AGENDA

Study Session of the Bloomfield Hills Schools Board of Education

www.bloomfield.org/livestream

August 6, 2020
6:00 PM

"Failure is instructive. The person who really thinks learns quite as much from their failures as from their successes."
- John Dewey

1. Call to Order

A. Attendance

2. Public Comment

A. Public Comment

To submit a Public Comment during the Virtual Board Meeting of Bloomfield Hills Schools, please visit www.bloomfield.org/comment for instructions and to complete the online form.

3. Study Session

A. Post-Bond Update

B. Return to School Update

4. Administrative Appointments

A. Appointment of Leonard Sanford Jr. to Director of Health & Wellness

Kelly Bohl

I move Leonard Sanford, Jr. be appointed as Director, Health & Wellness. The effective date was August 3, 2020.

5. Board Business

A. First Reading of Board Policy Updates

Kelly Bohl, Assistant Superintendent for Human Resources & Labor Relations

This information is being presented for a first reading in accordance with Board Policy 1003 and requires no board action at this time.

B. Ratification of Ad Council Agreement

Kelly Bohl

I move that the Agreement with the Administrative Council on compensation for the 2020-21 and 2021-22 school years be approved as presented.

C. Approval of Bond Professional Services Agreements

Pat Watson, Superintendent and Tina Kostiuk, Assistant Superintendent for Finance & Operations

I move that the Board of Education authorize the Superintendent to execute an agreement with each of the following professional service providers to be paid for with the Bloomfield Hills Schools School Improvement Bond proceeds:

1. Construction Management: Barton Malow Builders LLC for a lump sum fee not to exceed $10,493,731
2. Architect: French Associates, Inc. at 5.6 percent of the cost of the work, defined as all hard construction costs and contingency actually used, which equates to a maximum of $9,515,452, plus reimbursable expenses not to exceed $200,000. It is planned to enter into a fixed fee based on the foregoing formula following the design development phase.
3. Technology Design: Barton Malow Builders LLC for a lump sum fee not to exceed $1,298,100

D. Approval of BHS COVID-19 Preparedness and Response Plan

Pat Watson, Superintendent

I move the Board of Education approve the Bloomfield Hills Schools COVID-19 Preparedness and Response Plan, as presented.

6. Public Comment

A. Public Comment

To submit a Public Comment during the Virtual Board Meeting of Bloomfield Hills Schools, please visit www.bloomfield.org/comment for instructions and to complete the online form.

7. Adjournment

Public Comment is a time for individuals to share their thoughts with the Board; however, it is not a time for dialogue with the Board. Those who wish to speak at Public Comment are asked to complete a Public Comment Request Card. In the interest of fairness, the Board will announce a speaker time limit based on the number of cards submitted and available time.

If you have a disability requiring a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, please call the Office of the Superintendent at 248-341-5406 at least one week prior to the meeting or as soon as possible.

Board Minutes are Located at:
http://www.bloomfield.org/board-of-education
Bloomfield Hills School Board of Education
7273 Wing Lake Road
Bloomfield Hills, MI 48301

248-341-5406

Bloomfield Hills Board of Education

Memo

To: Superintendent and Board of Education
From: Kelly Bohl
Date: July 29, 2020
Re: Appointment of Leonard Sanford Jr. to Director of Health & Wellness

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Recommended Motion:

I move Leonard Sanford, Jr. be appointed as Director, Health & Wellness. The effective date was August 3, 2020.

Background Information:

ATTACHMENTS:

File Name	Description
Director_of_Health___Wellness_JD.pdf	Director of Health & Wellness job description
Leonard_Sanford_Jr._(2)_Redacted.pdf	Sanford Resume

www.bloomfield.org

VACANCY ANNOUNCEMENT
DIRECTOR OF HEALTH & WELLNESS
Bloomfield Hills Schools
2020-2021 School Year

(1 Year Contract)

Applications are being accepted for a **Director of Health & Wellness (1.0 FTE)** position for Bloomfield Hills Schools for the 2020-2021 School Year. This position is a one year opportunity.

RESPONSIBLE TO: The Superintendent

QUALIFICATIONS:

- Master's Degree from an accredited college/university with particular emphasis on health and wellness, or a related field
- Preference for knowledge or background in working with educational programming, extracurricular activities and student health
- Demonstrate leadership skills, knowledge of and proven performance in behavior planning, meeting/group facilitation, conflict resolution and community/educational partnerships
- Knowledge of recent trends and research based practices in the field of public health
- Knowledge of public health regulations and compliance
- Creative, flexible, hands-on problem solver who builds relationships with individual students, district staff, and all team members
- Position requires the following skills: demonstrate proficiency with Microsoft Office Suite; be highly organized; possess excellent communication skills; be highly confidential at all times; act as a team player; be flexible to work on multiple tasks; pay attention to detail; be able to learn new skills and deal with constant change

MAJOR DUTIES AND RESPONSIBILITIES:

- Develop, recommend and support safety protocols to keep the BHS school community safe based on the status of the coronavirus.
- Works with district leadership to support the mental and social-emotional health, safe instruction and operations within each phase of the MI Safe Start Plan.
- Monitor and review the public health data released by the State of Michigan and local public health officers on a weekly basis.
- Work with district mental health professionals to develop a mental health screening for all students.

- Compile and regularly update a comprehensive list of wellness resources available to both staff and students
- Establish ongoing reporting protocols for school staff to evaluate physical and mental health status.
- Serve as a mental health liaison who will work across the school, local public health agencies, and community partners.
- Work with district communication professionals to develop active communication channels for school stakeholders to address mental health concerns resulting from covid.
- Work with district facilities professionals to ensure the appropriate Personal Protective Equipment (PPE) is available, being used appropriately, and protocols to be followed are communicated and enforced.
- Develop a healthy hygiene program to teach and enforce healthy hygiene behaviors.
- Work with building administration to develop safe distancing flow maps for students and staff entering, exiting, and moving about district buildings.
- Work with all building staff on spacing, movement and access to classrooms and other learning areas.
- Develop in conjunction with the Oakland County Health Department screening protocols for students and staff.
- Work with building administrators to assign a designated quarantine area for students presenting with covid symptoms and the process/protocols to be followed in compliance with CDC guidelines.
- Implementation and monitoring of testing protocols for students and staff who test positive for Covid, including contract tracing.
- Work with district transportation professionals to develop safe bussing opportunities for students when and where applicable.
- Other duties as assigned

COMPENSATION BENEFITS: $59,462 - $77,337

STARTING DATE: Position is currently open and will be a 220 day contract for the 2020-2021 school year only.

METHOD OF APPLICATION: All applicants, who want to be considered for this position, must submit an application at: www.oakland.k12.mi.us/OHRC

It is the policy of the Bloomfield Hills Schools not to discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, transgender status, age, marital status, disability, genetic information, or any other reason prohibited by applicable laws, in its programs, services, activities, or employment practices. Inquiries related to discrimination on the basis of disability should be directed to the Section 504 Coordinator: Director of Special Education, 7273 Wing Lake Road, Bloomfield Hills, MI 48301, (248) 341-5415. Direct all other inquiries related to discrimination to: Assistant Superintendent for Human Resources and Labor Relations, 7273 Wing Lake Road, Bloomfield Hills, MI 48301, (248) 341-5425.

Leonard Sanford Jr.

[redacted]

Professional Summary

- Ambitious Doctoral student aspiring to achieve meaningful population health outcomes through servant leadership and learned knowledge of health administration competencies.
- Proficient in quality improvement, research methods, and data analysis.
- Lean Six Sigma Green Belt in Healthcare certified. D #: 10553048

Education

Doctor of Healthcare Administration

Walden University, Minneapolis, MN

2018-2021

- $16,000 academic scholarship awarded
- Student Associate Member of the American College of Healthcare Executives
- Student Member of he National Association of Health Service Executives
- Alumni Member of Alpha Phi Alpha Fraternity, Inc.: Iota Rho Lambda Chapter

Master of Health Services Administration

University of Detroit Mercy, Detroit, MI

2016-2018

- Student Associate Member of the American College of Healthcare Executives: Midwest Chapter
- Student Member of the National Association of Health Services Executives: Detroit Chapter
- President of the Health Services Administration Student Advisory Council
- Student Member of the National Society of Leadership and Success: University of Detroit Mercy Chapter
- Volunteer Student Mentor for the Step Up-Be A Leader Program
- Alumni Member of Alpha Phi Alpha Fraternity, Inc.: Iota Rho Lambda Chapter
- 2018 Lee Holmberg Award Winner
- Upsilon Phi Delta – Health Management Honor Society Inductee
- Degree conferred April 28, 2018
- Cumulative GPA: 3.79

Bachelor of Science in Kinesiology, Concentration: Exercise & Sport Science

Wayne State University, Detroit, MI

2012-2016

- Member of the Pre-Professional Medical Society
- Member of Alpha Phi Alpha Fraternity, Inc.: Alpha Upsilon Chapter
- Annual Thanksgiving and Christmas Meals on Wheels Detroit Volunteer
- Gleaners Food Bank Volunteer
- Youth Professional Development Volunteer: Talking with Ties Program
- Winter 2015 Dean's List
- Degree conferred August 19, 2016
- Cumulative GPA: 3.01

Diploma

West Bloomfield High School, West Bloomfield, MI

[redacted]

- 2-year varsity letter winner for varsity football
- Volunteer referee for annual women's Breast Cancer Awareness flag football game
- NCAA Division 2 Football Scholarship Recipient

Professional Experience

Practice Manager – Family Medicine & Internal Medicine

IHA, Ann Arbor, MI

July 2019-Present Full Time: 40 hours/week

- Successful oversight of practice expansion project, with an allocated budget of $500K
- Increased FY20 Q3 Press Ganey and GCAHPS Scores by an average of 3.4%
- Led team efforts to obtain incentivized funding through Blue Care Network Uplifts.
- Led coordination of training and continuing education on new EHR system Epic as an organization Super User.
- Oversight of team obtainment of the 2018 Priority Health Quality Award

Program Manager

Progressions Rehabilitation, Clinton Township, MI

January 2018-April 2019 Full Time: 40 hours/week

- Coordination of daily operations for three separate Adult Foster Care transitional living facilities.
- Responsible for staff development and management of 15 direct and 5 indirect reports. Including the conduction of performance reviews, weekly scheduling, approval of PTO, and disciplinary action.
- Monthly preparation of in depth reports on resident status using Google Drive programs.
- Actively provide prompting and assistance to the lives of approximately 20 traumatic brain injury and spinal cord injury residents through the coordination of routine daily schedules.
- Scheduling doctor's appointments, as well as reordering medication as needed.
- Oversight of resident medication administration through the use of computer software program QuickMAR.
- Reduced monthly fiduciary waste spending by over $1000 through various lean six sigma continuous quality improvement implementation.

Co-Assistant Director of the Emerging Leaders Program

University of Detroit Mercy, Detroit, MI Part Time: 15-20 hours/week

July 2017-January 2018

- Research demographics and develop new strategies to promote the Emerging Leaders Program, i.e. creating new brochures, sponsorships, etc.
- Creating and presenting PowerPoints/Prezi's to leadership and psychology classes to recruit and inform students about the Program
- Assist in the creation of PowerPoint presentations, Prezi's and Infographics of MSL results
- Maintain budget for food, beverages, plates, napkins, etc. for leadership slams
- Update and maintain Social Media group pages
- Work with Student Life and the Institute of Leadership and Service to be a communication liaison between students and events that count toward the ELP requirements

Quality Management Intern

U.S. Medical Management, Troy, MI Part Time: 20-25 hours/week

August 2017-December 2017

- Data extraction, processing, entry, analysis, reporting using Excel, Aprima, and Health Catalyst.
- Root Cause Analysis
- Communication with external entities
- Inquiries into government programs benchmarks community standards best practices
- National Home-based Primary Care Palliative Care Network Quality Improvement Initiative training for providers for Home-based, Hospice, and Palliative Health Care.
- IAH Patient Registry
- Patient Activities of Daily Living and Preferences validation

Health Administration Intern

St. John Providence Hospital Southfield, MI Full Time: 40 hours/week

May 2016- August 2016

- Worked directly under the Director of Orthopedic and Minimally Invasive Surgery Centers of Excellence, Mrs. Erin Reese-Burks.
- Attended all Executive team meetings, and became familiar with the daily job functions of an executive health care leader.
- Researched demographics for total hip and joint replacement bundled payments pilot program.
- Analyzed financial data to forecast and project risk for potential vertical expansion projects.
- Composed a patient brochure to provide education about the value of bundled payments.

Bloomfield Hills Board of Education

Memo

To:	Superintendent and Board of Education
From:	Kelly Bohl, Assistant Superintendent for Human Resources & Labor Relations
Date:	July 29, 2020
Re:	First Reading of Board Policy Updates

Recommended Motion:

This information is being presented for a first reading in accordance with Board Policy 1003 and requires no board action at this time.

Background Information:

The Policy Service has recommended updates to our Board Policy in response to recent revisions in Title IX regulations. The Policy Committee and Administration are recommending updates to the following policies:

4002 - Employment Considerations
8007 - Discrimination and Harassment

These polices are being presented tonight for a first reading. I anticipate recommending adoption based on board feedback at the August 20, 2020 regularly scheduled board meeting.

ATTACHMENTS:

File Name	Description
4002_Employment_Considerations_-_Proposed_Changes.pdf	4002 - Proposed Changes
8007_Discrimination_and_Harassment_proposed_changes.pdf	8007 - Proposed Changes

4002 Employment Considerations

Equal Employment Opportunity
The Board is committed to equal employment opportunities in all aspects of employment, including recruitment, selection, training, promotion and retention of staff.

Discrimination and Harassment
The Board is committed to maintaining a learning/working environment in which all individuals are treated with dignity and respect, free from illegal discrimination and harassment. There will be no tolerance for discrimination or harassment in employment on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, gender expression, transgender status, marital status, genetic information, disability, age, or any other illegal grounds.

Nepotism
It is the intent of the Board to avoid favoritism as well as the appearance of favoritism towards relatives in all matters concerning employment in the School District. The Board adopts the following standards:

- No Board member or employee shall participate in any personnel action, including a recommendation for appointment, employment, promotion or evaluation, concerning an applicant or employee to whom she or he is related.
- No Board member or employee may directly supervise or evaluate an employee to whom that person is related. If a person is hired or transferred into a position the person will immediately report that fact to the Superintendent, who will consult with the Board of Education concerning the proper disposition of the matter.

This policy should not, except as expressly provided, be interpreted to prohibit the employment of relatives of Board members or relatives of School District employees.

For purposes of this policy, the terms “related” or “relative” refer to the following relationships: father, mother, son, daughter, brother, sister, spouse, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or any other persons who reside at the same location as the Board member or employee.

Criminal Background Checks
The Board seeks to ensure a safe and secure environment for students, staff and other members of the school community. Accordingly, the School District will comply with state law and require that any individual working in a school building, whether as an employee or working regularly and continuously under contract, submits to a criminal history and background check by the department of state police. If an individual has been convicted of a listed offense, as defined by Michigan law, the School District will not employ the individual. If the individual has been convicted of a felony other than a listed offense, the School District will consider the severity of the felony, when the conduct occurred, its effect on the ability of the individual to work in a school building,

and any other matters considered relevant to the safety of the school community. An individual with a felony conviction will not be permitted to work in a school building unless the assignment is specifically approved by the Superintendent and the Board of Education. Should the School District become aware, at any time, that an individual already working in a school building has been convicted of a listed offense or a felony, the same procedures will apply. The Superintendent will develop and implement administrative regulations to carry out this policy.

8007 Discrimination and Harassment

The Board of Education is committed to maintaining a learning/working environment in which all individuals are treated with dignity and respect, free from illegal discrimination and harassment. There will be no tolerance for discrimination or harassment on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, gender expression, transgender status, marital status, genetic information, disability, age or any other basis prohibited by law. The Superintendent will develop administrative regulations to implement this policy. The Superintendent designates the Assistant Superintendent, Human Resources, Labor Relations & ~~Labor Relations~~Title IX Coordinator to ~~serve as the School District's Compliance Officer and Title IX Coordinator to investigate and resolve complaint of illegal harassment and discrimination.~~to supervise the implementation of this policy and its implementing regulations.

Bloomfield Hills Board of Education

Memo

To: Superintendent and Board of Education
From: Kelly Bohl
Date: July 29, 2020
Re: Ratification of Ad Council Agreement

Recommended Motion:

I move that the Agreement with the Administrative Council on compensation for the 2020-21 and 2021-22 school years be approved as presented.

Background Information:

The school district has a collective bargaining agreement with the Administrative Council which covers the terms and conditions of employment for building administrators and some instructional leadership positions. The contract expires on June 30, 2022 and has a wage reopener for the years 2020-2021 and 2021-2022. This agreement is for the wage reopener.

The estimated cost of this Agreement is $59,798 across all funds.

ATTACHMENTS:

File Name	Description
Ad_Council_TA_pending_ratification_(1)_(1).pdf	Draft Ad Council Agreement Pending Ratification

AGREEMENT BETWEEN BLOOMFIELD HILLS BOARD OF EDUCATION
AND
BLOOMFIELD HILLS ADMINISTRATIVE COUNCIL

Pursuant to Article 11 of the Ad Council Master Agreement, please accept this proposal for wages in years 2020-2021 and 2021-2022.

1. Full Step advancement for eligible members for 2020-2021
2. $1,000 on-schedule increase to those employees at the top of their respective salary schedules in lieu of the current $1,000 off schedule bonus
3. May 13, 2021 and May 3, 2022 will be a non report day or a holiday
4. Wage reopener in Spring 2021 for 2021-22 wages/step advancement

ADMINISTRATIVE COUNCIL DATE OF RATIFICATION:		BOARD OF EDUCATION DATE OF RATIFICATION:
Dr. Mary Hillberry, President		Paul Kolin, President
		Lisa Efros, Secretary
		Pat Watson, Superintendent
		Kelly Bohl, Chief Negotiator

Bloomfield Hills Board of Education

Memo

To:	Superintendent and Board of Education
From:	Pat Watson, Superintendent and Tina Kostiuk, Assistant Superintendent for Finance & Operations
Date:	August 6, 2020
Re:	Approval of Bond Professional Services Agreements

Recommended Motion:

I move that the Board of Education authorize the Superintendent to execute an agreement with each of the following professional service providers to be paid for with the Bloomfield Hills Schools School Improvement Bond proceeds:

1. Construction Management: Barton Malow Builders LLC for a lump sum fee not to exceed $10,493,731
2. Architect: French Associates, Inc. at 5.6 percent of the cost of the work, defined as all hard construction costs and contingency actually used, which equates to a maximum of $9,515,452, plus reimbursable expenses not to exceed $200,000. It is planned to enter into a fixed fee based on the foregoing formula following the design development phase.
3. Technology Design: Barton Malow Builders LLC for a lump sum fee not to exceed $1,298,100

Background Information:

As a result of the successful bond election this week, we are proceeding with the BHS bond program including a recommendation to approve professional services agreements with the architect, construction manager and technology designer.

We have had a long-standing relationship with both recommended firms: Barton Malow and French Associates, who were approved for district projects subsequent to a 2008 request for proposal process. French has been part of the district's sinking fund projects. Barton Malow was appointed to be the construction manager for the high school construction project and continues to be involved with sinking fund projects. Barton Malow's technology design team worked on the

high school project as part of the high school architect's contract responsibilities. When the high school bond passed in May 2012, it was stated that the district was not going to address any other major facility needs for at least four years, just after the high school opened during the fall of 2015.

Since then, a comprehensive facilities audit was conducted to provide data regarding the district's overall facility status and options for the future given the district's aging facilities and short-term critical needs. Barton Malow and French Associates (as firms with intimate knowledge of our facilities through their involvement with our sinking fund projects) were both engaged in the study that ultimately led to a multi-month series of Scope and Design Task Force meetings, composed of staff, strategic partners and community stakeholders. Both firms spent many hours and resources in participating and planning through conceptual design prior to an anticipated May 5 election that was moved to August 4, 2020 as a result of the pandemic.

Qualitatively, both firms have successfully demonstrated their capabilities working on district projects over a number of years, building a significant amount of knowledge and familiarity about the district's facilities and infrastructure. Their knowledge and experience with the district facilitate meeting the planned construction timeline.

From a quantitative perspective, we performed our due diligence by reviewing professional fee arrangements of other districts with recent bond elections over the past three years. Dana Abrahams of Clark Hill PLC has been an integral part of negotiating and finalizing all of the agreements being recommended for Board approval. In addition, the fee structure was evaluated from an economic perspective and found to be very competitive with fees and services as compared to other districts. Professional fees for services, exclusive of personnel costs and reimbursable costs, expressed as a percentage were found to be at or better than the average fee based on fifteen contracts/proposals within the past three years as follows:

	# of firm/ proposed rates	Average fee percentage	BHS Bond Program (percentage* on construction/contingency)
Architect	15	5.9%	5.6%
Construction Manager	15	1.9%	1.9%

The percentage is applied to a defined "cost of the work." For BHS, the cost of the work includes direct construction costs and contingency unlike some other arrangements that include other components, thereby increasing the compensation dollars.

The Technology design services have historically been a part of the architect's responsibility. Technology is an integral part of the bond projects; therefore, it is deemed in the best interest of the district to enter into a separate, direct contract with the technology design team.

The unknown of the firms sampled from the past three years is their quality of work, the nature of the bond programs at those respective districts and the effect that COVID-19 will have on bond work moving forward. However, we believe, given that the fees are competitive and both firms possess extensive knowledge about the buildings, bond programs, and personnel of the district, we recommend both Barton Malow and French Associates be retained as construction manager/ technology designer (two separate divisions) and architect, respectively.

A review of key provisions of all three agreements is planned for discussion at the August 6th FFLA meeting. This recommendation meets the requirements of state law and Board Policy.

ATTACHMENTS:

File Name	Description
Bloomfield_Hills_-_Construction_Manager_Agreement_(FINAL_8.4.2020).PDF	Barton Malow Builders - Construction Management Svcs.
Bloomfield_Hills_-_Architect_Agreement_(FINAL_8.4.2020).pdf	French Associates
Bloomfield_Hills_-_Technology_Designer_Agreement_(FINAL_8.4.2020).PDF	Barton Malow Builders - Technology Design Svcs.

AIA® Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the 4th day of August in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Bloomfield Hills Schools
Booth Center
7273 Wing Lake Road
Bloomfield Hills, Michigan 48301

and the Construction Manager:
(Name, legal status, address and other information)

Barton Malow Builders LLC
26500 American Drive
Southfield, Michigan 48034

for the following Project:
(Name, location and detailed description)

2020 Bond Election. See detailed description of the Project for the 2020 Bond Election attached hereto as **Exhibit D**.

The Architect:
(Name, legal status, address and other information)

French Associates, Inc.
236 Mill Street
Rochester, Michigan 48307

The Owner and Construction Manager agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. ^AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1484142694)

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12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D.** The 2020 Bond issue is approximately $200,155,000.00. At that same time, the Owner will approve the fixed limit of the Cost of the Work which will not-exceed the amount of the Bonds.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D.**

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

.1 The Owner's fixed limit on the Cost of the Work will be set by the Owner in accordance with Section 1.1.1, above. The fixed limit shall include the Cost of the Work as defined in Article 6 of this Agreement, as well as all other elements of the Project for which the Construction Manager has responsibility. Any services provided under this Agreement are subject to the fixed limit. In the absence of an express provision to the contrary in this Agreement, the Construction Manager shall perform the required services in a manner that will render a Cost of the Work for the Project that does not exceed the most current Owner approved fixed limit.

