faithful performance by Construction Contractor of the covenants in this Contract, Owner agrees to pay, or cause to be paid, to Construction Contractor the following amounts (herein "Contract Amount"), in accordance with the terms of this Contract:

A. **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, and preparing cost estimates, Construction Contractor shall receive the not-to-exceed amount of Dollars \$103,322.00 as the total lump sum compensation for its services. See Pre-Construction proposal for breakdown of expenses. Monthly installment payment of the total lump sum compensation shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular month and Owner's receipt of Construction Contractor's written invoice for such payment, said invoice to be in a form reasonably acceptable to Owner. The final invoice shall not be submitted until either (i) the GMP Amendment is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate this Contract as provided in section 4.B hereafter, whichever occurs first.

B. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Contractor hereunder, Owner shall reimburse Construction Contractor for the Cost of the Work (as that term is defined hereafter), and pay Construction Contractor a Construction Management Fee for the entire Work in the fixed amount of Dollars (TBD @ 4.8% of GMP). The Construction Management Fee shall be Construction Contractor's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Contractor's total profit for Construction Phase Services. Construction Contractor agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work within 60 days after the Construction Documents in Owner's opinion are sufficiently completed by Design Professional and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Contractor as required hereunder. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Contractor agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price shall be mutually agreed upon by Owner and Construction Contractor and shall be set forth in the GMP Amendment. Construction Contractor shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal. For each line item in the GMP, Construction Contractor shall record on the Schedule of Values all variances and deviations between the bid amount originally submitted for that line item and the final line item price incorporated into the GMP. At the time of the submission of the Final Pay Application, the Construction Manager will provide to the Owner or its representative a reconciliation of the final job cost detail for the project to the final Schedule of Values by line item. Construction Contractor guarantees that in no event shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Construction Contractor and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Contractor shall not be entitled

to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

Section 5. Cost of the Work

A. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Contractor in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Contractor has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection A:

1. Labor Costs.

a. Wages of construction workers directly employed by Construction Contractor to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.

b. Wages or salaries of Construction Contractor's supervisory and administrative personnel whether stationed at the Project site or offsite, but only for that portion of their time required for the Work and only with Owner's written agreement.

c. Wages and salaries of Construction 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 as in subsection A.1.b above.

d. The parties hereby establish a maximum (not to exceed) markup rate of (40 %) for all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and 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 markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections A.1.a through A.1.c above, at the actual rates for the markup up to the maximum established herein. Actual rates for the markup shall be determined and agreed to at the time the GMP is established. Items that will not be reimbursed through the labor burden include training, bonuses and administration costs.

2. Subcontract Costs. Payments made by Construction Contractor to subcontractors in accordance with the requirements of the applicable written subcontracts.

3. Cost of Materials and Equipment Incorporated into the Completed Construction.

a. Costs, including transportation, IT equipment/hardware, project specific software, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in subsection A.3.a, 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 Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Contractor; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

4. Costs of other materials and equipment, temporary facilities and related items
 - a. 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 Construction 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 Construction Contractor.
 - b. 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 Construction Contractor at the Project site, whether rented from Construction 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 Construction Contractor or others, shall be subject to Owner's prior written approval.
 - c. Cost of removal and proper disposal of debris from the Project site.
 - d. Reproduction costs, costs of telegrams, 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.
 - e. That portion of the reasonable travel and subsistence expenses of Construction Contractor's personnel assigned to the Project site, incurred while traveling outside of the Monroe County metropolitan area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner. Any expenses not approved by the Owner prior to the travel will not be compensated. Provide detailed description of all travel requests.
5. Miscellaneous Costs.
 - a. That portion of any separate premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Construction Contractor, with Owner's prior written approval, beyond the level of coverage specified herein. Any self-insured coverages must be disclosed and all methods of determining costs to the Owner shall also be disclosed. Construction Contractor's base insurance shall be a cost of work for the project at 0.89% of the GMP.
 - b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Contractor is liable.
 - c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Contractor is required by the Contract Documents to pay.
 - d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
 - e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

- f. Deposits lost for causes other than Construction Contractor's fault or negligence.
 - g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Contractor, reasonably incurred by Construction Contractor in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.
 - h. Repair to damaged or non-conforming work that was not caused by the negligence of Ajax Building Corporation or its Subcontractors shall be considered cost of work and shall be reimbursed in accordance with Exhibit A, Section 12.
6. Other Costs. Other costs incurred in the proper performance of the Work in accordance with the Construction Documents if and to the extent approved in advance in writing by Owner.

B. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

Salaries and other compensation of Construction Contractor's personnel stationed at Construction Contractor's principal office or offices other than the Project site office, except as otherwise provided in subsection A.1.b above.

- 2. Expenses of Construction Contractor's principal office and offices other than the Project site office.
- 3. Overhead and general expenses, except as may be expressly included in subsection A above.
- 4. Construction Contractor's capital expenses, including interest on Construction Contractor's capital employed for the Work.
- 5. Rental costs of machinery and equipment, except as specifically provided in subsection A.4.b above.
- 6. Costs due to the fault or negligence of Construction Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 7. Any costs not specifically and expressly described in subsection A above.
- 8. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

Any costs associated with the rental expense of IT equipment that would exceed the normal purchase costs of such item will not be reimbursable. IT non-reimbursable items will include but not limited to: general/accounting software, email, licenses, operating systems, IT support, etc. Any Warranty costs that exceed the specified warranty listed in the contract documents will not be reimbursed. Costs of equipment necessary to establish server connections to home office, scheduling software and to provide wireless capabilities for all team members use on-site are not considered in this item, but shall be considered cost of work to be reimbursed.