Init.
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User Notes: (1484142694)

.2 Amount of the Owner's overall Budget for the Project, including all hard construction costs and contingency actually used in the Project. Notwithstanding the foregoing, the Cost of the Work does NOT include the compensation of the Architect, its employees, agents or the Architect's consultants, the Construction Manager, its employees, agents or the Construction Manager's consultants, Personnel Reimbursable Rates or General Condition Items, the costs of the land, rights-of-way, financing, other costs which are the responsibility of the Owner, or other costs such as review and permit fees, marketing, Technology Designer, Project Financial Consultant, Project Market Study Consultant, Project Investment Banker, etc., and other "soft costs" that are the responsibility of the Owner.

.3 The Construction Manager acknowledges that the Owner has established a fixed limit for the Cost of the Work as a condition of this Agreement. The Construction Manager shall in estimating the Project adhere to the Owner's established fixed limit for the Cost of the Work.

Notwithstanding anything contained herein to the contrary, the Owner, in its sole discretion, shall work with the Construction Manager in determining how the contingency allocated for the Project shall be utilized.

§ 1.1.4 The Owner's anticipated design and construction ~~schedule:~~schedule (see **Exhibit F**):

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

.4 Other:

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Competitive bid with multiple Prime Contractors

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The Construction Manager shall consult with the Owner on all fast-tracking, equipment and material expediting and bid-packaging deemed necessary in order to meet the Owner's schedule referred to in Section 1.1.4. The Construction Manager shall cause all Contractors to include any and all costs required to comply with Owner's schedule.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

If any, to be determined later by mutual agreement.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

Brian Goby

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User Notes: (1484142694)

Director, Physical Plant Services
BGoby@bloomfield.org
248-341-5490
And

Christina Kostiuk
Assistant Superintendent for Finance & Operations
TKostiuk@bloomfield.org
248-341-5452

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other information.)

The Construction Manager shall assist the Architect during the Design Phases to ensure that the Architect's design complies with Project budget and schedule and confirm the constructability and completeness of the Design/Construction Documents. It is recognized that the Construction Manager's review is made in the Construction Manager's capacity as a construction manager and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and ~~contractors:~~contractors, with whom the Construction Manager shall coordinate:
(List name, legal status, address and other information.)

.1 Land Surveyor:

TO BE DETERMINED

.2 Geotechnical Engineer:

TO BE DETERMINED

~~.3 Civil Engineer:~~

~~.4 Other:~~.4 Other Consultants:
(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)

Owner's Environmental Consultant and Others TO BE DETERMINED

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

The Construction Manager agrees to commit key personnel throughout the duration of the Project as identified in **Exhibit C**, subject to the continued employment of any named individuals by the Construction Manager. Construction Manager shall promptly notify the Owner if services of any one of the listed key personnel become

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unavailable due to circumstances beyond the Construction Manager's control – e.g., extended illness or disability, death, or termination of employment, etc. Owner shall have the right to interview and select alternate key personnel employed by the Construction Manager to replace the unavailable key personnel. Construction Manager shall agree to provide the services of the alternate key personnel selected by Owner. Construction Manager is not entitled to additional compensation for any such substitution(s) of the key personnel. The assignment of key personnel shall also include members of the Construction Manager's consultants.

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

The staffing plan based on the current schedule and hourly rates is included in **Exhibit A**

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if ~~any:~~any (also see **Exhibit C**):

.1 Cost Estimator:
(List name, legal status, address and other information.)

.2 Other consultants:

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

None, unless agreed to in writing by the Owner.

§ 1.1.15 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager ~~shall appropriately~~ may adjust the ~~schedules,~~ schedule, and the Construction Manager's services and the Construction Manager's ~~compensation.~~ compensation may be adjusted as mutually agreed to by the parties. The Owner and the Construction Manager shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Construction Team.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this ~~Agreement.~~Agreement whether performed by the Construction Manager, its employees or agents, and the Construction Manager's consultants as enumerated in Sections 1.1.11 and 1.1.13 of this Agreement and any other services included in this Agreement as Basic Services.

§ 2.2 ~~The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.~~ Any other Paragraph or Section in this Agreement, the Contract Documents or any other document to the contrary notwithstanding, all services provided by the Construction Manager under this Agreement shall be performed in a reasonably prompt manner and in accordance with the standard of reasonable care and skill exercised by a construction manager of recognized experience and expertise similar to the Construction

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Manager's in the construction of public school facilities. The Construction Manager shall be responsible for the degree of care and skill for all services provided hereunder whether such services are provided directly by the Construction Manager, its employees or agents, or by the Construction Manager's consultants hired by the Construction Manager.

The Construction Manager acknowledges that the services to be provided by the Construction Manager under this Agreement shall include assisting the Owner in complying with the Owner's obligations set forth in Michigan Revised School Code (MCL 380.1 et seq., including, but not limited to 380.1264, as amended) the School Building Construction Act (the "Act") (MCL 388.851 et seq., as amended), the Occupational Code (MCL 339.2011, as amended), the Stille-Derossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.) and the Michigan Building Code. The Construction Manager shall also assist the Owner in complying with all of the Owner's competitive bidding requirements under Sections 1267 and 1274 of the Michigan Revised School Code, as amended. While the Construction Manager does not take responsibility for providing legal advice or design responsibility, the services of the Construction Manager shall be provided consistent with those statutes. Further, the Construction Manager shall be responsible for all costs incurred to correct any action taken by the Owner based on the Construction Manager's services which are inconsistent with the requirements of those statutes. Finally, the Construction Manager acknowledges that for purposes of the Act, the Construction Manager is designated as the person qualified to supervise and is in charge of construction.

§ 2.3 ~~The~~ Unless modified by this Agreement, the Construction Manager shall provide its services in conjunction ~~with~~ with, and where indicated in this Agreement in reliance upon, the services of an Architect as described in AIA Document ~~B132™ 2009,~~ B132™ 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition.~~ Edition, as modified between Owner and Architect. The Construction Manager shall not be responsible for ~~actions taken by the Architect.~~ the negligence, breach of contract or wrongful conduct of the Owner or the Owner's separate contractors, suppliers, or consultants, any Contractor or subcontractor or supplier of any tier, the Architect or its consultants, or any of their agents or employees, or any other person(s) or entities performing portions of the Work. However, nothing herein shall relieve the Construction Manager of its duties pursuant to this Agreement.

§ 2.4 The Construction Manager shall identify a ~~representative~~ Principal-in-Charge authorized to act on behalf of the Construction Manager and fully commit the Construction Manager's resources with respect to the Project. The Construction Manager's Principal-in-Charge shall be identified on **Exhibit C.**

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall ~~maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~ obtain and maintain the following insurance during and for the duration of this Agreement at no additional cost to the Owner. The insurance required by Section 2.6 shall be written for not less than the limits specified or required by law, whichever coverage is greater. Coverages, whether written on an "occurrence" or "claims-made" basis, shall be obtained and maintained without interruption from a company or companies lawfully authorized to do business in the State of Michigan, and with an A.M. Best's Rating of "A-", or better, from the date of commencement of operations under this Agreement until the date of final payment and termination of any coverage required to be maintained after final payment.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than ~~($) for each occurrence and in the aggregate for bodily injury and property damage.~~ the following:.

.1 General Aggregate	$ 4,000,000
Each Occurrence (Bodily Injury and Property Damage)	$ 2,000,000
.2 Excess Umbrella Liability	
Each Occurrence	$15,000,000
General Aggregate	$15,000,000

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§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than ~~($) combined single limit and aggregate for bodily injury and property damage~~ the following:

Bodily Injury:	
Each Person	$2,000,000
Each Accident	$2,000,000
Property Damage	$2,000,000
Each Accident	$2,000,000
or	
Combined Single Limit (Bodily Injury and Property Damage):	
Each Accident	$2,000,000

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation ~~at~~ that meets or exceeds the legal statutory limits and Employers Liability with a policy limit of not less than ~~($)~~ the following:

Each Accident:	$1,000,000
Disease, Policy Limit:	$1,000,000
Disease, Each Employee:	$1,000,000

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than ~~($)~~ the following per claim and in the aggregate.

.1 The Construction Manager shall maintain in force available for this Project professional liability insurance providing at a minimum $5,000,000 per occurrence and $5,000,000 in the aggregate, for liability arising out of any negligent acts, errors and omissions in the Construction Manager's, its employees, agents, and Construction Manager's consultants rendering of or failure to render professional services under this Agreement, including without limitation Construction Manager's services described under Article 3 and Article 4 and any other services identified in Article 12 or elsewhere in this Agreement as a Basic Service, as well as any and all subsequent addition or additions or amendments thereto. Insurance amounts must be annually renewed and maintained in force for a period of not less than the Statute of Limitation and Statute of Repose periods in the state where the Project is located after the Project's relevant Date of Substantial Completion or the last day service is rendered by the Construction Manager on the Project, whichever shall be the later. The Construction Manager shall immediately notify the Owner if this insurance becomes not available or the required coverage amount is substantially changed from the current coverage carried by the Construction Manager or as required herein.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates ~~will show~~ shall be endorsed to name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. See Certificates of Insurance attached hereto as **Exhibit E** and incorporated herein by reference. Such Certificates of Liability Insurance must be endorsed to include the Owner and its consultants as an additional insured on the commercial general liability, automobile policies and umbrella or excess policies and must provide that the Owner will be given at least thirty (30) days' notice of cancellation or change in insurance coverage.

With respect to any of the insurance policies provided by the Construction Manager pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are cancelled or not renewed, the Construction Manager shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Construction Manager shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made"

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policies shall be annually renewed and maintained in full force and effect for three (3) years from the date of completion of the Project.

In addition, if at any time throughout the Term of this Agreement Owner desires Construction Manager to increase any or all of the above-referenced minimum insurance requirements, Owner shall request a price from the Construction Manager for said cost. If Owner, then, chooses to increase said minimum insurance requirements, Owner shall reimburse the Construction Manager for the difference of the insurance premium(s) at cost without any mark-up.

The Construction Manager shall ensure that the Contract Documents applicable to the Contractors and Subcontractors require that Contractors and Subcontractors to include the Owner and its consultants as additional insureds on all Comprehensive General Liability, Automobile and umbrella or excess policies applicable to the Project held by Contractors and Subcontractors.

§ 2.6.6.1 WAIVER OF SUBROGATION.
See AIA A232-2009, Article 11.3.7.

§ 2.6.7 The Construction Manager shall maintain for this Project pollution liability insurance providing Two Million Dollars ($2,000,000) per pollution event and Two Million Dollars ($2,000,000) policy aggregate.

§ 2.7 The Construction Manager, its employees, agents and Construction Manager's consultants shall maintain all necessary licenses, permits or other authorizations necessary to act as licensed (or registered) professionals for the Project until the Construction Manager's and Construction Manager's consultants' duties hereunder have been fully satisfied.

§ 2.8 Basic Compensation of the Construction Manager and of the underlying school construction Projects will be financed through the Owner's issuance of General Obligation Unlimited Tax Bonds (the "Bonds"), if such election is successful. The Bonds establish as a condition of this Agreement a fixed limit of the Cost of the Work.

The Construction Manager shall not provide any further services until the Construction Manager receives written notice from the Owner that the Owner has issued the above-referenced Bonds and authorizes the Construction Manager to proceed under this Agreement, unless otherwise directed by the Owner in writing. Notwithstanding any other provision of this Agreement to the contrary, the Construction Manager acknowledges that compensation of any services to be performed by the Construction Manager are expressly contingent upon the Owner's issuance of General Obligation Unlimited Tax Bonds for all Projects. In the event that the Owner does not issue such Bonds, in the complete discretion of the Owner, the Owner may terminate this Agreement and the Owner shall not be responsible for compensating the Construction Manager. Notwithstanding any other provision of this Agreement to the contrary, the Construction Manager acknowledges that the Construction Manager must receive the Owner's Approval after each completed Phase hereunder and may not proceed to the next Phase without the Owner's express approval to proceed.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition (Please see Exhibit H – Scope of Services for additional requirements.)
The Construction Manager's Basic Services ~~consist of those described in Sections 3.2 and 3.3~~ include those described in Articles 3 and 4 and any other services identified in Article 12 or elsewhere in this Agreement as Basic Services unless specifically designed as an Additional Services herein, and include but shall not be limited to and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.1.1 The Construction Manager accepts the relationship of trust and confidence established by this Agreement, covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill, judgment and fiduciary responsibilities in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; and to perform its services in an expeditious and economical manner consistent with the Owner's interests. The Construction Manager shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 3.2 Preconstruction Phase

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§ 3.2.1 The Construction Manager shall review and analyze the program and other information furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project considering the Owner's long term plans regarding facilities, systems and equipment, and shall assist the Owner and the Architect in order to arrive at a mutual understanding of ~~such requirements with the Owner and Architect.~~the program, schedule, construction budget and other design parameters.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager shall maintain a current budget statement for the Project.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the ~~Project.~~Project, but not less than monthly, or as otherwise reasonably requested by the Owner.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction ~~Manager shall provide cost~~ Manager, in conjunction with the Architect, shall provide cost-benefit evaluations of those alternative materials and systems and may also provide its own suggestions. It is understood that the Cost of the Work and Project budget will be set by these estimates.

§ 3.2.5 The Construction ~~Manager~~ Manager, at the Owner's direction, shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically in writing, at least monthly or at other appropriate intervals agreed to by the Owner and Construction Manager, update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager ~~shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect,~~ in conjunction with the Architect shall prepare and update in writing at least monthly and at the end of each Design Phase, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and shall make recommendations for corrective action. The Architect shall be entitled to rely upon the Construction Manager's estimates in the performance of Architect's services, unless Architect knows or should have known the estimates to be incorrect. In that event, the Owner, Architect, and Construction Manager must agree to meet in order to agree upon the estimate.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations for revisions whenever the ~~Construction Manager determines that~~ design details adversely affect constructability, cost or schedules.

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§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. The Construction Manager is to provide to the Owner a schedule of all categories of Work that it recommends to be separately bid, along with the estimated cost of each. Efforts shall be made to avoid unnecessary Contractor to Subcontractor relationships, along with their resultant pyramiding Contractor mark-up costs, when such are not beneficial for the Owner.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, ~~including~~ including, but not limited to, phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, ~~including~~ materials and equipment including, but not limited to, those that must be ordered well in advance of construction, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of ~~materials,~~ products, materials and equipment, including those that must be ordered well in advance of construction. The Construction Manager shall further ensure that cost estimates based on preliminary plans will include purchase recommendations on products, materials and/or equipment requiring long lead times and recommendations on early bid packages, pre-purchase of products, materials, equipment and systems of construction, which are to be incorporated into the Contract Documents, and other similar options.

§ 3.2.14 The Construction Manager shall assist the Owner and Architect in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for ~~quasi-governmental~~ quasi-governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall develop and submit the list of prospective bidders to whom copies of the bidding documents are to be sent for the Architect's review and the Owner's ~~approval.~~approval (which submission shall not be construed to exclude other parties permitted to bid under applicable law). Additionally, the Construction Manager acknowledges that the services to be provided by the Construction Manager under this Agreement shall include assisting the Owner in complying with all of the Owner's competitive bidding requirements under Sections 1267 and 1274 of the Michigan Revised School Code, as amended.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the ~~Architect, shall issue bidding documents to bidders~~ Architect and in

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consultation with the Owner, shall prepare and issue bidding documents to bidders, prepare and publish necessary bid advertisements, and conduct pre-bid conferences with prospective bidders. The Construction Manager shall assist the Owner and Architect in: (1) obtaining competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) recommending awards and preparing contracts for construction. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda. All bid documents shall include the modified form of construction contracts that will be used. Said form shall be reviewed and approved by the Owner's legal counsel prior to issuance of any bidding documents. The Construction Manager (with the Architect's assistance) shall include in the bidding documents a requirement that Contractors provide adequate training, manuals and facility systems information once the relevant portion of the Project is completed.
Construction Manager shall not distribute any bidding or procurement information to any third party without the Owner's and/or Architect's prior written approval.

§ 3.2.20 ~~The Construction Manager shall receive bids, prepare bid analyses~~ After the Owner receives bids, the Construction Manager, with the assistance of the Architect, shall review bids, prepare bid analyses, conduct post-bid interviews and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids. When recommending awards to the Owner, it is the Construction Manager's responsibility to confirm to the Owner in writing that the successful bidder is the "lowest responsible bidder" as that term is used in Attorney General Opinion, 1959-60, No. 3303, Vol. 1, p. 169. All references to Arbitration shall be removed from each AIA type contract prepared, including, but not limited to, Arbitration language within the Standard Form of Agreement Between Owner and Contractor and the General Conditions of the Contract for Construction. The Construction Manager will conduct pre-award conferences with successful bidders and prepare the form of construction contract, which shall be subject to review by the Owner's legal counsel.

§ 3.2.21 The Construction Manager shall ~~assist the Owner in preparing Construction Contracts and~~ prepare the Construction Contracts for the Owner's review and approval and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors. The Construction Manager will draft Construction Contracts that are in no way inconsistent with any provision of this Agreement or General Conditions which shall be subject to review and approval by the Owner's legal counsel.

§ 3.2.22 The Construction ~~Manager~~ Manager, in conjunction with the Architect, shall advise the Owner as to all building and special permits required for the Project and shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in ~~connection with the Owner's responsibility for~~ filing documents required for the approvals of governmental authorities having jurisdiction over the Project. The Owner shall have the final authority as to which governmental authorities have jurisdiction over the Project as well as the extent to which they have jurisdiction over the Project. As such, the Construction Manager shall only file with governmental authorities the documents the Owner concurs should be so filed.

§3.2.23 The Construction Manager shall keep the Architect and the Owner informed of any changes in requirements, general market conditions, or in construction materials, systems or equipment as the Drawings and Specifications are developed.

§3.2.24 In the event that the lowest bid(s) relative to any Project(s) exceed(s) the funds appropriated for the Project or the final estimates provided by the Construction Manager, as approved by the Owner, the Construction Manager shall assist the Architect in consultation with and at the direction of the Owner, shall proceed in accordance with Section 6.5 hereof, as part of the Construction Manager's Basic Services with no additional cost to the Owner.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 ~~Subject to Section 4.3, the~~ The Construction Manager's responsibility to provide Construction Phase Services commences with the award of ~~the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~ any Contract for Construction and terminates 30 days after the date the Owner accepts

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the final Certificate for Payment, issued by the Architect or 30 days after final payment to all Contractors is due, whichever is earlier, except for those responsibilities detailed in Section 3.3.29 and Article 12.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager shall provide qualified daily, full-time on-site field supervision any time construction is taking place. The Construction Manager acknowledges that for purposes of the Act, the Construction Manager is designated as the person qualified to supervise construction.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser ~~Edition. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.~~ Edition, as modified by this Agreement or as mutually agreed to by the Owner, Architect and Construction Manager. The terms of this Agreement shall control any inconsistencies between this Agreement and the General Conditions of the Contract.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project ~~schedule and the Contract Documents.~~ schedule, cost estimates, and the Contract Documents. Such duties shall include verification that all necessary submittals of the Contractors, including but not limited to insurance certificates and performance/payment bonds, are timely received from the Contractors. The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The Owner reserves the right, in its sole discretion, to remove or change any of the Construction Manager's personnel. Prior to actual removal and/or substitution, the Owner shall notify the Construction Manager of its intent to remove such employee and the Construction Manager shall replace such employee as soon as reasonably possible with an employee which the Owner deems acceptable.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, in writing, at least monthly or as otherwise agreed by the parties, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, materials and equipment, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings at least biweekly with the Owner and other relevant parties, to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

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§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and ~~Architect~~ Architect, at least monthly, and in writing, as to variances between actual and budgeted or estimated ~~costs.~~ costs and how the same relate to the Owner's fixed limit. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the ~~Project.~~ Project for review and approval by the Owner, on a monthly basis, and when requested by the Owner and advise the Owner and Architect as to variances between actual and budgeted estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. The Construction Manager agrees that the Owner or any of its duly authorized representatives shall, for a period not less than seven (7) years from the date of Substantial Completion, have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Construction Manager related to the Agreement for any reason.

The Construction Manager's accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. The Owner acknowledges that some categories of the Construction Manager's costs are incurred on a company-wide basis and therefore cannot be precisely allocated to this Agreement. In order to reduce the costs of further review and audit of the Construction Manager's records related to the Cost of the Work, the parties have or will agree to certain fixed prices, rates or percentages in the Contract Documents as a good faith agreement on those categories of Cost of the Work and therefore agree to waive further review, audit or adjustment of the agreed fixed prices, rates or percentages. The Owner further acknowledges that it has had sufficient opportunity to review the Construction Manager's proposed fixed prices, rates and percentages prior to agreement upon them.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 ~~Not more frequently~~ At intervals appropriate to the Project and Contract Documents, but not less than monthly, the Construction Manager shall review and certify to the Owner, after consulting with the Architect, the amounts due the respective Contractors as follows:

.1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the ~~Architect.~~ Architect and Owner.

.2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the ~~Architect.~~ Architect and Owner.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's visits, inspections and evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that the Work has progressed to the point indicated and that, to the best of the Construction Manager's knowledge, information and belief, the ~~Work has progressed to the point indicated and the~~

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quality of the Work is in accordance ~~with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of~~ with the Contract Documents understanding minor deviations from the Contract Documents ~~prior to completion and to specific qualifications expressed by the Construction Manager.~~ will be corrected during punchlist activities, to the reasonable satisfaction of the Owner. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) ~~made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2)~~ reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; ~~(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4)~~ or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.12.5 As part of Basic Services, the Construction Manager shall, on a monthly basis, provide to the Owner a list of Contractors to be paid and in what exact amount(s). When the Construction Manager provides the Owner with such list, it indicates to the Owner that both the Architect and Construction Manager have reviewed and confirmed the Work provided to date and the progress made under each individual Contractor's contract in accordance with Paragraphs 3.3.12.3 and 3.3.12.4 above. When the Owner provides a check to the Construction Manager in the amount(s) requested, it is understood and acknowledged by the Construction Manager that such check is being held "in trust" by the Construction Manager only to pay the Owner's Contractors in the amounts indicated, except the amount that relates directly to the Construction Manager's Compensation will not be deemed to be held "in trust". The Construction Manager shall also provide a "crime insurance policy" or provide an endorsement to its Certificate(s) of Insurance which in essence provides the same coverage with minimum limits of $5,000,000.00 and the Construction Manager shall be responsible for any required deductibles, if any. Additionally, the Owner shall be named as an additional insured on such policy to the extent permissible, at no additional cost to the Owner.

§ 3.3.13 The Construction Manager shall review the safety programs developed and implemented by each of the Multiple Prime Contractors ~~solely and exclusively~~ for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager will also conduct regular periodic safety inspections and timely inform both the Owner and the Contractors of any unsafe conditions discovered during these inspections or disclosed to Construction Manager at any time, and shall direct the relevant Contractor to correct such conditions. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine ~~in general~~ that the Work of each Contractor is being performed in accordance with the requirements ~~of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work.~~ of the Contract Documents and endeavor to guard the Owner against defects and deficiencies in the Work. The duties and responsibilities of the Construction Manager shall in no way waive, limit or excuse the Contractor's obligations to the Owner under the Contract Documents. In order to make such determination, the Construction Manager shall assign a representative of the Construction Manager to the Project who will be present while Work is in progress, and on-site to inspect the site and Work, as often as necessary and appropriate to the stage of construction, to familiarize the Construction Manager with the progress and quality of the Work and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the Contract Documents and construction schedule, and shall provide prompt notice in writing to the Owner and Architect of any major or material deviations from the Contract Documents in the Work. The Construction Manager shall provide services at no additional cost, made necessary by major defect or deficiencies in the Work of the Contractor(s) which, through reasonable care, should have been discovered by the Construction Manager and promptly reported to the Owner and the Contractor(s), but which the Construction Manager failed to so discover and/or report.

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For purposes of this Agreement, the term "inspect" shall be defined as the evaluation of construction and materials used therein, sufficient to permit the Construction Manager to render his or her professional opinion as to the Work conforming with the Contract Documents.

The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall consult with and timely notify the Architect about the rejection. The Construction Manager shall promptly notify the Owner in writing of the intent to reject such Work and shall reject such nonconforming Work unless the Owner stops the Architect and the Construction Manager in writing within twenty-four (24) hours after being notified. Upon rejection, the Construction Manager shall direct the Contractor(s) to take appropriate corrective action, and advise the Owner of the corrective action. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the ~~Owner,~~ Owner and in conjunction with the Architect, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect and Owner of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent expressly authorized by law and provided in this Agreement. The Construction Manager shall not have direct control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents provided that on the basis of its on-site inspections, the Construction Manager has reported to the Owner any construction means, methods, techniques, sequences or procedures that do not appear to conform with industry standards, and has also reported to the Owner any Work that appears not to be in conformance with the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner, its separate consultants, contractors or any Contractor or Multiple Prime Contractors, Subcontractors, the Architect or its consultants, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect and Owner requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are ~~accepted,~~ accepted and approved by the Architect and Owner, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. The Construction Manager will create, update and provide to the Owner a numbered change order log in conjunction with each Contractors' submitted progress reports and shall contemporaneously review all changes and potential changes in the Work with the Owner and Architect for reason, cost, cause and responsibility, and identify whether such change is the result of an error or an omission made by the Architect.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of ~~Claims, subject to Section 4.3.1.7.~~Claims.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the ~~Project under the management of the Construction Manager.~~ Project. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to

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the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, ~~or in the absence of an approved Project submittal schedule,~~ and in all instances with such reasonable promptness as to cause no delay in the critical path of the Work and without financial impact to the Owner or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect. The Construction Manager will evaluate the cost of substitutions proposed by Contractors.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, delays and other similar relevant data as the Owner may require. The log shall be available to the Owner and Architect.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or ~~otherwise as agreed to by the Owner,~~ more frequently as agreed to, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

.1 Work completed for the ~~period;~~period for each Contractor and the Project as a whole, including percentage of completions;
.2 Project schedule status;
.3 Submittal schedule and status report, including a summary of remaining and outstanding ~~submittals;~~ Submittals;
.4 Request for information, Change Order, and Construction Change Directive status reports;
.5 Tests and inspection reports;
.6 Status ~~report~~ reports of nonconforming and rejected Work;
.7 Daily logs;
.8 ~~Summary~~ Summaries of all Multiple Prime Contractors' Applications for Payment;
.9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
.10 Cash-flow and forecast reports; and
.11 Any other items the Owner may require:

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

.1 Contractor's work force report;
.2 Equipment utilization report;
.3 Cost summary, comparing actual costs to updated cost estimates; and
.4 Any other items as the Owner may require:

§ 3.3.21 ~~Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site~~ The Construction Manager and each Contractor shall maintain at the Project Site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, ~~Samples~~ Samples, purchases, materials, equipment, applicable handbooks, maintenance and operating manuals and instructions and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the ~~Architect~~ Architect, Owner and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall ~~observe~~ arrange, observe, coordinate and facilitate the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

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§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, ~~jointly~~ in addition to or in conjunction with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall ~~prepare, and the Construction Manager and~~ obtain and review a certificate of substantial completion prepared by the Contractor, and the Construction Manager and the Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion ~~of the Work.~~ of the Work with the assistance of the Owner and Architect. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including ~~warranties~~ warranties, as-built documents and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment for each Contractor upon the Contractor's compliance with the requirements of the Contract Documents. The Construction Manager will provide marked-up prints, drawings, and other data furnished by contractors to the Architect for inclusion in as-built drawings. Such as-builts shall be provided to the Owner in both reproducible drawing format and digital format as specified by the Owner. Digital format shall include all of the following:

.1 Copies of all drawings in in DWG or DXF and AutoCAD formats; and
.2 All digital files shall be presented in a flash drive in PDF format.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the ~~Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.~~Owner.

§ 3.3.29 ~~Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.~~As part of its Basic Services, the Construction Manager shall review and discuss any outstanding issues with the Owner at twenty-three (23) months following the Date of Substantial Completion. Construction Manager will assist the Owner in resolving such outstanding issues, as necessary, and will provide call-back services related to such outstanding issues, facility operations and performance for a period of thirty-six (36) months following the date of Substantial Completion.

~~ARTICLE 4 ADDITIONAL SERVICES~~

§ 3.3.30 Prior to the termination of the Construction Manager's services, the Construction Manager shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or the Construction Manager is a party concerning the Project as part of its Basic Services.

§ 3.3.31 To the extent required by law or as required by the Owner, the Construction Manager shall require and ensure each Prime Contractor for each separately bid portion of the Work, under its Standard Form of Agreement Between the Owner and Contractor, to obtain and maintain a performance bond and payment bond in an amount covering that Prime Contractor in a form and with a surety acceptable to the Owner in connection with its obligations thereunder.

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The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any Work at the Project site.

§ 3.3.32 The Architect is required under its contract with the Owner to prepare or provide a set of reproducible record drawings showing changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor(s) through the Construction Manager to the Architect, including, but not limited to, the location of water, sewer, telephone, electric, gas, video, data and any other utility lines. The Construction Manager shall certify these drawings as accurate; provided the Construction Manager's certification shall be made to the best of the Construction Manager's knowledge. These drawings shall be submitted to the Architect within sixty (60) days of Project closeout and prior to Final Payment.

§ 3.3.33 As a part of its Basic Services, the Construction Manager shall assist the Owner and the Architect in determining existing conditions.

§ 3.3.34 As a part of its Basic Services, the Construction Manager shall assist the Owner and the Architect in the planning and sequencing of construction activities in order to accommodate necessary work during occupancy in a manner acceptable to the Owner.

§ 3.3.35 As a part of its Basic Services, the Construction Manager shall assist the Owner in the event of the termination or default of the Architect or Contractor and by major defects or deficiencies in the work of the Architect or Contractor. This includes taking necessary measures to meet the Project schedule and budget. Notwithstanding the foregoing:

.1 The Construction Manager Basic Services does not prohibit the Owner from requiring the surety, if any, to reimburse the Construction Manager/Owner for such services performed due to such default; and

.2 This provision shall not apply in the event the Construction Manager makes a recommendation of a Contractor to the Owner and the Owner elects to select a different Contractor.

§ 3.3.36 On the basis of its regular on-site inspections, Construction Manager will report to the Owner any observed construction means, methods, techniques, sequences, or procedures that do not appear to conform with industry standards, and shall also report to Owner any work that appears not to be in conformance with the Contract Documents or deficient in the quality of workmanship.

§ 3.3.37 The Construction Manager shall provide daily full-time on-site field supervision during the entire Construction Phase. The Owner reserves the right to approve the Construction Manager's field supervisor, and to require the replacement of the field supervisor upon two (2) weeks' notice.

§ 3.3.38 The Construction Manager shall inspect the Work of the Contractors on the Project as it is being performed to assure that the work performed and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of this Project, the Architect shall determine the extent of the Work that does not meet the requirements and the Construction Manager shall direct the Contractor(s) to take appropriate corrective action, and advise the Owner of the corrective action.

§ 3.3.39 The following shall be provided by the Construction Manager as a part of its Basic Services:

(1) Preparation of documentation for alternate bid or proposal requests proposed by the Owner
(2) Preparation for, or attendance at, public presentations, meetings or hearings
(3) Assistance to the Initial Decision Maker, if other than the Architect
(4) All necessary fast-tracking, equipment and material expediting and bid-packaging deemed necessary in order to meet the Owner's schedule.

§ 3.3.40 As the Architect progresses through Schematic Design, Design Development, and Construction Documents, the Construction Manager shall prepare and update the Cost of the Work estimates, as provided in the Project Preconstruction Schedule, with increasing detail and refinement in order to assure the Owner that the Project scope

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can be accomplished within the Owner's established Project budget. The Construction Manager shall provide the Cost of the Work estimates within the standard of care of the profession. The Cost of the Work estimates must not mislead the Owner and/or the Architect in planning and designing the Work.

§ 3.3.41 The Construction Manager shall require in each Project Manual/Bid Package that it issues on behalf of the Owner that each Contractor certifies to the Owner that no owner, employee, agent, representative, contractor and/or other personnel of the Contractor will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). This Certification shall be accomplished through obtaining an Affidavit Of Compliance – Criminal Background Checks, in a form approved by the Owner. Additionally, the Construction Manager shall also obtain such Certification from each owner/employee of the Construction Manager who will work on the Project and be on site at any of the Owner's facilities.

§ 3.3.42 It is acknowledged by the Construction Manager that a substantial portion of the Project shall consist of the acquisition and implementation of a technology and security system(s). In that regard, the Owner agrees to directly contract for and utilize the services of a technology and security designer in connection with designing the technology and security system(s). However, the Construction Manager agrees that it will coordinate the integration of the technology and security installation with the entire construction Project.

§ 3.3.43 The Construction Manager shall coordinate the submission of all close-out documents for the Architect's review, which close-out documents will be prepared by the Contractors and submitted to the Construction Manager for its review. Immediately following the Architect's review and approval, the Construction Manager shall provide the Owner with one (1) paper copy and one (1) electronic copy of all close-out information. The Construction Manager is responsible to require and ensure that As-Constructed Record documents for civil (including site work) engineering and As-Designed documents for all other disciplines from the following Contractors are provided: mechanical, plumbing, electrical and site utilities. Additionally, the Owner shall also be provided with a copy of a complete electronic file from the Project including RFI's, submittals, Construction Documents including Addenda, bulletins, ASI's, Drawings, Specifications, Change Documents and Project Manuals. Close-out documents shall include but are not limited to operations manuals, warranties, videos of training sessions, permit information and approvals.

ARTICLE 4 BASIC SERVICES

§ 4.1 ~~Additional Services listed below are not included in Basic Services but may be~~ Basic Services identified as Construction Manager's responsibility are listed in the table below are included in Basic Services and are required for the Project. The Construction Manager shall provide the listed ~~Additional~~ Services ~~only if~~ specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section ~~11.2.~~ 11.1.2.

(Designate the ~~Additional~~ Services the Construction Manager shall ~~provide~~ include and provide as Basic Services in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner ~~or~~ ~~Not~~ or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	Owner's Architect	
§ 4.1.2 Architectural interior design (B252™–2007)	Owner's Architect	
§ 4.1.3 Tenant-related services	Not Provided	
§ 4.1.4 Commissioning (B211™–2007)	Owner (See Section 3.3.23	The Construction Manager shall oversee basic start-up and assist commissioning of major building components and equipment as a Basic Service. The Construction Manager will assist and coordinate with the Owner, Architect and

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		Commissioning Agent
§ 4.1.5 LEED® certification (B214™–2012)	Not Provided	
§ 4.1.6 Furniture, furnishings, and equipment design (B253™–2007)	Owner's Architect	Construction Manager and Architect shall assist and coordinate

§ 4.2 ~~Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.~~

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this ~~Agreement.~~ Agreement if mutually agreed in writing prior to commencing such services, or if required by circumstances beyond the Construction Manager's control. In the absence of mutual agreement in writing, the Construction Manager shall notify the Owner prior to providing Additional Services and secure Owner's written approval prior to commencing such services. If the Owner deems that all or a part of such Additional Services is not required, the Owner shall give prompt written notice to the Construction Manager, and the Construction Manager shall not provide those services. Except for services required due to the fault of or caused by the Construction Manager, its employees, agents and Construction Manager's consultants, acts, errors, omissions, etc., the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager ~~to compensation pursuant to Section 11.3.~~ to compensation at the rates set forth in **Exhibit A** hereto. If however, services described in this Section 4.3 below are required due to circumstances within the control of the Construction Manager, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Construction Manager for Additional Services that became necessary as a result of the fault or professional negligence of the Construction Manager, its employees, agents, and Construction Manager's consultants.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

.1 Services necessitated by a ~~change in the Initial Information,~~ substantial (cardinal) change in the initially agreed upon Project scope, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery ~~method, or bid packages in addition to those listed in Section 1.1.6;~~ method;

.2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;

.3 ~~Preparation of documentation for alternate bid or proposal requests proposed by the Owner;~~ ;

.4 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~

.5 ~~Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;~~

.6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such ~~Work;~~ Work when such changes are not the fault of or caused by the Construction Manager's employees, agents and Construction Manager's consultants negligent acts, errors, omissions, etc.;

.5 ;

.6 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after the time frame established in Section 3.3.1.;

.7 ~~Assistance to the Initial Decision Maker, if other than the Architect; or~~ Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

~~.8 Service as the Initial Decision Maker.~~

~~§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the~~

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~~need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:~~

~~.1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.~~

~~.2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.~~

~~.3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.~~

§ 4.3.3 If the services covered by this Agreement have not been completed within ~~( ) months of the date of this Agreement,~~ sixty (60) months from the date of the sale of the Bonds, and if sold in separate series, from the date of the sale for that particular series, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be ~~compensated as Additional Services.~~ subject to negotiation.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 ~~Unless~~ Acknowledging the Owner's status as a public body, and unless otherwise provided for under this Agreement, the Owner shall provide information reasonably requested by the Construction Manager in writing, in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special ~~equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.~~ equipment, systems,. Owner-furnished equipment, move-in schedule, and site requirements. The Construction Manager will notify the Owner when any such information that is time sensitive along with a reasonable time frame for the receipt of same. However, the failure by the Owner to furnish any information to the Construction Manager shall not relieve the Construction Manager of any liability hereunder, nor extend the time in which the Construction Manager is to perform such duties unless the Construction Manager notifies the Owner in writing that the lack of such information may impede the progress of the Project.

§ 5.2 The Owner shall ~~establish and periodically update the Owner's budget for the Project,~~ provide a budget for the Project, based on consultation with the Architect and Construction Manager, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. ~~If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.~~

§ 5.3 ~~The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2009, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Adviser Edition. The~~ as modified. If requested by the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and ~~Architect, and any further modifications to the agreement.~~ Architect.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the ~~Project.~~ Project subject to the Owner's parameters, which parameters, if any, shall be given to the Construction Manager in writing when such representative is designated. The Owner shall render decisions pertaining to documents the Construction Manager submits ~~in a timely manner~~ within a reasonable period of time in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's ~~services.~~ services subject to the Owner's policies which require Board action. The Construction Manager will notify the Owner when any such decisions are time sensitive along with a reasonable time frame for the receipt of same. The Owner's Designated Representative is identified in Section 1.1.8 above.

Init. /

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§ 5.6 ~~Unless provided by the Construction Manager, the Owner shall furnish~~ When necessary for the Project and requested by the Construction Manager in writing, the Owner shall furnish, with assistance from the Architect and Construction Manager, surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description ~~of the site.~~ of the site, if such surveys are reasonably required by the scope of the Project. The surveys and legal information 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.

§ 5.7 ~~Unless provided by the Construction Manager, the Owner shall furnish~~ When necessary for the Project and requested by the Construction Manager in writing, the Owner shall furnish, with the assistance from the Architect and Construction Manager, 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.~~recommendations, if such surveys are reasonably required by the scope of the Project.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall ~~furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall~~ require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project that it knows to be a fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's ~~services.~~services but the Owner's failure or omission to do so shall not relieve the Construction Manager of its responsibilities hereunder and the Owner shall have no duty of observation, inspection, or investigation. The Construction Manager shall provide the Architect and the Owner prompt notice if it becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. ~~When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.~~

§ 5.13 ~~Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the~~ The Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 ~~Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this~~

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~~Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.~~

§ 5.15 The Owner shall provide the Construction Manager reasonable access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager reasonable access to the Work wherever it is in preparation or progress.

§ 5.16 With respect to Sections 5.6, 5.7, and 5.9, the Construction Manager will assist the Owner in determining what services are necessary and how they will be performed.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect ~~and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the~~. The Cost of the Work does NOT include the compensation of the Architect, its employees, agents or the Architect's consultants, the Construction Manager, its employees, agents or the Construction Manager's consultants, Personnel Reimbursable Rates or General Condition Items, the costs of the land, rights-of-way, financing, ~~contingencies for changes in the Work or other costs~~ other costs which are the responsibility of the Owner, or other costs such as review and permit fees, marketing, Technology Designer, Project Financial Consultant, Project Market Study Consultant, Project Investment Banker, etc., and other "soft costs" that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is ~~provided in Initial Information,~~ fixed as set forth in Section 1.1.3 above and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager. The foregoing statement does not waive the fixed limit of the Cost of Work.

§ 6.3 If ~~the Architect is providing detailed cost estimating services as an Additional Service, and~~ a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 ~~If, prior to the conclusion of the Design Development Phase, the~~ If at any time the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the ~~Architect,~~ Architect and as a Basic Service, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or ~~budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.~~ budget.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of ~~the Design Development~~ any Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;

.2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the ~~Work;~~ Work (including any necessary rebidding); or

.3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Construction Manager, without additional compensation, shall cooperate with the Owner and Architect as necessary to bring the Cost of the Work within the fixed limit. The Construction Manager's cooperation shall be the limit of the Construction Manager's responsibility as a Basic Service under this Article 6 except when such modifications are the fault of or caused by the Construction Manager, its employees, agents and Construction Manager's consultant's negligent acts, errors, omissions, etc.

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ARTICLE 7 COPYRIGHTS AND LICENSES

~~The Construction Manager~~ Unless otherwise stated conspicuously in writing, the Construction Manager, its employees, agents and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction ~~Manager,~~ Manager and the Construction Manager's consultants, if any, ~~and the Owner~~ warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the ~~copyright owner~~ originator of such information or has permission from the copyright owner to transmit such information for its use on the ~~Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.~~ Project or on subsequent projects.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of ~~binding~~ dispute resolution selected in this Agreement within the period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2009, General Conditions of the Contract for ~~Construction.~~ Construction amended for the Project. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 ~~The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.~~ **INDEMNIFICATION**

The Construction Manager shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assigns, from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with Construction Manager's performance of the services pursuant to this Agreement and/or from Construction Manager's violation of any of the terms of the Agreement, including, but not limited to: (i) the negligent acts or willful misconduct of the Construction Manager, its officers, directors, employees, successors, assigns, contractors, consultants and agents; (ii) any breach of the terms of this Agreement by the Construction Manager, its officers, directors, employees, successors, assigns, contractors, consultants and agents; (iii) any violation or breach of any applicable Federal, State or local law, rule, regulation, ordinance, policy and/or licensing and permitting requirements applicable to providing the services; or (iv) any breach of any representation or warranty by the Construction Manager, its officers, directors, employees, successors, assigns, contractors, consultants and agents under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under this Agreement. This Section shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Construction Manager's insurance obligations contained in this Agreement.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section ~~9.7.~~9.6.

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§ 8.2 ~~Mediation~~Alternate Dispute Resolution

§ 8.2.1 ~~Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

A. The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

B. In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to Section 8.2.1A. The mediator shall render his/her decision within seven (7) days of said meeting.

C. The purpose of the mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

D. In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.

E. During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

~~§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 8.2.3 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~

~~*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*~~

~~[ ] Arbitration pursuant to Section 8.3 of this Agreement~~

~~[ ] Litigation in a court of competent jurisdiction~~

~~[ ] Other: *(Specify)*~~

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~~§ 8.3 Arbitration~~

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 ~~If~~Except for payments reasonably disputed in good faith, if the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, for this purpose, the Construction Manager shall give seven (7) days' written notice to the Owner to cure within five (5) business days before suspending services. In the event of ~~a~~ such suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to ~~suspension and any~~ suspension. When the Project is resumed, the Construction Manager make seek an equitable adjustment from the Owner for expenses incurred in the interruption and resumption of ~~the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.~~ Construction Manager's services. However, if the parties cannot agree on the amount of the adjustment, Construction Manager follow the alternative dispute resolution procedure contained in Section 8.2 above.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager ~~shall be compensated~~ make seek an equitable adjustment from the Owner for expenses incurred in the interruption and resumption of ~~the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.~~Construction Manager's services. However, if the parties cannot agree on the amount of

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the adjustment, Construction Manager follow the alternative dispute resolution procedure contained in Section 8.2 above.

§ 9.3 If the Owner suspends the entire Project (not individual projects) for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 ~~Either party~~ The Construction Manager may terminate this Agreement upon not less than ~~seven~~ thirty (30) days' written notice to the Owner should the ~~other party~~ Owner fail substantially to perform in accordance with the terms of this Agreement through no fault of the ~~party initiating the termination.~~ Construction Manager and only if the Owner fails to cure said default within thirty (30) days' of written notice.

§ 9.5 The Owner may terminate this Agreement for any reason upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses ~~then due and all Termination Expenses as defined in Section 9.7.~~ reasonably incurred prior to termination.

~~**§ 9.7** Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below.~~

~~**§ 9.7.1** In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.~~

~~**§ 9.7.2** In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.~~

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~ State of Michigan.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2009, General Conditions of the Contract for Construction, as modified for the Project, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager. In the event of any conflict between this Agreement and the General Conditions, this Agreement shall prevail.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least ~~14~~ seven (7) days prior to the requested dates of ~~execution.~~ execution, unless circumstances require a shorter time frame. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least ~~14~~ seven (7) days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials ~~or toxic substances in any form at the Project site.~~in any form at the Project site including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances or regulated substances or wastes (collectively referred to as "Hazardous Materials"), except as described in this Section. It is, however, acknowledged by the Construction Manager that the Owner has disclosed to it that the school buildings and facilities which are the subject of the construction management services to be provided by the Construction Manager may contain Hazardous Materials. It is further acknowledged that in implementing the construction Projects which may result from the Construction Manager's services, as herein defined, the removal or treatment of such Hazardous Materials may become necessary before any construction is commenced. The Construction manager shall not knowingly approve the use of any asbestos containing building material (ACBM) or any known hazardous building materials to be used in the construction of the Project. Upon the issuance of the Final Certificate for Payment, the Construction Manager shall require each Contractor to certify to the Owner, Architect and Construction Manager that no ACBM or any known hazardous building materials were used in the construction of the Project. The Owner will provide written documentation to the Construction Manager regarding any such Hazardous Material of which it is aware, that it discovers, or that is made known to the Owner. As a Basic Service, the Construction Manager will coordinate services of Hazardous Materials consultant(s) and/or contractor(s) with all other individuals or entities involved in the Project in an effort to minimize to the extent practicable disruption in the Project work and schedule, but shall not be responsible for the performance of such consultant and/or contractor. The Construction Manager shall be responsible to the Owner if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site, or generated during construction, or after it should have recognized such presence and general location, it exacerbates such contamination.

§ 10.7 ~~The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.~~

CONFIDENTIALITY

~~**§ 10.8** If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.~~

§ 10.7.1 The Construction Manager shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Construction Manager, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence). The provisions of Section 10.7 are not limited by this modification, however it shall be interpreted as prohibiting the Construction Manager from using the Owner as a reference or using any photograph or likeness of any School District building, use of its logo or the like, without obtaining the written permission of the Owner's representative identified in Section 1.1.8 above. The Construction Manager may list the School District as a client.