C. **Discounts, Rebates and Refunds.**

1. Cash discounts obtained on payments made by Construction Contractor shall accrue to Owner if (i) before making the payment, Construction Contractor included them in an application for payment and received payment therefore from Owner, or (ii) Owner has deposited funds with Construction Contractor with which to make payments; otherwise, cash discounts shall accrue to Construction Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Contractor shall make provisions so that they can be secured.
2. Amounts which accrued to Owner in accordance with the provisions of subsection C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

Section 6. Bonds

A. Within ten (10) business days of acceptance of the GMP Proposal by Owner and Construction Contractor (unless a later submittal is expressly approved in writing by Owner), Construction Contractor shall provide Owner with Performance and Payment Bonds in the amount of 100% of the total sum of the Owner's Construction Budget for the work as set for in the preamble of this agreement, the costs of which are to be paid by Construction Contractor. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the bond is issued.
5. The Bonds must be fully performable in Florida, with service and venue in Monroe County, Florida.
6. The Construction Manager may opt to require performance or payment bonds from any subcontractor. The cost of such bonds shall only be included in the Cost of the Work on those subcontracts whose value is in excess of \$50,000.00. Any other subcontractor bonds shall not be considered a Cost of the Work and, hence shall not be reimbursable by the Owner to the Construction Manager. Although Ajax Building Corporation_ typical threshold for bonding is \$50,000.00, Ajax Building Corporation may also elect to bond work regardless of the contract value, for envelope trades, hazardous material removal and MEP trades. Any subcontract below the \$50,000.00 threshold that Ajax Building Corporation has elected to bond shall be identified and presented to the Owner with an appropriate explanation.
7. If the GMP exceeds \$500,000.00, the surety company shall also comply with the following provisions:
 - a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
\$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

(1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section, these minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

(2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

- B. If the surety for any bond furnished by Construction Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.
- C. In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Construction Contractor shall record within 5 days in the Public Records of Monroe County, Florida, a copy of the Performance and Payment Bonds. Construction Contractor shall deliver within 10 days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Contractor hereunder.
- D. Upon establishment of the GMP, the dollar amount of coverage provided by the bond shall be adjusted to an amount not less than the GMP, and shall be adjusted thereafter as the GMP is adjusted by change orders other than those associated with Owner Direct Purchase. In the event of a decrease in required bond coverage, the Owner shall be entitled to a credit of the applicable bond premium.

Section 7. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under this Contract. Contractor shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after execution of this agreement, unless a later date for commencement of Pre-Construction Phase Services is established in writing by the

Owner. Any Work performed by Construction Contractor prior to execution of this agreement shall be at the sole risk of Construction Contractor. The "Construction Phase Commencement Date" shall be established in the GMP Amendment. Construction Contractor shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. No work will be reimbursed prior to the Notice-to-Proceed being issued. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time is set forth with more specificity in Paragraph B below.

B. Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, Construction Contractor agrees to provide the Pre-Construction Phase Services in accordance with the Master Project Schedule included at Exhibit D. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Contractor. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Contractor and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Contractor shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose, and the Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within 45 calendar days after the Substantial Completion date, or within 45 calendar days after Construction Contractor's receipt of the punch list, whichever date occurs last.

C. Owner and Construction Contractor recognize that, since time is of the essence for this Contract, Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed or finally accepted within the times specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable education to the public, in Monroe County, Florida. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Contractor, if Construction Contractor fails to achieve Substantial Completion of the Work or portions thereof designated for earlier completion within the required time periods. Should Construction Contractor fail to substantially complete the Work or portions thereof designated for earlier completion within the required time periods, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, \$1000 dollars per site for each calendar day thereafter until Substantial Completion of the work or designated portion is achieved. Additionally, should any classrooms be unsuitable for occupancy on a student day as established by the student calendars available on the Owner's website, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, \$250 dollars per classroom for each student day for which occupancy is precluded. Should Construction Contractor fail to satisfy all requirements for final acceptance of the Work as described in Paragraph 22.2 of Exhibit A herein within the required time period, Owner shall be entitled to assess, as liquidated

damages, but not as a penalty, five hundred dollars \$500 for each calendar day thereafter until the final acceptance requirements are met. Construction Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Contractor fails to substantially complete the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term "business day" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

Section 8. Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

- Exhibit A: General Terms and Conditions
- Exhibit B: Supplemental Terms and Conditions
- Exhibit C: Insurance Requirements
- Exhibit D: Master Project Schedule
- Exhibit E: Construction Contractor's Staffing Schedule
- Exhibit F: Truth-In-Negotiation Certificate

Section 9. Notice

A. All notices required or made pursuant to this Contract by Construction Contractor to Owner shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Monroe County Public Schools

ATTN: Construction Department, Douglas Pryor, 1310 United Street, Key West, FL 33040

B. All notices required or made pursuant to this Contract by Owner to Construction Contractor shall be made in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Ajax Building Corporation
109 Commerce Blvd.
Oldsmar, Florida 34677
Attn: William P. Byrne

- C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 10. Modification

No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 11. Successors and Assigns

Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.

Section 12. Governing Law and Venue

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida. The Parties expressly covenant and agree that jurisdiction and venue for any claim or dispute arising out of or relating in any way to this agreement shall lie in the appropriate court for the 16th Judicial Circuit, in and for Monroe County, Florida

Section 13. No Waiver

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 14. Entire Agreement

Each of the parties hereto agrees and represents that the Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Contract. This agreement shall also supersede and nullify all terms and conditions of purchase orders issued in conjunction with this agreement to facilitate OWNER processing of payments.

Section 15. Severability

Should any provision of the Contract be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 16. Construction

Unless the context of this Contract otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