§ 10.7.2 The Construction Manager shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner to the Construction Manager.

§ 10.7.3 The Construction Manager shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the

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confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 10.7.1.

§ 10.7.4 The Construction Manager shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the Services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

§ 10.7.5 The Construction Manager shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Construction Manager to publicity released by the Owner that is detrimental to the reputation of the Construction Manager. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Construction Manager shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 10.7.6 The Construction Manager shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 10.7 are binding upon them.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Included in Construction Phase Services 11.1.2.

§ 11.1.2 ~~For Construction Phase~~ Basic Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Compensation for all Basic Services (including without limitation Work that is subject to Change Orders or Construction Change Directives) is a fixed fee of $10,493,731.00 with a breakdown as follows: 1) a fixed fee of $3,228,457.00 (Construction Manager's Overhead and Profit); plus 2) a fixed fee of $7,111,274.00 (which includes all of Construction Manager's Personnel necessary to complete the Project including the Pre-Construction Phase Services); plus 3) a fixed fee $154,000.00 while the Construction Manager is on site to cover on site office costs, i.e., supplies, equipment, camera, computers, software licenses, cell phones, and mileage; plus 4) General Condition Items as defined in **Exhibit B**. The Construction Manager's Fixed fee shall be paid to the Construction Manager monthly as follows:

77 monthly payments of $136,282.22 from August 2020 through December 2026

If the Project is not completed and the last payment is made to the Construction Manager hereunder, that last payment does not constitute a representation that the Project is complete and, as such, that the Construction Manager shall continue working on the Project, without any additional compensation, until the Owner accepts the Project as completed. The Construction Manager shall manage (at no additional fee) the cost control and reporting process on the entire Bond Issue.

Compensation for Reimbursable Expenses (including General Conditions) shall be on a unit cost basis using the Construction Manager's Costs included in **Exhibit B**. The maximum cost for Reimbursable Expenses shall be established as a not-to-exceed amount at the time of Contractor awards. This mutually agreed upon, not-to-exceed amount for Reimbursable Expenses shall become an Amendment to this Agreement.

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All such Reimbursable Expenses (including General Conditions) shall be provided by the Construction Manager at cost, without any mark-up, to the Owner. Any General Condition items purchased by the Construction Manager for the Project in conjunction with this Agreement which are charged to the Owner shall be the property of the Owner during and at the completion of the Project.

Notwithstanding the foregoing, the fixed fee for Construction Manager's Overhead and Profit and Project Executive's and Project Director's time on the Project is based upon a percentage of the Cost of the Work ($169,918,786.00). If the Scope of the Projects are reduced or increased for any reason whatsoever, the parties shall mutually agree upon a reduced or increased lump sum fee respectively using the percentage (being 1.90%) as the basis for such reduction or increase.

Construction Personnel Costs shall be at actual Cost, without markup, using the Construction Manager's Personnel Costs included in **Exhibit A**, of Construction Manager's staff directly engaged on the Project. However, in the event Scope of the Work is modified, this not-to-exceed amount will have to be modified to arrive at an appropriate reduction or increase in Personnel Cost associated with that specific modified Project.

Based upon the foregoing, the payment to the Construction Manager for all services rendered hereunder shall be a fixed fee of $10,493,731.00 plus mutually agreed to General Condition Items to be provided at cost, without any mark-up.

§ 11.2 For Additional Services designated in Section ~~4.1,~~ 4.3 and 4.3.1, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

TO BE DETERMINED AT A LATER DATE using **Exhibit A** as the basis for determining such compensation.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

TO BE DETERMINED AT A LATER DATE using **Exhibit A** as the basis for determining such compensation.

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager ~~plus (percent (%), or as otherwise stated below:~~at cost and without mark-up:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Refer to **Exhibit** A.

~~Employee or Category~~ ~~Rate ($0.00)~~

§ 11.6 Compensation for Reimbursable Expenses
§ 11.6.1 Reimbursable Expenses ~~are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:~~

~~.1 Transportation and authorized out-of-town travel and subsistence;~~
~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~

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~~.4 Printing, reproductions, plots, standard form documents;~~
~~.5 Postage, handling and delivery;~~
~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
~~.7 Professional photography, and presentation materials requested by the Owner;~~
~~.8 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;~~
~~.9 All taxes levied on professional services and on reimbursable expenses;~~
~~.10 Site office expenses; and~~
~~.11 Other similar Project related expenditures.~~may be incurred by the Construction Manager as necessary for the Project and shall be reviewed and approved by the Owner in writing before such expense(s) is incurred.

~~§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus percent (%) of the expenses incurred.~~

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of Zero ($ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services ~~performed. Payments are due and payable upon presentation.~~ performed unless and to the extent reasonably disputed by the Owner in good faith. Undisputed payments are due and payable within thirty (30) days of the Owner's receipt of the Construction Manager's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

~~%~~ Zero (0%) percent per annum.

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction ~~Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Manager. However, the Owner does reserve the right to withhold payment for disputed amounts, until such time as the dispute is resolved.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the ~~Owner at mutually convenient times.~~Owner. Construction Manager shall submit detailed monthly invoices based on the progress of the Project, Reimbursable Expenses and/or Personnel Costs, if applicable, for approval and payment by the Owner. Owner's payments to the Construction Manager shall not exceed the percentages of the total Basic Compensation for each phase of the Project as set forth in Section 6, or the maximum Reimbursable Expenses allowable.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as ~~follows:~~follows, and are included:

§ 12.1 To the fullest extent possible, the provisions of this Agreement, including the Exhibits, General Conditions, Supplementary Conditions and all other documents constituting the Agreement shall be deemed to supplement and complement each other. In the event of any inconsistency between the provisions of the Contract Documents, which conflict relates to the scope of the Project hereunder, such inconsistency shall be resolved in the manner that defines the Project the most comprehensively. In the event of any other ambiguity between provisions of the Contract Documents, the ambiguity will be resolved by giving effect to the most stringent provision (i.e., the provision, which requires the highest standard of performance).

§ 12.2 The Construction Manager shall, upon completion of the Project, or earlier upon termination of this Agreement, deliver to the Owner all records and files of the Project reasonably obtainable, which shall have been organized in a reasonable manner by the Construction Manager, including all field marked copies of Construction Documents, which shall include all alternates, addenda, bulletins, construction change directives, field orders, and /or other data

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generated by the Contractor during the course of construction of the Project. In addition, the Construction Manager shall review Close-Out Documents provided by each Contractor through the Construction Manager to confirm that all required documents have been provided as required by the Specifications contained in the Project Manual.

§ 12.3 The Construction Manager shall act as the Owner's agent at the site of the Work to the extent so designated in writing and mutually agreed to by the parties to the Agreement. This shall include, but is not limited to the arranging for construction support and general condition items, as reviewed and approved by the Owner

§ 12.4 The Construction Manager shall enforce compliance with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project Site(s) and the surrounding area. The Contractor shall immediately notify the Owner in writing if, during the performance of the Work, the Contractor reasonably determines compliance with any portion of such rules and regulations to be impractical, setting forth the problems of such compliance and suggesting alternative means through which the results intended by such portions of the rules and regulations can be achieved. The Owner may, in its sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations.

§12.5 The Owner, being a public body, shall render decisions within a reasonable time after being requested to do so by the Construction Manager. The Construction Manager shall prepare and submit all recommendations for which approval is required by the Owner as soon as reasonably possible unless another schedule is agreed to by the Owner in writing.

§12.6 The Construction Manager shall disclose to the Owner in writing the special terms and conditions entered into with any Contractor, seller, third party or any other vendor engaged for the Project by anyone other than the Owner. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, equipment rental discounts, rebates, refunds, insurance and surety bonding credits, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

§ 12.7 As part of Basic Services, the Construction Manager shall perform the services identified in the Team Responsibility Matrix, dated March 3, 2020, and attached hereto as **Exhibit G**, under the heading of "Construction Manager." The services required to be performed by the Construction Manager under the Team Responsibility Matrix demonstrates the coordination required by all of the parties, but does not in any way relieve the Construction Manager of any of its contractual obligations required hereunder.

§ 12.8 Architect agrees to render its professional services in accordance with the Project Schedule attached hereto as **Exhibit F**.

§ 12.9 If the Construction Manager is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, epidemics, unavoidable casualties or other causes beyond the Construction Manager's control; or by delay authorized by the Owner pending litigation, mediation, or arbitration, as applicable, or by other causes that the Owner determines may justify delay, then the Construction Manager may seek an equitable adjustment from the Owner to the Contract Time and/or the Construction Manager's Fee and if mutually agreed to by the parties the same shall be ratified in a Change Order. However, if the parties cannot agree on the amount of the adjustment, Construction Manager follow the alternative dispute resolution procedure contained in Section 8.2 above.

§ 12.10 The parties acknowledge the current COVID-19 pandemic that was declared a national emergency by President Trump on March 13, 2020. Given the ongoing nature of the COVID-19 pandemic, the parties recognize that there may be unknown and unforeseeable impacts on the Construction Manager's performance, its productivity, on pricing, material and labor availability and on the supply chain after Contract execution ("COVID-19 Impacts"). To the extent the Construction Manager incurs additional costs or schedule impacts as a result of the COVID-19 Impacts or changes in laws, regulations, codes, laws or official interpretations related to COVID-19 Impacts after execution of the Contract, then the Construction Manager may seek an appropriate adjustment to the Contract Time and/or the

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Construction Manager's Fee to cover such costs and impacts pursuant to a Change Order in accordance with the Contract Documents. However, if the parties cannot agree on the amount of the adjustment, Construction Manager may follow the alternative dispute resolution procedure contained in Section 8.2 above.

§ 12.11 During the Construction Phase, the Owner shall provide "All-Risk Builder's Risk Insurance."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as ~~Adviser~~Adviser, as modified

.2 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~Other documents:

Exhibit A – Personnel Reimbursable Rates
Exhibit B – General Condition Items and General Condition Matrix
Exhibit C - Key Personnel

~~.3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~Exhibit D – Detailed Description of the Project

Exhibit E - Insurance Certificates
Exhibit F – Project Schedule
Exhibit G – Team Responsibility Matrix

~~.4 Other documents:~~Exhibit H – Scope of Services

~~*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*~~

Exhibit I – AIA Document A232-2009, General Conditions of the Contract for Construction, amended for the Project

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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EXHIBIT A

PERSONNEL REIMBURSABLE RATES

See Attached Staffing Plan

Reimbursable Rates for the Project Personnel will be reimbursed using the following rates:

Category	Hourly Rates
Project Director	$120.00 - $125.00
Senior Project Manager	$80.00 - $90.00
Project Manager	$65.00 - $80.00
Assistant Project Manager	$55.00 - $65.00
Senior Superintendent	$80.00 - $90.00
Superintendent	$65.00 - $80.00
Assistant Superintendent	$55.00 - $65.00
Project Engineer	$50.00 - $65.00
Project Coordinator	$45.00 - $50.00
Project Financial Control	$63.00
Fire Safety Manager	$63.00
Safety Manager	$77.00
Estimating	$96.00

Note:

Personnel rates include the salaries of personnel and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

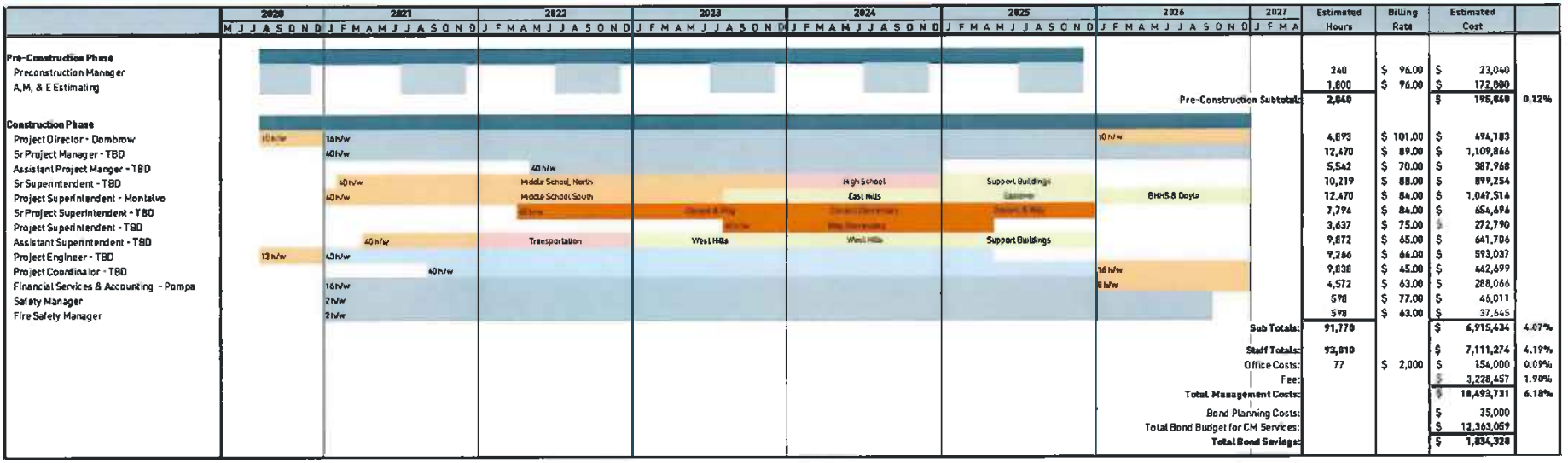
The rates set forth above are valid for the duration of the Project.

Barton Malow
BUILDERS

Bloomfield Hills Schools
2020 Bond Program
Staffing Schedule

Barton Malow
Date: 8/3/20

Total Bond Program: $200,155,000
Construction Value: $169,918,786
Duration: 77



	Estimated Hours	Billing Rate	Estimated Cost	
Pre-Construction Phase				
Preconstruction Manager	240	$ 96.00	$ 23,040	
A,M, & E Estimating	1,800	$ 96.00	$ 172,800	
Pre-Construction Subtotal:	2,040		$ 195,840	0.12%
Construction Phase				
Project Director - Dombrow	4,893	$ 101.00	$ 494,193	
Sr Project Manager - TBD	12,470	$ 89.00	$ 1,109,866	
Assistant Project Manger - TBD	5,542	$ 70.00	$ 387,968	
Sr Superintendent - TBD	10,219	$ 88.00	$ 899,254	
Project Superintendent - Montalvo	12,470	$ 84.00	$ 1,047,514	
Sr Project Superintendent - TBD	7,794	$ 84.00	$ 654,696	
Project Superintendent - TBD	3,637	$ 75.00	$ 272,790	
Assistant Superintendent - TBD	9,872	$ 65.00	$ 641,706	
Project Engineer - TBD	9,266	$ 64.00	$ 593,037	
Project Coordinator - TBD	9,838	$ 45.00	$ 442,699	
Financial Services & Accounting - Pompa	4,572	$ 63.00	$ 288,066	
Safety Manager	598	$ 77.00	$ 46,011	
Fire Safety Manager	598	$ 63.00	$ 37,645	
Sub Totals:	91,770		$ 6,915,434	4.07%
Staff Totals:	93,810		$ 7,111,274	4.19%
Office Costs:	77	$ 2,000	$ 154,000	0.09%
Fee:			$ 3,228,457	1.90%
Total Management Costs:			$ 10,493,731	6.18%
Bond Planning Costs:			$ 35,000	
Total Bond Budget for CM Services:			$ 12,363,059	
Total Bond Savings:			$ 1,834,328	

EXHIBIT B

GENERAL CONDITION ITEMS

Prior to the start of Construction, the Construction Manager shall provide a cost estimate breakdown for all General Conditions required for completion of a Project for the Owner's review and approval, which estimate shall not exceed the amount identified in the 2020 Bond Application For Prequalification without the prior written consent of the Owner. These items will be paid for monthly, at cost, without any mark-up. The Owner shall have the option of providing the Construction Manager with any General Condition items where such items meet or exceed the Construction Manager's reasonable requirements. The Construction Manager has calculated the General Condition Items to be approximately two (2%) percent of the Cost of the Work at a value not-to-exceed $3,148,237.00. However, the previous amount does not include office costs which are calculated at a not-to-exceed amount of $154,000.00.

Any General Condition items purchased by the Construction Manager for the Project in conjunction with this Agreement which are charged to the Owner shall be the property of the Owner during and at the completion of the Project. General Condition Items shall be included in a Contractor's bid package, supplied by the Owner, bid out by the Construction Manager on behalf of the Owner or otherwise agreed to by the parties. The Owner shall have the final decision in determining how these items shall be supplied to the Owner for the Project. General Condition items are identified as follows:

FIELD OFFICE SUPPORT

- Office Trailer Rental
- Office Space or Trailer Setup
- Maintain Field Office
- Security System
- Office Cleaning
- Construction Manager's Trailer Rental
- Construction Manager's Space or Trailer Setup
- Electric Hookup – Trailers and Office
- Electric Usage – Trailers and Office
- Water Hookup – Trailers and Office
- Water Usage – Trailers and Office
- Sewer Hookup – Trailers and Office
- Office Furniture/Furnishings
- Copier/Supplies
- Photocopying Out-sourced
- Drawing Reproduction
- Postage/Overnight Express

TEMPORARY UTILITIES – TEMPORARY HEAT

- Temporary Heat Setup and Maint.
- Temporary Heat-Fuel

- Maintenance of Perm. System
- Temporary Water & Sewer Hookup
- Temporary Water & Sewer Usage
- Temporary Electric Hookup
- Temporary Electric Usage

TEMPORARY FACILITIES, FENCES AND BARRICADES

- Temporary Storage Sheds
- Temporary Toilets/Port-a-johns
- Temporary Fence
- Barricades
- Covered Walks/Overhead Protection
- Temporary Rail
- Temporary Roads
- Job Signs
- Temporary Parking/Bus Services
- Temporary Roof Protection
- Drinking Water
- Temporary Partitions-Dust Part.
- Temporary Ladder & Stairs
- Dust Control, Road Maintenance

WEATHER PROTECTION

- Snow Removal
- Weather Protection Enclosures
- Pumping/De-watering
- Erosion Control

SAFETY AND SECURITY

- Watchman-Security Service
- Guard Shacks
- Safety Program
- Safety Incentives
- Extinguishers
- First Aid Kit
- Hard Hats and Rain Gear
- Safety Signs

CLEAN-UP

- Clean-up Foreman
- Periodic Clean-up
- Final Clean-up
- Final Glass Cleaning
- Hauling trash by truck

- Dumpsters
- Dump Fees with Dumpsters
- Rubbish chutes-install/maintain/remove
- Dump carts

PROTECTION OF FINISHED AND EXISTING WORK

- Protect Existing Facilities
- Protect Finished Work
- Elevator Protection-Cabs and Jambs

TOOLS AND EQUIPMENT

- Surveying Equipment and Supplies
- Small Tools
- Miscellaneous Equipment

MATERIAL HANDLING AND HOISTS

- Temporary Elevator Cabs
- Hoist and Crane Communications
- Cranes
- Crane Operators
- Elevator Operators
- Hoist Operators
- Buck Hoists/Single or Double

CONSULTANT AND PROFESSIONAL SERVICES

- Testing and Inspection
- Air Monitoring Services
- Test and Balance
- Special Certifications
- Legal Expenses

PERMITS AND FEES

- General Building Permits (including any permits or applications required to be made with the State of Michigan Department of Consumer and Industry Services)
- State Fire Marshal
- Local Fire Marshal
- HVAC and Plumbing Permits
- Electrical Permits
- DNR Permit
- Flood Plain Permits

ADMINISTRATIVE

- General Liability Insurance ($5.00/$1000)
- Additional Insurance Coverage (See 3.3.12.5)
- Professional Liability Insurance

EXHIBIT C

KEY PERSONNEL

The Construction Manager agrees to commit the following key individuals for the duration of the Project, as well as the necessary resources of the firm to meet the Project goals and schedule:

Position	Individual
Project Director	Daryl Dombrow
Superintendent	Carl Montalvo

The Construction Manager shall not remove any of the above-referenced personnel from the Project without the prior written consent or request of the Owner unless such personnel cease to be in the employ of the Construction Manager. In the event any such personnel must be replaced, Construction Manager shall promptly find an acceptable replacement in consultation with the Owner.

EXHIBIT D

DETAILED DESCRIPTION OF THE PROJECT

See Attached Bond Summary

The Bond Projects are being divided into the following two (2) categories:

(1) Projects which are covered under the Construction Manager's Basic Services:

(a) All Projects identified in the Bond Summary, except as set forth in (2) below; and

(2) Projects which the Owner, at a later date, has the option of assigning to the Construction Manager's Scope of Work, which will then be deemed a part of the Construction Manager's Basic Services, or having the work performed by separate Contractors or the Owner's own forces:

(a) Buses;
(b) Roofing; and
(c) Technology.

Barton Malow
BUILDERS

BLOOMFIELD HILLS SCHOOLS
2020 BOND PROGRAM
SUMMARY: BUILDING-SCOPE

2/10/20

	FACILITY	Built	Size	Year 1 2020	Year 2 2021	Year 3 2022	Year 4 2023	Year 5 2024	Year 6 2025	Year 7 2026	TOTAL
1	CONANT ELEMENTARY SCHOOL	1960	50,970	0	408,080	4,623,752	0	10,900,056	2,815,752	0	**18,747,640**
2	WAY ELEMENTARY SCHOOL	1966	48,400	0	175,329	3,325,544	0	8,618,270	289,516	0	**12,408,660**
3	EAST HILLS ELEMENTARY	1962	113,102	0	322,481	28,665	6,390,601	6,647,073	0	0	**13,388,820**
4	WEST HILLS ELEMENTARY	1966	111,560	0	107,494	27,948	4,383,000	6,173,691	0	0	**10,692,134**
5	MIDDLE SCHOOL SOUTH (BHMS SITE)	1958	112,860	406,806	13,216,288	24,774,996	93,161	458,640	0	0	**38,949,892**
6	MIDDLE SCHOOL NORTH (LAHSER SITE)	1967	115,000	3,599,256	27,028,692	12,329,163	12,136,649	71,662	0	0	**55,165,423**
7	BLOOMFIELD HILLS HIGH SCHOOL	2015	381,687	0	0	0	3,345,204	8,530,935	0	6,147,381	**18,023,520**
8	BOWERS FARM	2010	9,916	0	0	5,016	0	0	4,592,611	0	**4,597,627**
9	INTERNATIONAL ACADEMY	1965	61,750	0	0	0	0	0	2,323,555	0	**2,323,555**
10	WING LAKE CENTER	2008	39,400	0	0	0	0	0	700,932	0	**700,932**
11	NATURE CENTER	1985	6,000	0	0	1,433	0	0	690,704	0	**692,138**
12	EASTOVER - EARLY CHILDHOOD CENTER	1955	60,295	0	0	23,649	0	100,327	7,041,150	0	**7,165,126**
13	DOYLE CENTER	1962	39,400	0	0	0	0	0	0	2,937,459	**2,937,459**
14	TRANSPORTATION/MAINTENANCE/STORAG	tbd	25,000	3,583,124	0	0	0	0	9,920,810	0	**13,503,934**
15	FOX HILLS ELEMENTARY	1967	44,352	0	0	0	0	0	0	530,394	**530,394**
16	LONE PINE ELEMENTARY	1967	60,030	0	0	0	0	0	0	666,762	**666,762**
17	BUS GARAGE	1966	5,644	0	0	0	0	0	70,957	0	**70,957**
18	FRANKLIN ROAD BUILDING	1969	15,500	0	0	0	0	0	0	0	**0**
	TOTAL		1,300,866	7,589,187	41,258,365	45,140,168	26,348,615	41,500,654	28,445,989	10,281,996	200,564,973

Series 1 Subtotal:	93,987,719	Series 2 Subtotal:	106,577,254	
Bond Issuance Costs:	858,600	Bond Issuance Costs:	1,188,557	2,047,157
Estimated Interest Earnings:	(796,319)	Estimated Interest Earnings:	(1,660,811)	(2,457,130)
Series 1 Total:	94,050,000	Series 2 Total:	106,105,000	200,155,000

EXHIBIT E

INSURANCE CERTIFICATE(S)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: Detroit.certrequest@marsh.com CN102957321--Cas-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Old Republic Insurance Company — 24147 INSURER B : XL Insurance America Inc. — 24554 INSURER C : XL Specialty Insurance Company — 37885 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CHI-009544848-01 **REVISION NUMBER:** 5

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC OTHER:			MWZY 315247 20	01/01/2020	01/01/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	1,000,000 1,000,000 10,000 1,000,000 5,000,000 5,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			CAH740935705	01/01/2020	01/01/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	2,000,000
B	[ ] UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			US00064722LI20A	01/01/2020	01/01/2021	EACH OCCURRENCE AGGREGATE	$ $	15,000,000 15,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		CWD740935505	01/01/2020	01/01/2021	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	1,000,000 1,000,000 1,000,000
B	Excess General Liability			CGE 7409929	01/01/2020	01/01/2021	Each Occurence General/Prod-Comp Ops Agg		2,000,000 4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Bloomfield Hills Schools is/are included as Additional Insured (except Workers Compensation) where required by written contract.

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/28/2020

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PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: detroit.certrequest@marsh.com CN102957321--Prof-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Indian Harbor Insurance Company — 36940 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	

COVERAGES **CERTIFICATE NUMBER:** CHI-009544851-01 **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N	N/A					E.L. EACH ACCIDENT	$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			CEO742018205	01/01/2020	01/01/2021	Limit	5,000,000
	Including Pollution Coverage						SIR each claim	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee Manashi Mukherjee

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/28/2020

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PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: Detroit.certrequest@marsh.com CN102957321--Crime-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Westchester Fire Insurance Company — 10030 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CHI-009544854-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] N/A						E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$
A	Crime			G25143346005	01/01/2020	01/01/2021	Limit	5,000,000
							Deductible	250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee — Manashi Mukherjee

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EXHIBIT F

PROJECT SCHEDULE

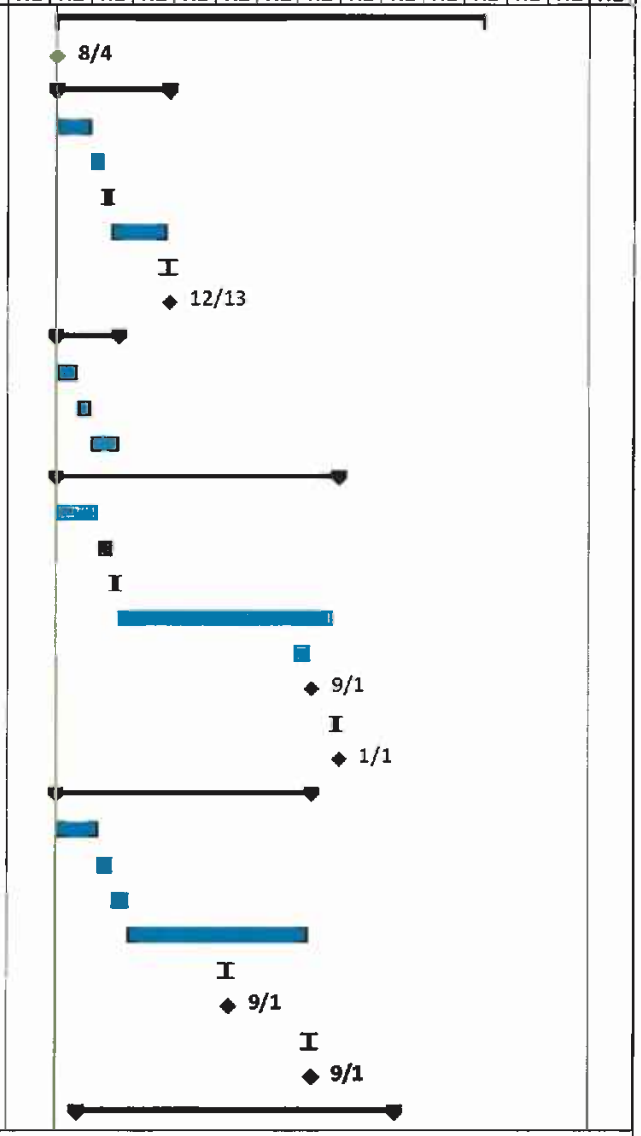
The Project Schedule is attached hereto, which schedule will be updated during the term of this Agreement as mutually agreed to by the parties.

Bloomfield Hills Schools
2020 Bond Program Master Schedule

Bloomfield Hills Schools

Barton Malow BUILDERS

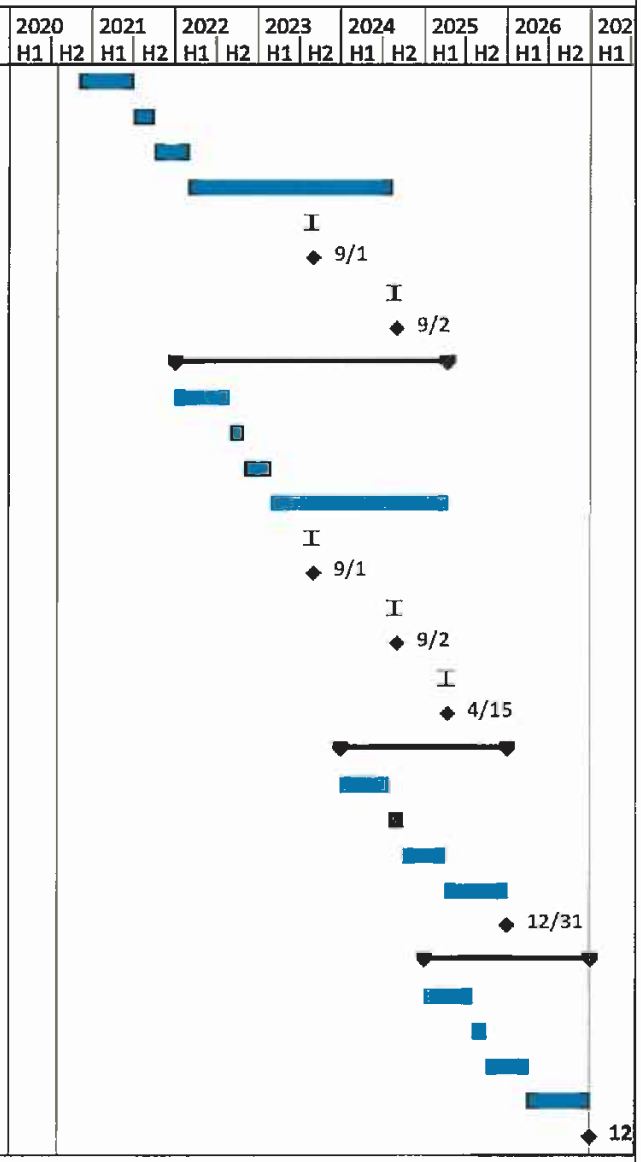
ID	Task Name	Start	Finish	Duration
1	**2020 Bond Issue Master Schedule**	**Tue 8/4/20**	**Fri 9/26/25**	**1344 days**
2	Bond Passes	Tue 8/4/20	Tue 8/4/20	0 days
3	**Bid Package No. 1 - District Priorities**			
4	Design Phase	Tue 8/4/20	Thu 12/31/20	108 days
5	Bid Phase	Fri 1/1/21	Fri 2/26/21	41 days
6	Procurement Phase	Mon 3/1/21	Wed 3/31/21	23 days
7	Construction Phase	Thu 4/1/21	Wed 12/1/21	175 days
8	Owner Move-In	Thu 12/2/21	Fri 12/10/21	7 days
9	Occupancy	Mon 12/13/21	Mon 12/13/21	0 days
10	**Bid Package No. 2 - Middle School Demo, Utilities, Abatemen**			
11	Design Phase	Tue 8/4/20	Wed 11/4/20	67 days
12	Bid Phase	Thu 11/5/20	Thu 12/31/20	41 days
13	Construction Phase	Fri 1/1/21	Tue 5/4/21	88 days
14	**Bid Package No. 3 - North Middle School**			
15	Design Phase	Tue 8/4/20	Thu 2/4/21	133 days
16	Bid Phase	Fri 2/5/21	Tue 4/6/21	43 days
17	Procurement Phase	Wed 4/7/21	Tue 5/4/21	20 days
18	Construction Phase	Wed 5/5/21	Fri 12/1/23	673 days
19	Owner Move-In	Thu 6/15/23	Thu 8/24/23	51 days
20	Occupancy (Phase 1)	Fri 9/1/23	Fri 9/1/23	0 days
21	Owner Move-In	Mon 12/4/23	Fri 12/29/23	20 days
22	Occupancy (Phase 2)	Mon 1/1/24	Mon 1/1/24	0 days
23	**Bid Package No. 4 - South** Middle School			
24	Design Phase	Tue 8/4/20	Thu 2/4/21	133 days
25	Bid Phase	Fri 2/5/21	Tue 4/6/21	43 days
26	Procurement Phase	Wed 4/7/21	Mon 6/14/21	49 days
27	Construction Phase	Mon 6/14/21	Wed 8/16/23	568 days
28	Owner Move-In	Wed 8/17/22	Wed 8/31/22	11 days
29	Occupancy (Phase 1 Renovations)	Thu 9/1/22	Thu 9/1/22	0 days
30	Owner Move-In	Thu 8/17/23	Thu 8/31/23	11 days
31	Occupancy (Phase 2 Addition)	Fri 9/1/23	Fri 9/1/23	0 days
32	**Bid Package No. 5 - Elementary Renovations (EHMS & WHMS**			



PRELIMINARY FOR DISCUSSION PURPOSES

Bloomfield Hills Schools
2020 Bond Program Master Schedule

ID	Task Name	Start	Finish	Duration
33	Design Phase	Tue 11/3/20	Thu 7/1/21	173 days
34	Bid Phase	Thu 7/1/21	Thu 9/30/21	66 days
35	Procurement Phase	Fri 10/1/21	Tue 3/1/22	108 days
36	Construction Phase	Tue 3/1/22	Tue 8/13/24	641 days
37	Owner Move-In	Mon 8/14/23	Thu 8/31/23	14 days
38	Occupancy (Phase 1 Renovations)	Fri 9/1/23	Fri 9/1/23	0 days
39	Owner Move-In	Mon 8/12/24	Fri 8/30/24	15 days
40	Occupancy (Phase 2 Renovations)	Mon 9/2/24	Mon 9/2/24	0 days
41	**Bid Package No. 6 - Elementary Renovations (Way & Conant)**			
42	Design Phase	Mon 1/3/22	Wed 8/31/22	173 days
43	Bid Phase	Thu 9/1/22	Mon 10/31/22	43 days
44	Procurement Phase	Tue 11/1/22	Tue 2/28/23	86 days
45	Construction Phase	Wed 3/1/23	Tue 4/15/25	555 days
46	Owner Move-In	Wed 8/16/23	Wed 8/30/23	11 days
47	Occupancy (Phase 1 Classroom Addition)	Fri 9/1/23	Fri 9/1/23	0 days
48	Owner Move-In	Thu 8/15/24	Fri 8/30/24	12 days
49	Occupancy (Phase 2 Multi Purpose Addition)	Mon 9/2/24	Mon 9/2/24	0 days
50	Owner Move-In	Tue 4/1/25	Mon 4/14/25	10 days
51	Occupancy (Phase 3 Media Center/STEM)	Tue 4/15/25	Tue 4/15/25	0 days
52	**Bid Package No. 8 - High School, Eastover, Bowers, IA, Natur**			
53	Design Phase	Mon 1/1/24	Mon 7/29/24	151 days
54	Bid Phase	Thu 8/1/24	Mon 9/30/24	43 days
55	Procurement Phase	Tue 10/1/24	Tue 4/1/25	131 days
56	Construction Phase	Tue 4/1/25	Wed 12/31/25	197 days
57	Owner Occupancy	Wed 12/31/25	Wed 12/31/25	0 days
58	**Bid Package No. 8 - Support Buildings**			
59	Design Phase	Wed 1/1/25	Wed 7/30/25	151 days
60	Bid Phase	Fri 8/1/25	Tue 9/30/25	43 days
61	Procurement Phase	Wed 10/1/25	Wed 4/1/26	131 days
62	Construction Phase	Wed 4/1/26	Thu 12/31/26	197 days
63	Owner Occupancy	Thu 12/31/26	Thu 12/31/26	0 days



PRELIMINARY FOR DISCUSSION PURPOSES

EXHIBIT G

TEAM RESPONSIBILITY MATRIX

See Team Responsibility Matrix dated March 2, 2020

RESPONSIBILITY MATRIX DATED MARCH 2, 2020

Bloomfield Hills Schools

PROJECT TEAM:

OWNER: Bloomfield Hills Schools

ARCHITECT: French Associates, Inc.

CONSTRUCTION MANAGER: Barton Malow Company

INTRODUCTION:

The following matrix lists functional tasks assigned to one or more members of the Bloomfield Hills Schools Project Team.

Tasks are listed by category and general sequence. Some tasks are clarified by footnotes.

RESPONSIBILITY MATRIX

TEAM SELECTION	OWNER	A/E	CM	
Initiate Project	1	0	0	
Owner Selects CM	1	0	0	
Owner Selects A/E	1	0	0	
Establish Team Responsibilities	1	1	1	
Establish Fees	1	1	1	
Execute Contractual Agreements	1	1	1	
Establish Communication Procedures	1	1	1*	
BOND CAMPAIGN				
Develop Owner's Program	1*	1	1	
Establish Owner's Budget	1	2	1	(1)
Establish Budget Guidelines and Controls	1	2	1*	
Analyze Program vs. Budget	1	1	1*	
Develop Hazardous Material Program	1	2	2*	
Establish Site Requirements	1	1*	2	
Conduct Site Evaluation	2	1	2	
Conduct Utilities Evaluation	0	1	2	
Develop Preliminary Project Master Schedule	1	1	1*	
Establish Preliminary Occupancy Schedule	1	2	1	(2)
Develop Preliminary Cash Flow Schedule	2	0	1	
Study Financial Feasibility	1	0	2	
Conduct Financing Studies	1	0	1	
Submit Necessary State or Federal Fund Applications	1	0	2	
Board's Review & Approval of Bond Documentation	1	2	2	
Fund Raising Promotion, Bond Campaign	1	2	2	
Obtain Financing & Invest Funds	1	0	2	
SCOPE VALIDATION & SCHEMATIC DESIGN				
Study Spatial Relationships	2	1	2	
Prepare Functional and Flow Diagrams	0	1	0	
Recommend Basic Materials & Systems	2	1	2	
Coordinate with Governmental Agencies	2	1	2	(3)
Update Project Master Schedule	1	1	1*	
Update Occupancy Schedule	1	2	1	
Prepare Detailed Design Schedule	2	1*	1	(4)
Complete Scope Validation Design Packages	0	1	0	
Develop Schematic Estimate	0	2	1	
Analyze Estimate (Program/Budget/Estimate)	2	1	1*	
Refine Program (Relating to Bond Scope/Budget/Estimate)	1	1*	1	
Scope Validation Report	0	1*	1	
Board's Review and Approval of Schematic Design & Estimate	1	2	2	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

DESIGN DEVELOPMENT	OWNER	A/E	CM	
Obtain Survey & Soils Testing	2	1	2	(5)
Retain Special Consultants	1	1	2	
Prepare Site Plan	0	1	0	
Evaluate Architectural Component & System Alternates	0	1	2	
Evaluate Structural Systems	0	1	2	
Evaluate Mechanical & Electrical Systems	0	1	2	
Prepare Outline Specifications	0	1	2	
Initiate Preliminary Utility Co. Review	2	1	2	
Complete Design Development Packages	0	1	0	
Prepare Design Development Estimate	0	2	1	
Analyze Estimate (Program/Budget/Estimate)	2	1	1*	
Conduct Value Engineering Analysis	0	1	1	(6)
Finalize Selection of Components & Systems	1	1*	2	
Design Development Report	0	1*	1	
Board's Review & Approval of Design Documents & Estimate	1	2	2	
Obtain Fed./State/Local Bldg. & Health Authority Reviews	2	1	2	(7)
Obtain State Fire Marshal Plan Review	2	1	2	(7)
Obtain Dept. of Natural Resources Review, if Required	2	1	2	(7)
Prepare Local Planning or Zoning Board Approvals, if Required	2	1	2	(7)
Update Master Schedule	1	1	1*	
Prepare Preliminary Construction Schedule	2	0	1	
Identify Long-Lead Purchase Items	0	2	1	
Prepare Long-Lead Purchase & Phased Construction Documents, if Required	0	1	2	
Bid and Purchase Long-Lead Items	2	2	1	
Evaluate Labor & Trade Contractor Market	0	0	1	
Establish General Conditions	2	2	1	
Update Cash Flow Schedule	2	0	1	
Establish Reporting & Accounting Procedures	2	2	1	

CONSTRUCTION DOCUMENTS	OWNER	A/E	CM	
Prepare Construction Plans & Technical Specifications	0	1	0	
Implement Phased Construction, if Applicable	2	2	1	
Review Construction Plans & Technical Specifications	1	1*	1	(8)
Final Government Agency Review Approval	2	1	2	
Final Insurance Requirements Review	1	0	2	
Finalize Owner Occupancy Schedule	1	0	1*	
Prepare Project Manual	0	2	1	(9)
Establish Contract Conditions	2	2	1	(10)
Determine Bid Divisions of Work	0	2	1	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

Update Construction Schedule	0	0	1	
Prepare Trade Contractor Bid Lists	2	2	1	
Review Trade Contractor Bid Lists	1	2	1*	
Update Cash Flow Schedule	2	0	1	
Construction Document Report	0	1*	1	
Board's Approval of Construction Documents & Schedule	1	2	2	
BIDDING AND AWARDING				
Advertise for Trade Contractor Bids	2	0	1	
Place Legal Ads for Bidding	2	0	1	
Distribute Bidding Documents	0	0	1	
Obtain Builders Risk Insurance	1	0	2	(11)
Conduct Trade Contractor Pre-Bid Conference	0	2	1	(12)
Prepare & Distribute Addenda	0	1	1*	
Receive & Tabulate Trade Contractors' Bids	2	2	1	(13)
Evaluate Bids for Specification Compliance	0	1	1*	
Evaluate Bids and Make Award Recommendations	2	2	1*	
Conduct Pre-Award Conferences	2	2	1	
Evaluate Cost of Project as Bid	0	2	1	
Update Construction & Master Schedule	0	0	1	
Board's Review & Approval of Trade Contracts	1*	2	1	
Issue Notice to Proceed	1	0	1*	
Develop Detailed Construction Schedule	0	0	1	
Set Disbursement Schedules	0	0	1	
Issue Trade Contracts	1	0	1*	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

CONSTRUCTION	OWNER	A/E	CM	
Mobilization for Construction	0	0	1	
Verify & Monitor Insurance & Bond Requirements	2	0	1	
Provide Full Time Field Coordination & Reporting	0	0	1	
Establish Beneficial Occupancy Schedule	0	0	1	
Inspect & Monitor Trade Contractors' Work	0	2	1	
Inspect for Conformance to Design	0	1	2	
Interpret Plans & Specifications	0	1	2	
Evaluate Progress & Update Construction Schedule	0	0	1	
Process Shop Drawings & Sample Control	0	2	1	
Check & Approve Shop Drawings & Samples	0	1	2	
Approve Trade Contractor Progress Payments	1	1	1	(14)
Disperse Payments to Contractors	2	0	1	
Provide Project Cost Controls	0	0	1	
Conduct Job Meetings	0	2	1	
Prepare & Process Bulletins	0	1	2	(15)
Prepare & Process Change Documents	0	1	1*	
Review & Approve Change Documents	1	2	2	(16)
Administer Safety Program	0	0	1	
Administer Quality Control Program	0	2	1	(17)
Maintain As-Built Drawings	0	0	1	
Coordinate Owner Occupancy Schedule	1	2	1	
CLOSE OUT & OCCUPANCY				
Prepare Punch List	0	1	2	
Coordinate Completion of Punch List	0	2	1	
Certify Substantial Completion	2	1	2	
Obtain Final Approval from Fire Marshal	0	1	2	
Conduct Demonstration on Systems & Equipment	1	2	1	(18)
Start-Up & Recommended Maintenance	1	2	1	
Submit Operation Manuals & Warranties	0	1	1*	
Inspect for Final Compliance with Documents	2	1	2	
Perform Final Accounting	0	0	1	
Determine Final Payments	1	1	1*	
Coordinate Work under Guarantee	0	2	1	
Provide Continuing Consultation in Post Occupancy	0	1	1	
Owner's Acceptance	1	0	0	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

FOOTNOTES

(1) The Owner establishes limits of expenditures, the construction manager develops breakdowns for total cost.
(2) The Owner sets the desired occupancy based on the construction duration anticipated by the construction manager.
(3) Following consultation with the Owner, the architect/engineer coordinates governmental agency plan reviews as required and assisted by the construction manager.
(4) The Owner sets the desired occupancy based on the construction duration anticipated by the construction manager.architect/engineer set their production schedule milestones established by the construction manager.
(5) The architect/engineer obtains the necessary surveys and soil tests to properly execute his work, which is contracted and paid for directly by the Owner to the survey and testing agency.
(6) The construction manager recommends cost effective alternate systems for analysis by the architect/engineer with joint concurrence in recommending systems to the Owner for approval.
(7) The architect/engineer will submit all required drawings, specifications, transmittals, applications and fees to the appropriate governing agencies after approval from the Owner. Owner to reimburse fees to architect/engineer.
(8) The Owner reviews plans and specifications for program requirements, construction manager reviews for cost and duration control.
(9) Construction manager to prepare description of work for each trade and equipment contractor in accordance with the architect/engineer's specifications.
(10) Construction manager to initiate trade contract conditions to be reviewed and approved by the Owner.
(11) Builders Risk Insurance obtained by Owner.
(12) Chaired by construction manager with architect/engineer in attendance for questions and drafting of addenda.
(13) Owner receives bids, assisted by the construction manager at a public bid opening, with architect/engineer in attendance.
(14) Construction manager and architect/engineer approves certification for payment to trade contractors and submits summary to Owner for approval of payment.
(15) Architect/engineer prepares bulletins by trade or equipment contractors and submits to construction manager for distribution.
(16) Architect/engineer and construction manager approve bulletin pricing, and Owner approves expenditure.
(17) Architect/engineer establishes quality control standards in the Specifications and construction manager implements the plan.
(18) Contractors to conduct demonstration to Owner with architect/engineer and construction manager in attendance.

EXHIBIT H

SCOPE OF SERVICES

CONSTRUCTION MANAGER SERVICES

Scope of Preconstruction Services

GENERAL

The Construction Manager's Preconstruction Services shall include estimating Cost of the Work, construction budget control, review of design and construct-ability, value engineering, life-cycle costing, influence the methods and sequence of construction, scoping of bid packages and work categories, and soliciting bids from Contractors, and tabulating bids received, and review and recommend bid awards. The Owner reserves the right to make reasonable changes to this schedule as Project requirements dictate.

A. SCHEDULE, PHASING AND LOGISTICS PLAN DEVELOPMENT

1. The Construction Manager shall assist in the development of a Master Preconstruction Schedule beginning with the Schematic Design and continuing through the bidding and Contract award. The final date on the Preconstruction Schedule will be the bid date of the Owner awarding and signing the construction Contract of the last Bid Package. The Preconstruction Schedule will place significant emphasis on the phasing and logistics planning of the Project. It will take into careful consideration areas of the existing and adjacent facilities and site that must remain open during construction.
2. The Preconstruction Schedule will identify the responsibilities among the members of the Construction Team. Key milestone dates, including, without limitation, for design phases, budget delivery, permit request submission, state submission and review, release of documents for bidding, and tentative bid and bid award.
3. Additionally, the Preconstruction Schedule should identify long lead items that may require procurement during the term of this Agreement. Major building equipment items such as boilers, chillers, air handlers, generators, switchgear, etc., may be in this category. The schedule must also identify when architecturally significant Owner furnished equipment must be delivered to this Project.
4. The Construction Manager will assist in developing the schedule so that realistic dates can be set and met. The Preconstruction Services Schedule will be distributed to all members of the Construction Team and monitored on a regular basis during the Design/Preconstruction Services review meetings. It is the responsibility of the Construction Manager to continually emphasize to all members of the Construction Team that meeting the Preconstruction Services Schedule milestones is the key element in ensuring a timely design phase of the Project, allowing for a prompt construction start date. The Preconstruction Services Schedule shall include reasonable time for Owner review and comment.
5. Concurrent with submission of each Budget Estimate as defined in Section C below, the Construction Manager shall prepare and submit to the Owner a precedent annotated bar chart, CPM or other scheduling method suitable to the Owner for the Construction Phase

of the Project. This schedule shall be updated with each Budget Estimate and shall reflect any revisions in the Budget Estimates, which affect the construction duration. Activity detail on the schedules must directly correspond to the budget line items.

6. Concurrent with the submission of a Cost of the Work estimate for any phase of the Work as defined in Section C, below, the Construction Manager shall provide pertinent information and assist in the development of a Master Construction Schedule associated with each particular phase of Work, beginning with the Construction Manager's mobilization and ending with Project Completion/Final Inspection/Occupancy. The strategy of phasing the Project as determined during Preconstruction should be identified from start through completion on the overall schedule. It shall have a minimum number of activities, as required to adequately represent to the Owner the complete Scope of Work and define the Project's critical path and associated activities. The format of the Master Construction Schedule will be an expansion of the base line schedule as developed in conjunction with each budget estimate with dependencies indicated on a monthly grid identifying key milestone dates including, without limitation, construction start, phase completion, structural top-out, dry-in, M/E/P rough-in completion, permanent power, conditioned air, metal stud, and drywall completion date and Owner occupancy date.

B. DOCUMENT REVIEW

1. Design/Preconstruction Services review meetings may be held as often as biweekly through the design phase of the Projects. Meetings shall be held at the Owner's office.
2. The Construction Manager shall develop and maintain a Request for Information (RFI) Log and/or an Issues and Answers Log to aid in the prompt transfer of information between all members of the Construction Team. The log will be monitored and updated on a continual basis and addressed at the review meetings. Unresolved issues are to be identified in each review meeting with follow-up responsibilities and response dates being assigned to the appropriate team members, including the Construction Manager.
3. The Construction Manager shall provide the members of the Construction Team continual input addressing constructability, availability of materials and qualified trades for specialized systems, comparative cost/benefit analyses for various building systems, and budget/schedule impact as specific phases of the overall design are developed in order to ensure the development and completion of Contract Documents within the budget and schedule limitations.
4. If necessary in order for the Construction Manager to provide accurate information, it shall, at no additional cost to the Owner, involve the services of outside consultants and/or subcontractors in the review and budgeting of specialized systems such as structural, skin/curtain-wall, equipment, elevators, furnishings, plumbing, fire suppression, mechanical, electrical, utility service connections, pneumatic tube, food service, low voltage, and life safety.

C. DESIGN BUDGET/ESTIMATES

The Construction Manager shall prepare and submit three (3) formal Budget/Estimates for the Project and/or each sub-component of the Project during the Preconstruction Services Phase.

1. The Construction Manager shall prepare and present to the Owner and the Construction Team the first formal Project Budget/Estimate at the conclusion of Schematic Design Phase. This first Budget/Estimate shall be divided into the 16 CSI Divisions, and allows the Owner to rely upon it as a maximum Cost of the Work of the Project.
2. The Construction Manager shall prepare and present to the Owner and the Construction Team a second formal Project Budget/Estimate at the conclusion of Design Development Phase. This second Budget/Estimate shall be a "full take-off estimate" of sufficient substance and detail so the Owner will be able to rely upon as an maximum Cost of the Work. The Construction Manager shall fully engage the Architect and other design team members to ensure that the scope, quality and costs of the Project are aligned and within the initial maximum Cost of the Work.
3. The Construction Manager shall prepare and submit a third Budget/Estimate at the conclusion of Construction Documents Phase. This Budget/Estimate shall establish and represent the final estimate of the Project and/or each subcomponent of the Project.

D. VALUE (PLANNING) ENGINEERING

Concurrent with the submission of each Budget/Estimate, the Construction Manager shall submit a detailed list of value engineering options and the associated estimated costs. The Construction Manager shall meet and work with the members of the Construction Team in the evaluation of the various options and incorporate selected options into the Budget Estimates. The Construction Manager shall participate as a Construction Team member in maximizing the Project value for the Owner.

E. EQUIPMENT REVIEW AND COORDINATION OF DIRECT OWNER CONTRACTS

1. The Construction Manager shall assist the Owner in reviewing and budgeting the owner furnished equipment and furnishings material and installation costs or other items potentially affecting the construction contract, and shall include these budgets or allowances to the extent they are reasonably known, in each Budget Estimate to ensure that all costs are accounted for.
2. When required, the Construction Manager will work with the Architect during the Preconstruction Services Phase of the Project to assist the Owner in receiving bids and placing purchase orders for long lead equipment.

F. CASH FLOW ANALYSIS

Concurrent with the submission of each Budget Estimate and the Master Construction Phase Schedule as defined in Section A, above, the Construction Manager shall submit a cash flow analysis for the overall construction duration of the Project. This analysis should be derived from cost loading the construction schedule as developed and revised by the Construction Manager, showing projected monthly billings for Completed Work in Place. The analysis shall list individual monthly billings, accumulated billings to date, and percentages of completion on a monthly basis.

G. SCOPING OF BID PACKAGES AND WORK CATEGORIES (FOR EACH PROJECT)

Bid Packages are defined as those portions of the overall Project scope that are released for competitive bidding at staggered bid dates. Bid Packaging identifies opportunities for phased construction in order to accelerate the Construction Schedule to deal with Project constraints. The main intent in developing Bid Packages and Work Categories is to account for every item of work in the overall Project and identify the trade or Construction Manager responsible for performing the Work. Additionally, the development of Bid Packages and Work Categories is to overcome scope overlaps or omissions between trades. The Construction Manager, with assistance of the Architect and members of the Construction Team, shall define and prepare Scope of Work for various bid packages and work categories as required ensuring the Master Design and Construction Schedule is maintained and ensuring all required Work shall be included.

H. SUBCONTRACTOR/VENDOR SOLICITATION AND PREQUALIFICATION

1. The Construction Manager shall aggressively promote and generate interest of local and regional bidders and develop a master list of vendors, Contractors and subcontractors, which have shown interest in submitting bid proposals for the Project. This list should include Vendors and Subcontractors for all categories of work included in the total Project. The Construction Manager is required to report the percentage of the total Cost of Work that the local firms represent.
2. This list should include only companies that are responsible, qualified and financially capable.

I. CONSTRUCTION STAGING AND SITE MANAGEMENT PLANNING

The Construction Manager, with input from the members of the Construction Team, shall develop a proposed site management plan for staging construction operations. This plan will test the site to ensure all functionality described in the design is working. At minimum, the plan shall include such particulars as primary access roads to and from the construction site, construction parking, on-site entrances, construction personnel entrances and traffic patterns, location of temporary facilities, location of hoists, cranes and other stationary equipment if site accessibility is critical and dictates specific placement, locations of barricades and construction fences, emergency egress locations, etc., so that Owner's use of existing site or facility can be minimally disrupted or inconvenienced.

J. BIDDING AND CONSTRUCTION PHASE

1. Work Packaging & Bidding

   a. The Construction Manager shall create a labor analysis, to include types and quantities of labor required for the Project. Review the requirements in light of the market-place and make any recommendations necessary to assure the availability of an adequate labor force.

   b. The Construction Manager shall develop work-packaging recommendations and create package bidding schedule and procedure.

   c. The Construction Manager shall analyze the bid market, notify potential bidders, publish bid calendar, and publish all required notices.

   d. Bidding Documents shall consist of bidding requirements and proposed Contract Documents, bidding information, bidding forms, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings and other necessary Contract Documents. As much as possible, the bidding and contract forms shall use the unabridged AIA Contract Documents, modified as necessary and appropriate.

   e. The Architect shall cooperate with and assist the Owner and Construction Manager in bidding the Project by

   .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

   .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

   .3 organizing and conducting pre-bid conferences for prospective bidders;

   .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;

   .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

   .6 if required and directed by the Owner, participate in selection interviews and negotiations with prospective contractors, and major subcontractors, vendors and suppliers; and follow-up with preparing a summary report of the interviews and negotiation results; and

   .7 Upon Owner's approval to award bids, assist the Owner in finalizing the Work and preparing construction contracts.

   f. The Architect shall, as part of Architect's Basic Services, consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

2. During the Bidding Process, the Construction Manager shall:
    a. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
    b. distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
    c. Maintain a list of all potential bidders, subcontractors and vendors that intend to bid the Work.
    d. organizing and conducting a pre-bid conference for prospective bidders;
    e. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
    f. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.
    g. Receive bids, analyze and reconcile, and present bid results arrayed against the estimate for each individual work package for the Owner's approval; and
    h. Participate in selection interviews and negotiations with prospective contractors, and major subcontractors, vendors and suppliers; and follow-up with preparing a summary report of the interviews and negotiation results.

Receive and log all insurance certificates, performance and payment bonds, and other required affidavits and start-up documents.

EXHIBIT I

AIA DOCUMENT A232-2009, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, AMENDED FOR THE PROJECT

AIA® Document A232™ – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:
(Name, and location or address)

Bloomfield Hills Schools
2020 Bond Election
See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D.**

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Barton Malow Builders LLC
26500 American Drive
Southfield, Michigan 48034

THE OWNER:
(Name, legal status and address)

Bloomfield Hills Schools
Booth Center
7273 Wing Lake Road
Bloomfield Hills, Michigan 48301

THE ARCHITECT:
(Name, legal status and address)

French Associates, Inc.
236 Mill Street
Rochester, Michigan 48307

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the ~~Agreement),~~ "Agreement" or the "Contract"), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically ~~enumerated~~ excluded in the Agreement, the Contract Documents ~~do not~~ include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or ~~proposals, the Contractor's bid or proposal,~~ proposals including the Owner's Request For Proposals, including the Project Manual, (collectively the "RFP"), and the Contractor's bid or proposal (to the extent it does not conflict with the Owner's RFP, or portions of addenda relating to bidding requirements).

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate Contractor's performance of ~~their~~ its duties.

§ 1.1.3 The Work. The term "Work" ~~means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project), (ii) required of the Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, operate and maintain the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by Subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors ~~and~~ or by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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§ 1.1.8 Initial Decision Maker. The Initial Decision Maker ~~is the person identified~~ shall be the Architect, unless otherwise provided in the Agreement to render initial decisions on Claims in accordance with ~~Section 15.2~~ Article 15 and certify termination of the Agreement under ~~Section 14.2.2.~~ Article 14.

§ 1.1.9 Products. The term "Product(s)" as used in the Contract Documents refers to the materials, systems and equipment provided by the Contractor for use in the Work of the Project.

§ 1.1.10 Warranty/Guaranty. The terms "Warranty" and "Guarantee" as used in the Contract Documents shall have the same meaning and shall be defined as "legally enforceable assurance of satisfactory performance or quality of a product or Work."

§ 1.1.11 Quantity. Where materials, systems, goods and equipment items are referred to in the singular, such reference shall not serve to limit the quantity required. The Contractor shall furnish quantities as required by the Contract Documents to complete the Work.

§ 1.1.12 Project Manual. The Project Manual is a volume of documents and information assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, Drawings, the Contract and other information furnished by the Owner.

§ 1.1.13 Applicable Laws. Applicable Laws means all applicable federal, state and local codes, statutes, ordinances, laws (including, but not limited to, the Americans with Disabilities Act ["ADA"], the Revised School Code, MCL 380.1 et seq., (including, but not limited to 380.1264, as amended) the School Building Construction Act, MCL 388.851 et seq., the Stille-Derosett-Hale Single State Construction Code Act, MCL 125.1501 et seq., the Michigan Building Code, federal, state and local environmental laws and regulations, and the, rules and regulations, policies, guidelines and consent, administrative or other lawful orders of all public authorities having jurisdiction over the Project, the Work site, the Work or the prosecution of the Work.

§ 1.1.14 Construction Schedule. The Construction Schedule is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Contract Sum prepared by the Contractor and approved by the Owner, in writing, in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term "Construction Schedule" shall mean the most recent Owner-approved version. The initial agreed upon Construction Schedule is attached to the Contract as an Exhibit and is referred to as the Project Schedule.

§ 1.1.15 Milestone Dates. The Milestone Dates are those dates included in the Master Design and Construction Schedule and Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 1.1.16 Construction Team. The Construction Team includes the Contractor, Subcontractors, sub-subcontractor at any tier and suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

§ 1.1.17 Construction Time. The Construction Time is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract time shall be interpreted to mean Construction Time.

§ 1.1.18 Extraordinary Measures. Extraordinary Measures are corrective measures necessary to expedite the progress of the Work, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Contractor's rights under Section 7.5, the Owner shall have the right to order the Contractor to take Extraordinary Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents at Contractor's sole cost and expense.

§ 1.1.19 Master Design And Construction Schedule. The Master Design and Construction Schedule is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

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§ 1.1.20 Owner Delay. An Owner Delay means an actual delay to Contractor's completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Architect interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) unreasonable interference by the Owner or persons for whom it is responsible to the Contractor, including, the Architect or a separate contractor hired by the Owner, with the Contractor's performance of the Work, which is not cured within five (5) business days of written notice to the Owner.

§ 1.1.21 Intentionally Omitted.

§ 1.1.22 Punchlist. Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.23 Value Engineering. Value Engineering means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

§ 1.1.24 Hazardous Materials. Hazardous Materials means any solid, liquid or gaseous waste, regulated substance or material in any Applicable Law, and shall include, without limitation, any petroleum or petroleum products or by-products, Urea Formaldehyde, flammable explosives, radioactive materials, asbestos in any form, lead paint, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation. It is the intent of the parties, for purposes of this Agreement, that the term Hazardous Material is broadly construed.

§ 1.1.25 Word Clarifications.

§ 1.1.25.1 The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold such approval in its sole discretion.

§ 1.1.25.2 The word "provide" and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.25.3 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Agreement. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work and exercising the care, skill and diligence required of the Contractor by the Agreement.

§ 1.1.25.4 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.25.5 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a Section shall include all subsections beneath it bearing identical introductory numbers.

§ 1.1.25.6 Unless specifically limited in the Contract, the words "furnish," "install," and "provide," or any combination thereof mean to furnish and incorporate into the Work, including all necessary labor, materials, and equipment and other items required to perform the Work indicated.

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§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by ~~all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.~~ all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Construction Time and shall not result in the increase of the Contract Sum.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where responsibility for particular Work is required of the Contractor, the Contractor shall not be released from that responsibility by reason of the location of the Specification or Drawing information which establishes the responsibility. Thus, the Contractor shall be responsible for all Work required of it, even though that responsibility may be shown only in that portion of the documents typically pertaining to another contractor or trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Agreement is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the Work whenever necessary.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.4 Should there be any conflicts between or within the Drawings and/or Specifications which are not resolved in writing prior to receipt of bids that which requires the highest degree of performance (quality, quantity, strength, finish, completion, complexity, cost, etc.) will be required and shall be provided at no increase in Contract Sum. All such conflicts must be referred to the Construction Manager immediately upon discovery. Failure to do so will require Contractor to perform the work at no additional cost or expense to Owner. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.5 If there should be a conflict between two or more of the Contract Documents, the following order of interpretation shall apply:

.1 Where requirements specifically set forth in the Agreement are in conflict with other Contract Documents, the Agreement shall govern.

.2 Where there is conflict between the requirements of the General Conditions and the Agreement, the requirements of the Agreement shall govern, except where the requirements set forth in the Agreement are contrary to Applicable Laws, in which case the legal requirements shall govern.

.3 Where there is a conflict among Drawings and Specifications, or among any other Contract Documents not identified in Sections 1.2.5.1 or 1.2.5.2, the conflict shall be resolved by complying with the provision that requires the better quality or greater quantity of Work to the Owner.

.4 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Contract Documents, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Owner, Construction Manager and Architect will decide which Contractor(s) shall furnish the same and which Contract amount shall be adjusted for not incorporating such material or equipment into the Project.

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.5 Documents of a later date shall always govern, except that if a conflict exists between the Owner's Bidding Documents and the Contractor's proposal/bid the Owner's Bidding Documents shall control unless expressly modified in the Agreement.

.6 The specific shall govern over the general.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights.~~ All construction plans, Drawings, Specifications, the Project Manual and other documents and like materials relating to the Project, including those in electronic form, prepared by the Architect and the Architect's consultants ("Instruments of Service" or "Project Documents") and all data used in compiling, and the results of, any tests, surveys or inspections at the Project site, as well as all photographs, Drawings, Specifications, schedules, data processing output, computer-aided design/drafting (CAD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, or a third party, shall constitute the Project Documents, and shall belong to the Owner. The Contractor may retain one set of the Project Documents. All copies of them, except Contractor's record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Contractor shall not, without the prior written consent of the Owner, use or permit anyone to use any Project Documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project. The Owner shall at all times have access to and control over the disposition of any Project Documents pertaining to the Project.

The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Project Documents or Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect,~~ Owner, Architect, or Owner's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Project Documents or Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 Confidentiality

§ 1.7.1 The Contractor shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (1) with prior written consent of the Owner, (2) information which has become part of the public domain prior to the Date of the Contract, (3) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (4) as may be required to perform the Work or by any Applicable Law, or (5) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence.)

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§ 1.7.2 The Contractor shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other Project Documents furnished by the Owner to the Contractor.

§ 1.7.3 The Contractor shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain during and after the term of the Contract, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 1.7.1.

§ 1.7.4 The Contractor shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the services performed under the Contract, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

§ 1.7.5 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Contractor shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 1.7.6 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.7 are binding upon them.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially ~~changes~~ increases the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. ~~The~~ If requested in writing by the Contractor, the Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, ~~including~~ including, but not limited to, those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. All permits, fees, licenses

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and approvals not specifically identified in the Contract or Contract Documents as the responsibility of the Owner shall be the responsibility of the Contractor.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall immediately notify Owner of any errors, inaccuracies or problems which Contractor becomes aware of in the course of its use of the survey(s).

§ 2.2.4 ~~The~~ If requested in writing by the Contactor, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the ~~Owner shall furnish to the Contractor~~ Contractor shall receive at least one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or ~~entity, except to the extent required by Section 6.1.3.~~entity. This right shall be in addition to and not in limitation of the Owner's rights under any provision of the Contract Documents and Owner's right to stop Work shall not relieve Contractor of any of its obligations under the Contract Documents.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor fails, defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner or the Owner's designee to commence and continue correction of such failure, default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, ~~correct such deficiencies.~~ including any claim against the Contractor's Performance Bond, correct such deficiencies; provided, however, that if such failure, default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately correct such failure, default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses, including any and all legal expenses incurred to effectuate and enforce this provision, and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the Owner.

In the event the Owner directs another entity to perform Work pursuant to this Section that otherwise is the obligation of the Contractor, including correction of safety violations, either at the Contractor's request or as a result of the Contractor's failure to perform such Work, that other entity shall charge the Contractor all costs for labor, material and equipment plus that other entity's administrative, profit and overhead costs. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the Owner.

§2.5 Limitation on Owner's Responsibility

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§2.5.1 The Owner will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

§2.5.2 The Contractor shall only be entitled to rely upon instructions and directions provided by the Owner's authorized representative(s).

§2.5.3 The Owner may, in addition to delivering them to the Architect and Construction Manager, from time to time review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor, the Architect or Construction Manager of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or system designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents, and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Contract.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, Construction Manager or Architect in their administration of the ~~Contract,~~ Contract or the Contract Documents, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.5 These General Conditions refer to the relationship between the Owner and Contractor. As to the contract between the Contractor and its Subcontractors, the General Conditions shall be read as the Contractor having the position of the Owner and the Subcontractors having the position of the Contractor. The Subcontractors are bound to the Contractor just as the Contractor is bound to the Owner. The Subcontractor shall have all the rights, duties and obligations to the Contractor as the Contractor has rights, duties and obligations to the Owner. The Subcontractors shall agree to and accept the same responsibility to the Owner as the Contractor. In the event any failure of a Subcontractor causes any type of injury or loss to the Owner, direct or indirect, the Contractor shall be jointly and severally liable to the Owner for such injury or damage in addition to any responsibility or liability of the Subcontractor.

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project site, become generally familiar with local conditions (including weather conditions) under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Failure by the Contractor to report to, or request clarification from, the Architect and Construction Manager of any errors, omissions or inconsistencies shall result in interpreting and resolving such errors, omissions or inconsistencies in favor of the Owner and with no additional compensation to the Contractor.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,~~ Applicable Laws, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~Applicable Laws. If the Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum or otherwise. The Contractor shall not be liable to the Owner or Construction Manager or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Construction Documents unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Architect and Construction Manager.

§ 3.2.5 Prior to submitting its bid, the Contractor shall have studied and compared the Contract Documents and shall have reported to the Architect any error, inconsistency or omission in the Contract Documents. It will be presumed that the Contractor's bid and the Contract Sum include the cost of correcting any such error, inconsistency or omission, which should have been discovered by the exercise of reasonable diligence. Unless the Contractor establishes that such error, inconsistence or omission could not have been discovered by the exercise of reasonable diligence, the Contractor will make such corrections without additional compensation so that the Work is fully functional.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences

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and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction 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, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Such provision of labor and materials shall occur in sufficient time to satisfy the existing Project schedule. The Contractor bears the risk of any failure to timely provide such labor and materials for any reason. The Contractor agrees to execute the appropriate UCC forms to effectuate the Owner's ownership of the material and equipment furnished pursuant to the Contract.

§ 3.4.1.1 By making requests for substitutions based on Subsection 3.4.2 above, the Contractor:

(1) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

(2) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

(3) Certifies that the cost data presented is complete and includes all related costs, including but not limited to the Architect's redesign costs; and waives all claims for additional costs related to the substitution which subsequently became apparent; and

(4) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 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 employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other contractors and individuals associated with the Project. The Contractor shall also minimize the likelihood of any strike, work stoppage or other labor disturbance.

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§ 3.4.4 The Contractor agrees that neither it nor its Subcontractors, Sub-subcontractors, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor, will discriminate against any employee or applicant for employment, to be employed in the performance of the Work under the Contract, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of the Contract.

§ 3.4.5 ASBESTOS, PCB, LEAD, and Urea Formaldehyde-FREE PRODUCT INSTALLATION

§ 3.4.5.1 It is hereby understood and agreed that no product, substance, or material containing or treated with asbestos, including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestos in vermiculite, erionite, and taconite (hereinafter collectively "asbestos"), polychlorinated biphenyls (PCB), lead at or in excess of any limits imposed by Applicable Laws, or urea formaldehyde and any combination of these substances shall be installed or introduced into the Work by the Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier or other individuals or entities over whom the Contractor has control. The Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the Work all be asbestos, PCB, lead (as stated above), and Urea Formaldehyde-free.

§3.4.5.2 The Contractor shall also be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products or materials to be asbestos, PCB, lead, and Urea-Formaldehyde-free in accordance with the requirements of Section 3.4.5.1.

§3.4.5.3 The Contractor shall complete and submit to the Owner a certification evidencing asbestos, PCB, lead, and Urea Formaldehyde-free product and material installation prior to issuance of the final Certificate for Payment, in a form acceptable to the Owner.

§ 3.5 Warranty

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. ~~The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~ In addition to any other warranties, guarantees or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

.1 The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be new;

.2 The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;

.3 The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;

.4 The Work and all materials and equipment incorporated into the Work will be merchantable; and

.5 The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy-two (72) hours after written notice thereof and thereafter will use its best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final payment hereunder, such seventy-two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

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§ 3.5.1 The Contractor shall assign and or pass-through to the Owner at the time of Substantial Completion any and all manufacturer's warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be in the form and substance required by the Owner and/or Contract Documents.

§ 3.5.2 If the Contractor uses any portion of the Work or the Owner's other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct defective Work includes the Contractor's obligations under this Section.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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. The Contract Sum includes all applicable taxes and the Contract Sum shall not be modified as a result of Contractor's failure to include all such applicable taxes, or a change in Contractor's tax liability. The Contractor shall pay all state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall indemnify the Owner and hold it harmless from any assessment and payment of the same.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Applicable Laws applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work ~~knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,~~ contrary to Applicable Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the Project 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 written and dated notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Owner and the Architect, in consultation with the Construction Manager, 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 Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the Project 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, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, ~~either party may~~ the Contractor shall proceed as provided in Article 15. The Contractor shall be on alert to any indication or evidence of existing underground or concealed utilities or structures not shown on the Contract Documents and shall immediately notify the Owner of discovery of such evidence. It the Contractor encounters such utilities or structures, it shall cease operations immediately to minimize damage and shall notify the Owner, Architect and Construction Manager. The Contractor shall bear the cost of damage resulting from its failure to exercise reasonable care in its construction activity or from continuing operations without notifying the Owner.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall ~~notify~~ provide written and dated notification to the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be ~~made~~ made, as needed, as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at Project the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the Project site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 Whenever costs are ~~more than or~~ less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Superintendent shall be on site and provide adequate supervision over the Work covered under the Contract. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove any superintendent from the Project whose performance is not satisfactory to the Owner and to replace such superintendent with a superintendent who is satisfactory to the Owner, and without additional cost or compensation to the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Owner and/or Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. ~~Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's ~~consent, which shall not unreasonably be withheld or delayed.~~ prior written consent, except with another superintendent who is satisfactory to the Owner.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, or at other times requested by Owner or set forth in the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a ~~Contractor's construction schedule~~ proposed Construction Schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In no event shall the Contractor's Construction Schedule be extended due to action or inaction of the Contractor, except with prior written approval of the Owner within the Owner's sole discretion. The Contractor shall cooperate with the Construction Manager in

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scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces. The Construction Schedule shall be in a detailed format satisfactory to the Owner which shall also: (1) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; (3) set forth Milestone Dates and manpower loading. Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not approved, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for approval.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction ~~Manager's and Architect's approval. The Architect and Construction Manager's~~ Manager's, Owner's and Architect's approval, which approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, ~~and~~ (2) allow the Construction Manager and Architect reasonable time to review ~~submittals.~~ submittals, and (3) shall provide for expeditious and practical execution of the Work. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other ~~Contractors,~~ contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall proceed strictly (not substantially) in accordance with the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delay or potential delays. If any progress report indicates any delays, the Contractor shall, at no cost to the Owner, propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Contract Time or any Milestone Date or the Construct Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

§ 3.10.5 The Contractor shall cooperate with the Construction Manager in scheduling and performing its Work to avoid conflict or interference with the Work of others, and shall be responsible for any such conflict or interferences caused. The Construction Manager and the Contractor acknowledge and understand that the work schedule will be modified from time-to-time to work around the work of other Contractors, in an effort to avoid conflicts or interference in the work of the Construction Manager or other contractors, and that such schedule changes do not give rise to a claim for damages by the Contractor for delay or otherwise. If the Construction Manager's schedule for the Work is revised, the Contractor shall conform to the most recent schedule. The Contractor acknowledges that the Construction Manager's schedule may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms of the conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes and the Contractor agrees that the Project Schedule, as modified, shall be an accepted term and contractual requirement. The Contractor shall complete work in accordance with the Project Schedule and Milestone Schedule(s).

§ 3.10.6 Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of the Construction Manager or any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' Subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the Work up to the proper schedule. In the event that Contractor does not take such

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action necessary to bring its part of the Work up to schedule, as determined by the Construction Manager, within twenty-four (24) hours of receiving notice from Construction Manager, then, Construction Manager, as allowed by law and with Owner's written consent, may supplement Contractor's forces or remove Contractor from the Project and retain others to complete part or all of the remainder of Contractor's Work. Contractor shall be responsible for any and all costs of performing or completing the Work. Contractor shall pay any such sums within ten (10) days of date of invoice. If not paid within ten (10) days, the amount will be withheld from Contractor and paid to the relevant parties from next payment due Contractor.

§ 3.10.7 The Contractor shall cooperate with the Construction Manager in working out the proper sequence of operations between the Work of the Contractor and that of other trades on the Project site. The Contractor acknowledges that the Construction Manager's schedule for the Work may change during the duration of the Project and the Contractor took that fact into account when it entered into the Contract. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the ~~Work as constructed.~~Work, as constructed, together with a certification that they are "as-built" documents.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. All Work shall be furnished and installed in accordance with the Drawings, Specifications and as additionally required by the manufacturer's printed instructions. The Contractor shall review the manufacturer's instructions, and where conflict occurs between the Drawings or Specifications and the manufacturer's instructions, the Contractor shall request clarification from the Architect prior to commencing the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Owner, Construction Manager and Architect, or in the absence of an approved Project Construction Schedule and submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.5.1 The Contractor shall check thoroughly all such submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

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§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the submittals that are found inaccurate or otherwise erroneous be corrected.

§ 3.12.5.3 After the Contractor has checked and approved such submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Construction Manager and Architect for review. The Construction Manager and/or Architect may refuse to check or review any submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be "Project Specific." Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness and consistency of all submittals.

§ 3.12.5.6 The Contractor shall notify the Owner when submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Construction Manager and Architect in writing if any submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, samples of all materials and finishes to be used in the execution of the Work. Such samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof. In all cases, samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted samples.

.1 Samples shall be forwarded to the Construction Manager and Architect with all shipping charges prepaid. Unless otherwise directed, samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor and the Project.

.2 The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents at to dimensions or design.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 The Architect will check and review the submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Construction Manager and Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Construction Manager and Architect, resubmit corrected submittals to the Construction Manager and Architect as soon as possible, for final check and review. Such final check and review by the Construction Manager and Architect of submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Construction Manager and Architect's specific attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

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§ 3.12.6.2 The Construction Manager and Architect's review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment of systems, all of which remain the responsibility of the Contractor. The Construction Manager and Architect do not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the submittals by the Architect, and even through the Work is done in accordance with such submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Construction Manager and Architect's attention by the Contractor in a separate written letter of communication, at the time of submittal, and the Construction Manager and Architect has given written approval of such error, omission or deviation.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in a detailed writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.8.1 Any proposed substitution which requires modification of any details on the Drawings, or which affects other work, to cause modification to that work, shall be accompanied by detailed Drawings from the proposer showing changes in the affected details. All cost for changes to the Contract Documents, and necessary changes in the work of others will be paid by the proposing Contractor.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Architect's review of shop drawings and samples does not constitute or imply final acceptance of materials, equipment, etc. actually furnished or installed if such should be defective or not as represented by reviewed shop drawings and/or samples.

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§ 3.12.12 Owner will provide shop drawings to Contractor for all fabricated materials, specialty items, pre-purchased equipment, etc. which will be furnished by Owner for installation by Contractor. Contractor must give Owner at least three (3) days' notice prior to time drawings will be required.

§ 3.12.13 The Architect's Basic Services under its agreement with the Owner limits the review of the Contractor's submittals to an initial submittal and two (2) re-submittals. Services by the Architect for review of additional re-submittals shall be billed to and paid directly to the Architect by the Contractor; provided however, upon receipt of the Owner's written approval the Architect shall give notice to Contractor prior to the commencement of such services for which Contractor will be liable.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the ~~site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Project site to areas permitted by Applicable Laws **and the Contract Documents and shall not unrea**sonably encumber the ~~site with materials or equipment.~~ Project site with materials or equipment. Only materials and equipment which are to be used for the Project or carry out the Work shall be stored at the Project site. Protection of such materials and equipment shall be the sole responsibility of the Contractor. No off-site storage is permitted without the Owner's prior written consent.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the Project site. No one except the Owner is permitted to connect to or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and unless otherwise specifically provided in the Contract Documents. In all cases, the Contractor shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy-two [72] hours in advance) in order to avoid delays to the Project's progress.

§ 3.13.3 The control of the use of the Project site will be through the Construction Manager. Contractors are responsible for cooperation in all matters involving the use of the Project site. The Contractor shall ensure that the Work is at all times performed in a manner that affords the Owner, the Construction Manager, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the Project site or (2) portions of the Project in which Work is not being carried out in the event of partial occupancy.

§ 3.14 Cutting and Patching

§ 3.14.1 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Only skilled tradespersons shall perform any cutting, fitting or patching work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The ~~Contractor shall keep the premises~~ Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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§ 3.15.2 If the Contractor fails to ~~clean up~~ keep the Project site clean as required by the Owner or as provided in the Contract Documents, or fails to clean up the Project site upon completion of the Project, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement for all costs and expenses for clean-up from the Contractor.

§ 3.15.3 Any areas and/or concurrently occupied space both occupied by the Owner and used in the progress of the Work, both within the limits of the construction site and the adjacent areas leading to it shall be maintained, opened to travel and kept in a clean condition. Failure by the Contractor to maintain said areas will result in the Owner's cleaning of same, at the expense of the Contractor for all costs and expenses for clean-up from the Contractor.

§ 3.15.4 Unless the Contract Documents require a higher standard, the Contractor shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold harmless the Owner, Construction Manager and Architect ~~harmless from~~ from any and all cost, damage and loss on account thereof, including, but not limited to, actual attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Architect, or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect through the Construction Manager. The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device or materials of any kind shall be for its adequacy in the Work and shall not be an approval for the use thereof by the Contractor in violation of any patent or other rights of any third person.

§ 3.18 Indemnification

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~

The Contractor shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, Architect, Construction Manager, successors and assignees (collectively "Indemnitees"), from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with Contractor's performance of the Work pursuant to the Contract and/or from Contractor's violation of any of the terms of the Contract, including, but not limited to: (i) the negligent acts or willful misconduct of the Contractor, its officers, directors, employees Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor; (ii) any breach of the terms of the Contract by the Contractor, its officers, directors, employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor; (iii) any

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violation or breach of any Applicable Law and/or licensing and permitting requirements applicable to providing the Work; or (iv) any breach of any representation or warranty by the Contractor, its officers, directors, employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor under this Contract. The Contractor shall notify School District by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under the Contract. This paragraph shall survive the expiration or earlier termination of the Contract and shall not be limited by the Contractor's insurance obligations contained in the Contract.

§ 3.18.2 In ~~claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless the Owner, Construction Manager and Architect from and against the payment of the following:

All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under the Contract;

All sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work; and

All pension, welfare, vacation, annuity and other benefit contributions payable under or in connection with respect to all persons by whomsoever employed, engaged in the Work to be performed and furnished under the Contract.

The Contractor shall indemnify, defend and hold the Owner harmless from any claim, damage, loss or expense, including but not limited to actual attorney fees, incurred by the Owner related to any Hazardous Material or waste, toxic substance, pollution or contamination brought into the Project site or caused by the Contractor or used, handled, transported, stored, removed, remediated, disturbed or dispersed of by Contractor.

§ 3.19 Record Documents

§ 3.19.1 The Contractor shall maintain at the Project site on a current basis for review by the Owner, the Architect, the Construction Manager, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner, Construction Manager and the Architect, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound and indexed. The Contractor shall monitor preparation of as-built Drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the Record Documents, for the Contractor to inspect and copy.

§ 3.19.2 The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Construction Manager or Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to markup said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shows; (3) changes to

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existing conditions or existing conditions found to differ from those shown on any existing drawings; (4) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (5) such other information as the Owner may reasonably request.

§ 3.19.3 The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and the Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Construction Manager and Architect. The Contractor shall submit the final Record Drawings to the Construction Manager and Architect for review.

§ 3.19.4 During construction, the Contractor shall maintain on the Project site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner, Construction Manager and the Architect at all times. The Contractor shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (1) revisions made except minor or non-critical dimensional changes, (2) omissions, including Work omitted by Change Order or accepted alternates, (3) exact dimensioned locations of concealed lines, (4) locations of all control devices, (5) any additions to Work, (6) changes in significant details, (7) and any other information of a similar nature.

§ 3.19.5 Upon substantial completion of the Project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

§ 3.20 Warranties and Manuals

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner, through the Construction Manager, two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions, or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "Project Specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of substantial completion.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The ~~Owner shall retain an architect~~ Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.

§ 4.1.2 ~~The Owner shall retain a construction manager~~ Construction Manager is the person lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without ~~written consent of the Owner, Construction Manager, Architect and Contractor.~~ the prior written consent of the Owner and the Construction Manager or Architect respectively. Consent shall not be unreasonably withheld.

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect ~~as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~.

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§ 4.2 Administration of the **Contract**

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for ~~Payment.~~ Payment and, the Owner's and the Certificate for Payment is accepted by the Owner, during the correction period. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site ~~at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner,~~ as construction requires or as otherwise agreed to by the Owner or required by Applicable Law, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Construction Manager will schedule and coordinate the work of all Contractors on the Project, including the Contractors' use of the Project site. The Construction Manager will keep the Contractors informed of the Project Construction Schedule to enable the Contractors to plan and perform the Work in a timely manner.

§ 4.2.6 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of known or observed defects and deficiencies in the

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Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations ~~and decisions~~ of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, should the Construction Manager or Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, they shall immediately notify the Owner of the same to determine an appropriate corrective course of action or notify the Contractor of the same to correct the irregularities.

§ 4.2.12 The Construction Manager will ~~prepare~~ prepare, with the assistance of the Architect, Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article ~~7.~~ 7 and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 ~~Utilizing the documents provided by the Contractor, the~~ The Construction Manager will maintain at the Project site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner in good condition and reasonably organized upon completion of the Project.

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§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the Project site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of the Contract Documents on written request of the ~~Construction Manager,~~ Owner ~~or Contractor~~ through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Contractor shall reimburse Owner for all costs and expenses for the Architect's time to interpret and decide matters it deems clear and unambiguous.

§ 4.2.18 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such ~~interpretations and decisions,~~ interpretations, the Architect will endeavor to secure faithful performance by ~~both Owner and~~ the Contractor, will not show partiality ~~to either~~ and will not be liable for results of interpretations ~~or decisions so rendered in good faith.~~ rendered in good faith and without negligence. The Contractor shall, and shall cause all Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor to comply with an interpretation and decision of the Architect.

§ 4.2.19 The ~~Architect's decisions~~ Owner's interpretations on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~ promptness given the particular circumstances. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors. The term "Subcontractor" shall also include material and equipment suppliers. Each and every subcontract shall be understood to have the Owner as a third party beneficiary and the Owner shall enjoy all third party beneficiary rights permitted by law.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish supplies, materials or ~~equipment~~ equipment, including those fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager ~~may~~ will reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. ~~Failure of the Construction~~

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~~Manager, Owner, or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~All contractual agreements with additional persons or entities serving as a Subcontractor or Sub-subcontractor shall expressly identify the Owner as a third-party beneficiary, and the Owner shall enjoy all third-party beneficiary rights not prohibited by law.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner, the Architect and the Construction Manager of any proposed Subcontractor or Sub-subcontractor substitution a minimum of 10 days prior to such proposed change.

§ 5.3 Subcontractual Relations

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor and Sub-subcontractor, to the extent of the Work to be performed by the Subcontractor or Sub-subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's and Sub-subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor or Sub-subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor or Sub-subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

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.1 Requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;

.2 Requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;

.3 Waives all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;

.4 Recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Contract with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;

.5 Requires the Subcontractor performing labor at the Project site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;

.6 Includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";

.7 Requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Contract;

.8 Limits claims and damages in the manner provided in the Contract;

.9 Are in no way inconsistent with any provision of the Contract; and

.10 Requires the Subcontractor to indemnify the Owner the same extent required under Sections 3.6, 3.17, 3.18, 8.4.2, 9.3.3.1, 9.3.3.2, 9.10.2, 9.10.4, 10.1.1, 10.3.3, 10.3.4, 10.3.8 and Article 11.

Sub-subcontracts and supply contracts shall be subject to identical conditions, except: (1) suppliers that are not performing any Work on the Project site are not subject to the insurance requirements described in Article 11; and (2) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractor's insurance policies.

§ 5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, Sub-subcontract or Supply Contract to the Owner.

§ 5.3.2 Coordination of Subcontractors

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both supplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner, the Construction Manager and the Architect to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and Sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors and Sub-subcontractors whose Work has not been completed. All progress meetings minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval.

§ 5.3.2.3 Schedule of Subcontractors' Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the Construction Schedule. The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed schedule applicable to its portion of the Work within forty-five (45) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed schedules. However, the Construction Schedule will take precedence over any schedules prepared by Subcontractors with respect to

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time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The Contractor will require all their Subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their sub-subcontractor contracts.

§ 5.3.2.4 Subcontractors' Performance. The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

§ 5.3.2.5 Payments to Subcontractors. Upon award of the Subcontract, the Contractor shall have each Subcontractor prepare and submit a schedule of values allocating that portion of the Cost of the Work attributable to its Subcontract to the various portions of the Work. Each schedule of values shall be prepared in a form and substance acceptable to the Contractor (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Contractor shall develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

§ 5.3.2.6 Safety Programs. The Contractor shall provide a general review of safety programs developed by each of the Subcontractors, including a verification that each Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Contractor observes a safety violation, the Contractor shall require a Subcontractor to correct it. After written notification to the Subcontractor to correct the safety violation, if the Subcontractor does not correct the problem in a timely fashion, the Contractor shall cause the Work to be corrected by other means. The performance of such services by the Contractor shall not relieve the Subcontractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all federal, state and local statute, rules, regulations and orders applicable to the conduct of the Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with federal, state or local statutes, rules, and regulations relating to the Workers' safety or any other aspect of the Work.

§ 5.3.2.7 Work. The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Contractor shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall coordinate any inspections which may be required by any governmental agencies.

§ 5.3.2.8 Interpretation. The Contractor shall consult with the Architect, Construction Manager and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

§ 5.3.2.9 Insurance Certificates. The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner, through the Construction Manager. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

§ 5.3.2.10 System Readiness. The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall be equitably adjusted for increases in cost resulting from the suspension.~~may be equitably adjusted as negotiated by the parties.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. ~~If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.~~

§ 5.5 Contractor and Subcontractors' Warranty Acknowledgment. The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

Warranty Acknowledgment

(Name of Subcontractor) ("Contractor") warrants that all of its Work complies with the requirements of the Contract Documents. If, within two (2) years after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This two (2) year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (ii) with respect to warranty work for an additional two (2) year period following each correction. This obligation shall survive acceptance of the Work and termination of our Contract.

This warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the ~~right~~ right, but assumes no obligation, to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these including those portions related to ~~insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.~~insurance. The Contractor shall be responsible for coordinating the Work with the work of other Contractors, including the Owner's own forces or separate contractors, so as to complete the Work in accordance with the Project time schedule.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

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§ 6.1.3 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.~~

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.~~

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Construction Manager, with notice to the Architect, will~~ allocate the cost among those responsible. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change ~~Directive~~ Directive, written contract amendment or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect ~~alone.~~ with the Owner's prior written approval.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 There shall be no changes on the Contract Sum as a result of a Change Order unless the Change Order is in writing and issued prior to effectuating the Work under the Change Order. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions

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of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility. In any event, in computing any increase in the Contract Sum, fees allowable for overhead and profit shall not exceed the following percentages: 10% for materials purchased and for Work completed by a Contractor's own forces; and 5% for Work completed by a Subcontractor.

§ 7.2 Change Orders

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:~~§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Construction Manager~~ Architect and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one or more of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.7.

However, the Contract Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted~~ adjusted, unless the Contractor provided such unit prices as a part of a competitive bid.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.6.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall ~~determine~~ determine, with the Owner's approval, the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, ~~an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ a reasonable amount allowance for overhead and profit but

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not to exceed five percent (5%) on changes in the Work performed by a Subcontractor and ten percent (10%) for changes in the Work performed by the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 ~~Costs~~ Actual costs of labor, including social security, ~~old age and~~ unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;

.2 ~~Costs~~ Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and

.4 ~~Costs~~ Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the ~~Work; and~~

~~.5 Additional costs of supervision and field office personnel directly attributable to the change.~~ Work.

§ 7.3.8 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 Contract Sum shall be actual net cost as confirmed by the Construction Manager and 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 net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for undisputed Work completed under the Construction Change Directive in Applications for Payment. ~~The~~ For those undisputed portions, the Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of ~~cost~~ cost, if agreed to by the Owner in writing, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of ~~either party~~ the Contractor to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree in writing with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the ~~adjustments,~~ adjustments in writing, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such Work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or the Construction Schedule.

§ 7.4 Minor Changes in the Work

The ~~Architect~~ Architect, with the Owner's approval, has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Construction Manager or Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4 that (1) are inconsistent with the intent of the Contract Documents; (2) render the Drawings and Specifications not in material conformity with the Work; or (3) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.

§ 7.5 Contractor Change Requests

In addition to the Contractor's remedies under Article 8 in the case of delays (which shall be governed solely by Article 8 and to which this Section 7.5 shall not apply), if the Contractor believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Architect and Owner's separate contractors, constitutes a change in the Work entitling it to additional compensation, it shall within twenty-one (21) days after the date the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the

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pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Contractor Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Contractor shall submit such additional information as may reasonably be required by the Owner to evaluate the Contractor Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Contractor within such ten (10) day period whether to grant, grant in part, or deny the Contractor Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Contractor disagrees with the Owner's decision, the Contractor shall pursue the remedies it has under Article 15. Failure of the Contractor to timely submit a Contractor Change Order Request strictly (not substantially) in accordance with the requirements of this Section 7.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby."

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the ~~Contract~~ Construction Time is a reasonable period for obtaining all supplies, materials, tools and equipment necessary to perform the Work and for properly performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article ~~11~~ 11, or delivery of the performance and payment bonds required by law, to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Contract Time. The Contractor shall require overtime, multiple shifts and any other action necessary to complete of the Work within the Contract Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 in a Change Order or Construction Change Directive. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. All Work shall be completed in sufficient time to allow for clean-up and preparation for Owner move-in prior to the date of Substantial Completion.

§ 8.2.4 Without altering the applicability and obligations of Section 8.2.3, the Contractor shall prosecute the Work undertaken in a prompt and diligent manner wherever such Work, or any part of it, becomes available, or at such other times as the Owner and/or Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of any other contractor, the Owner, Construction Manager or the Architect. Any supplies, materials, tools and/or equipment that are to be furnished by the Contractor hereunder shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided for herein. If the Contractor, through its negligence or failure, including the negligence or failure of its Subcontractors, Sub-subcontractors or suppliers, fails to furnish the necessary labor and/or supplies, materials, tools and/or equipment to meet construction needs in accordance with the established Construction Schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the Work up to the proper schedule. In the event the Contractor fails to take such action necessary to bring its part of the Work up to schedule within twenty-four hours of receiving notice from the Owner or Construction Manager, then the Owner, at its sole option, may supplement the Contractor's forces, materials and/or equipment or remove the Contractor from the Project, and the Owner may complete part or all of the remainder of the Contractor's Work, either utilizing in the Owner's sole discretion its own forces, new contractors chosen by the Owner or any

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Subcontractor, Sub-subcontractor or supplier of the Contractor, which may include fixed price supplemental work time and materials supplemental work, or any combination thereof, which in Owner's sole discretion will most quickly and completely cure the failure of the Contractor. The Contractor shall be responsible for any and all costs of performing or completing the Work that are incurred by the Owner or any Contractor, Subcontractor, Sub-subcontractor, supplier, or other entity on the Owner's behalf. The Contractor shall pay the Owner for such costs within ten (10) days of the date of invoice. If not paid within ten (10) days, the amount will be withheld from the Contractor and paid to the Owner from the next payment due the Contractor under the Agreement. Exercise of such rights shall in no way limit or jeopardize the Owner's right to any other remedy, including but not limited to a claim against the Performance Bond of the Contractor.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 ~~If~~ Except as provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Contract Time will be extended only under the exact circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3. Provided the Contractor submits a written request for an extension not more than fourteen days after the occurrence that gives rise to the delay, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by ~~labor disputes,~~ fire, ~~unusual delay in deliveries,~~ unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending ~~mediation and arbitration,~~ litigation, mediation, or arbitration, as applicable, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time ~~shall be extended by Change Order for such reasonable time as the Architect may determine.~~ may be extended by Change Order. Failure of the Contractor to submit a timely request for an extension shall irrevocably waive the Contractor's right to such an extension of time. If the contract time is subject to extension pursuant to this subparagraph, such extension shall be the exclusive remedy of the Contractor and the Contractor shall not be entitled to recover damages from the Owner.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contractor shall use its best efforts to mitigate the effects of any delay.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ The Contractor acknowledges that the Construction Manager's Schedule for the Work may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms and conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies as a result of such schedule changes.

§ 8.3.4 Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Contractor and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Contractor shall also within twenty-one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Contractor is entitled to claim by reason of any such occurrence. If the Contractor intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a Change Order Request stating the specific extension or adjustment requested and justifying the reason for the request. The Contractor shall thereafter submit such additional information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or

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deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Contractor disagrees with the Owner's decision, it may pursue the remedies available to it under Article 15. However, failure of the Contractor to timely assert any alleged delay or claim for extension strictly (not substantially) in accordance with the provisions of this Section 8.3.2 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

§ 8.3.5 The Contract price includes all costs associated with known and current COVID-19 impacts, including impacts on materials, the supply chain, labor, productivity and schedule. To the extent the Contractor's performance of the Work under the Contract is impacted as a result of the COVID-19 pandemic after the date of Contract execution, any claims relating to delay and cost impacts associated with COVID-19 shall be made in accordance with the terms and conditions of the Contract Documents.

§8.3.6 The Contract price includes all costs associated with known and current COVID-19 impacts, including impacts on materials, the supply chain, labor, productivity and schedule. To the extent the Contractor's performance of the Work under the Contract is impacted as a result of the COVID-19 pandemic after the date of Contract execution, any claims relating to delay and cost impacts associated with COVID-19 shall be made in accordance with the terms and conditions of the Contract Documents.

§ 8.4 DELAY DAMAGE CLAIMS

§ 8.4.1 If the Contractor fails to complete its Work on time resulting in loss or damage to the Owner, whether or not liquidated damages are called for in the Contract Documents, the Owner shall be entitled to recover any damages caused by the Contractor's breach, including overhead, profit, extended general conditions, actual attorney fees, etc.

§ 8.4.2 In the event of Owner delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum. This adjustment shall be based solely upon and limited to additional actual out-of-pocket expenses to the extent they are incurred directly as a result of the Owner delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner delay. The Owner and Contractor shall mutually agree to the amount of this equitable adjustment in writing.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

~~Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment,~~ Before the first Application for Payment, the Contractor shall submit a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of ~~values, if required under Section 9.2,~~ values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Construction Manager and Contractor must provide copies

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of the insurance certificates, bonds, and the same for all of the Contractors and Subcontractors prior to commencing Work and prior to submitting the first Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders. A request for payment of sums related to Work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit with each monthly Application for Payment (1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied, (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialmen, supplier and laborer or the Contractor addressing all previous Applications for Payment submitted for the Project, and (3) if applicable, an updated Schedule of Values incorporating changes in the Work.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project site for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner and Construction Manager for approval to include such material costs in his next progress payment. The Contractor's request shall include the following information:

.1 A list of the fabricated materials consigned to the Project site (which shall be clearly identified, giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.

.2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.

.3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibility to complete the Work.

.4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.

.5 Costs incurred by the Owner, Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor.

.6 Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.

.7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

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

§ 9.3.3.1 Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the Contractor hereby expressly agrees to hold harmless, indemnify and defend the Indemnitees, at the Contractor's sole

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cost and expense, from and against any and all costs (including without limitation reasonable attorney fees), liabilities, actions, lawsuits, claims or proceedings brought against Indemnitees as a result of any lien or claim of lien filed against the Work, the site of any of the Work, the Project site or any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnitees. Notwithstanding the above, Contractor acknowledges that in accordance with Applicable Laws, public property cannot be liened.

§ 9.3.3.2 In the event of any lien or claim of lien, Owner may withhold from payments otherwise due Contractor, such amounts as Owner deems suitable to protect it from the adverse effect of such lien or claim of lien. The Owner shall release any payments or portions thereof withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than Two Hundred Percent (200%) of such lien or lien claim. By posting such bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend, hold harmless and indemnify the Indemnitees. Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not cause any adjustment to the Contract Sum.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the

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Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or ~~Architect.~~Architect, in writing, together with the Certification to which the qualification pertains.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect ~~has~~has, unless otherwise required by Contract or law, (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

.1 defective Work not ~~remedied;~~remedied, or the Contractor is in default of the Agreement;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract ~~Documents.~~Documents;.
.8 failure to provide any documentation, Record Documents, etc., in a timely manner;
.9 any failure by Contractor or a Subcontractor to fully perform any obligation under the Contract;
.10 the Work not having progressed to the extent set forth in the Application for Payment; and
.11 representations of the Contractor are untrue.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Owner, Architect, or Construction Manager with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

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§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 ~~Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.~~The Owner may, in its sole discretion, after providing Contractor with ten (10) days prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor for which the Contractor has not provided a waiver of lien, in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project such that, in the Owner's determination, progress of the Project and the Project's schedule are jeopardized. All payments made pursuant to this section shall be considered the same as if paid directly to the Contractor and shall constitute partial payment of the Contract Sum. Payment under this provision shall not jeopardize any other remedy available to the Owner.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Subject to applicable law, if a petition in bankruptcy or any other arrangement or proceeding regarding insolvency, assignment for the benefit of creditors, trust, chattel mortgage, or similar state or federal proceeding, whether voluntary or involuntary, shall be filed with respect to the Contractor, the Owner may withhold the final balance, or any other payments, whether or not an application for progress payment has been properly filed, until expiration of the period of any guarantees or warranties required for the Contractor, and the Owner may pay out such funds the amount necessary to satisfy any claims or costs that otherwise would have been covered by such guarantees or warranties.

§ 9.6.9 Unless otherwise provided in the Agreement or Contract Document, the Owner may retain out of each progress payment a "Retainage" equal to ten percent (10%) of that payment, excluding any portion paid for the Contractor's General Conditions costs. Retainage on all individual Subcontractors which include both labor and material shall be ten percent (10%). Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and

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agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the ~~Contractor,~~ Contractor and without justifiable basis under the Contract Document, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by ~~binding~~ dispute resolution, then the Contractor may, upon ~~seven~~ twenty-one (21) additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive ~~list~~ Punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such ~~list~~ Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the ~~list,~~ Punchlist, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the ~~list,~~ Punchlist, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item ~~upon notification by the Architect.~~ immediately. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the ~~list~~ Punchlist accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion final acceptance of the Work by Owner following final completion and final payment under Section 9.10 or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive Punchlist of items to be completed or correct (a "Punchlist"). The Contractor shall respond immediately to correct Work deficiencies and/or Punchlist items. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

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§ 9.8.7 The Contractor shall promptly notify the Construction Manager, in writing, when the Work deficiencies and/or Punchlist items are completed. Upon the review of the Work by the Construction Manager after such notification by the Contractor, if Work deficiencies and/or Punchlist items shall continue to exist, the Owner may correct such deficiencies and pay such costs out of retainage held by the Owner on the Contractor's Contract.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor ~~and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.~~shall proceed with the Work in such a manner as reasonably directed and shall cooperate with the Owner to limit interruptions.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 Any agreement as to the acceptance of non-conforming Work not complying with the requirements of the Contract Documents, shall be in writing in the form of a Change Order, acceptable to the Owner's authorized representative and signed by all parties.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and ~~(5),~~ (5)an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release

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executed by the Contractor on a form provided by the Construction Manager; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as close out documentation, the other documentation required by the Contract Documents, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and ~~reasonable~~ actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~

.3 terms of special warranties required by the Contract ~~Documents.~~Documents;

.4 Owner's Claims arising after final payment;

.5 Owner's claims for indemnification; or

.6 Claims about which the Owner has previously given notice to the Contractor.

§ 9.10.5 Acceptance of ~~final~~ Final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for ~~Payment.~~ Payment and specifically referenced as being an exception to the waiver contained in this Section.

§ 9.10.6 The amount of the Final Payment shall be the Contract Sum less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall ~~be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall repair any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and Owner's property as required by Applicable Law, the Contract Documents, or as otherwise required, to cause no damage to the Work and Owners' property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the Project site require. The Contractor shall also provide recommendations and information to the Owner regarding: (a) the assignment of responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of members of the Construction Team, the Owner, and the general public; (b) temporary facilities; and (c) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

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§ 10.1.1 The Contractor shall at all times observe and comply with all Applicable Laws which may in any manner affect the equipment and materials used in the proposed construction, those employed on the work, and the conduct of the Work. The Contractor shall hold harmless and indemnify the Owner and its Board of Education (in its individual and official capacities), employees and administrators, against any claim or liability arising from the violation of any Federal, State, local and/or municipal laws, ordinances, rules and regulations, whether the violations are by the Contractor or any Subcontractor, Sub-subcontractor or any other person employed or engaged by the Contractor or Subcontractor.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project Site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project site except those activities performed solely by the Owner. The Contractor shall provide the Owner, through the Construction Manager, a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

.3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

.4 construction or operations by the ~~Owner~~ Owner, Construction Manager or other Contractors.

§ 10.2.2 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~~ Applicable Laws on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the ~~Contract, reasonable~~ Work, adequate safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project site and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

.1 The various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured shall be substantially braced and held in place. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the Project site or due to any other methods of construction.

.2 The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor where necessary to divide the Work area from the Owner's occupied areas.

.3 During the prosecution of the Work, the Owner will use and occupy the buildings and site adjacent to and surrounding the Project site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Subcontractors.

§ 10.2.4 ~~When~~ No use or storage of explosives or other Hazardous Materials or equipment or unusual methods shall be allowed at the Project site without the Owner's express written consent. If the use or storage of explosives or other ~~hazardous materials~~ Hazardous Materials or equipment or unusual methods are necessary and permitted by the Owner

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for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel and shall store in compliance with all Applicable Laws. When in the course of the Work use or storage of explosives or other Hazardous Materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

.1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than seventy-two (72) hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.

.2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with Applicable Laws.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the 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, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not ~~permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.~~load or permit any part of the structure or Project site to be loaded with a weight that will endanger the structural integrity of the structure or Project site or the safety of workmen or any other persons on or about the Work. When required law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portion of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjourning land and/or property owners or other parties.

§ 10.2.8 ~~Injury or Damage to Person or Property~~

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~The Contractor shall take all necessary precautions for the safety of employees and visitors on the Project site and shall comply with Applicable Laws and provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Project Site where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Construction Manager all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

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§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor ~~is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition,~~ shall not, nor shall it permit any member of the Construction Team to bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except permitted materials and as required by Section 10.3.8., subject to the requirements of §10.3.9. If Contractor or Construction Team encounters a Hazardous or potentially Hazardous Material on, in, under or about the Project Site that is not permitted or not in compliance with Section 10.3, Contractor shall immediately stop Work in the affected area and ~~report the condition to the Owner, Construction Manager and Architect~~ notify the Owner, Construction Manager, and Architect, in writing.

§ 10.3.2 ~~Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start up.~~ The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict (not substantial) compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials, Hazardous Materials or Potentially Hazardous Materials are released on the Project site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

.1 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum, any contingency or otherwise, fully and promptly remediate each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws to the most stringent standards, e.g., residential, available under all Applicable Laws, and in cooperation with the Owner, except to the extent the Hazardous Materials (i) existed uncontainerized, in or under the Project Site before Work began at the Project Site and neither the Contractor nor any other member of the Construction Team released or exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) were caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. Notwithstanding the foregoing limitations, the Contractor shall be responsible if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates the condition or area impacted by the Hazardous Materials.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~ The Contractor shall at its expense, without recovery from the Owner, the Contract or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold harmless the Indemnitees and the Project site from and against all claims, suits, administrative proceedings, personal injury, investigations, damages, costs, fines, judgments and liabilities, including, but not limited to, attorneys' fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of permitted materials or Hazardous Materials at the Project site by or due to any member of the Construction Team or

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for any noncompliance with the Agreement. The indemnity in the previous sentence and in Section 10.3.4 does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site or (ii) contamination that was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third-party. In both (i) and (ii), the exclusion of Contractor obligations does not apply to circumstances in which the Contractor has exacerbated the presence of Hazardous Materials or triggered a response or removal requirement. In addition, the obligations of the paragraph include, but are not limited to, Contractor's remediation and removal of any release of Hazardous Materials that it brought to the Project Site. Contractor's obligations herein are not limited by the extent of its insurance coverage.

§ 10.3.4 The ~~Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~Contractor's defense, indemnity, and hold harmless obligations shall include, but not be limited to, any and all governmentally mandated investigation, remediation, removal and/or clean-up of any such Permitted Materials or Hazardous Materials, and all related fees and costs.

§ 10.3.5 ~~The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~If the Contractor shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project site, the Contractor shall immediately notify the Owner, Construction Manager and Architect.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~If any member of the Construction Team encounters on the Project Site material, which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Contractor shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner, Construction Manager and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA/MIOSHA regulations and all Applicable Laws or the Hazardous Material is containerized for purposes of removal from the Project Site, in compliance with Applicable Laws. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. No member of the Construction Team shall bring any off-site materials or soil on the Project Site to use as fill that are not compliance with and accompanied by a Uncontaminated Soil Certification by a licensed professional engineer or geologist or, in the case of aggregate stone, a receipt from the originating quarry.

§ 10.3.7 Except as otherwise provided in the Agreement, including, but not limited to the exclusions in Section 10.3, and except to the extent covered by any insurance, the Owner, to the extent permitted by law, shall hold harmless the Contractor and Subcontractors from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of Hazardous Materials on the Project Site that pre-existed the Work.

§ 10.3.8 The Contractor shall work with asbestos or PCB or other Hazardous Material, except as provided for under the Work and in compliance with all Applicable Laws, including, but not limited to, employee protection, licensing, and training. In such a circumstance, the Contractor shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and decreasing obligations otherwise stated in Section 10.3, shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Contractor's or Construction Team's failure to so comply with an Applicable Law.

§ 10.3.9 The Contractor shall take care to minimize the use of any Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Contractor shall cause Permitted Materials which

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contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner's premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict (not substantial) conformity with Applicable Laws and the Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing the Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders. The term "Permitted Materials" as used in the Contract Documents shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties). The Contractor shall not permit inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials (www.epa.gov/iaq/schooldesign/construction.html) The Contractor shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 Security

§ 10.5.1 All members of the Construction Team shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties entering the Project site.

.1 The Construction Manager and Contractors shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Construction Manager and Contractor's written plan for Project Site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.

.2 The entrances to the Project site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Contractor. The Contractor shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

§ 10.6 Dust; Smoke; Fume

§ 10.6.1 The Contractor shall cause each member of the Construction Team to conduct operations in such a manner, which will control blowing dust. The amount of dust resulting from the operations of each of the Construction Team shall be controlled to prevent the spread of dust to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any Applicable Law. Temporary methods consisting of sprinkling or similar methods will be permitted to control dust. Use of water will not be permitted when it will result in, or create, hazardous or objectionable conditions such as ice, flooding and pollution. Dust control shall be performed as the Work proceeds and whenever a dust or nuisance or hazard occurs.

§ 10.6.2 Smoke pipes, exhausts and fumes from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect and the Owner.

§ 10.6.3 The Contractor shall enforce the Architect's or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted.

§ 10.7 Fire Precautions

§ 10.7.1 All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The members of the Construction Team shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

.1 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers,

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shall be stored in an orderly manner and shall be readily accessible.

.2 Before starting Work, the Contractor shall consult with the Owner, Construction Manager and Architect regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly (not substantially) conform and shall cause all members of the Construction Team to strictly (not substantially) conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.

.3 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.

.4 All tarpaulins used during the course of the Work shall be of flameproof type and shall be secured in place against damage or flapping from wind.

.5 All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.

.6 Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be containerized on-site and disposed of off-site, together will all flammable or waste material subject to spontaneous combustion, in compliance with Applicable Laws and in a manner to avoid hazard or damage to persons or property.

.7 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.

.8 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide continuously during operation properly trained personnel for said inspections.

.9 Temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.

.10 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

§ 10.7.2 The Contractor shall provide necessary personnel and firefighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.

§ 10.7.3 Not more than one day's supply of flammable liquids or gases, such as oil, gasoline, solvent, propane, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project site. Drums are to be equipped with approved vented pumps. The Contractor shall have a Spill Prevention, Control, and Countermeasure Plan ("SPCC"), all members of the Construction Team shall be trained with respect to the SPCC, and the SPCC shall provide for response materials to be available in all locations where Hazardous Materials that are brought to the Project Site by any member of the Construction Team are located, used, or stored.

§ 10.7.4 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

§ 10.8 Fire Protection

§ 10.8.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.8.2 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project site.

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§ 10.8.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for adequate fire protection, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner and/or the Architect.

§ 10.8.4 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual (FM) requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

§ 10.8.5 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

§ 10.8.6 All other parties with temporary structures on the Project site shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 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~~ and must have an A.M. Best's Rating of "A", XII or better. Such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed 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; and

.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 obligations under Section ~~3.18.~~3.18;

.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- Premises' Operations (deleting X, C, or U exclusions);
- Owner's and Contractor's Protective;
- Products and Completion Operations;
- Contractual – including specific for the Contractor's obligations under Paragraph 3.18;
- Any auto; and
- Broad Form Property Damage, including Completed Operations; and

.10 All Bonds required by law, including bid bond, performance bond and payment bond.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract or other Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether~~ must be maintained and written on an occurrence ~~or claims-made basis,~~ basis and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted by Contractor to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be ~~canceled~~ canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable ~~promptness.~~promptness, but not less than 30 days prior to any reduction in coverage.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) ~~the Owner as~~ an additional ~~insured~~ insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Such Certificates of Insurance shall be endorsed to specifically name the additional insureds.

§ 11.2 Owner's Liability Insurance

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

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner 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 Contract Sum, 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Architect, the Construction Manager, the Contractor, Subcontractors and Sub-subcontractors in the Project. Notwithstanding the foregoing, the Owner's Builder's Risk Policy excludes any tools, equipment, scaffolding, etc., owned or rented by the Contractor or Subcontractors and material stored on the site but not incorporated into the Project. The Contractor shall be responsible for protecting all product until the Date of Substantial Completion is established by the Architect/Engineer. The Contractor shall replace any Work if damaged prior to substantial completion. The Contractor may assume the risk itself or obtain insurance in an amount it deems sufficient to cover the risk.

§ 11.3.1.1 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 the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires ~~deductibles, the Owner~~ deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 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. Property insurance coverage for Contractor's owned or hired equipment, tools, automobiles, and materials not incorporated into the final Work shall be the sole responsibility of the Contractor.

§ 11.3.2 **Boiler and Machinery Insurance.** The Owner 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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 **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.~~

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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 Section 11.3.7 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.~~

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 ~~**Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, 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 Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, 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.~~

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of

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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.

§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. 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 Article 7.~~

§ 11.3.10 The Owner 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 Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.~~insurers.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Owner ~~shall have the right to require the Contractor to furnish bonds~~ hereby requires the Contractor to furnish separate Performance and Labor and Material Payment Bonds covering faithful performance of the Contract and payment of obligations arising thereunder ~~as stipulated in bidding requirements or specifically required in the Contract Documents~~ each in the penal sum of 100% of the Contract Sum and in accordance with Applicable Laws on the date of execution of the Contract. Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of not less than A, XII or better and shall remain in effect for a period not less than two (2) years following the later of (i) the date of Substantial Completion, (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amount or expiration of the Warranty under the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Construction Manager shall obtain copies of the Performance Bond and Payment Bond required by the Agreement from the Contractor prior to Contractor beginning performance pursuant to the Agreement. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to Contractor beginning performance pursuant to the Agreement.

§ 11.4.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

§ 11.5 Insurance In General

§ 11.5.1 At the written request of the Owner to the Contractor, the Contractor shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Contractor fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum by the cost of the Replacement Insurance. The Contractor shall furnish all necessary information to obtain and maintain such Replacement Insurance.

§11.5.2 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.5.3 Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's sole cost and expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may ~~request~~ request, with the Owner's written consent, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. At the time Owner's consent is sought as described herein, the Architect and/or Construction Manager shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner or the separate Contractor, shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

~~The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~Owner and/or the Architect may reject defective or unsatisfactory Work. The Contractor shall promptly cause all Work rejected by the Owner and/or Construction Manager and/or Architect, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Contract Sum and without use of any contingency. If any additional testing, inspections and compensation for the Architect's services and expenses are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two (2) years after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor ~~shall~~ shall, without interfering with the Owner's facilities, personnel or operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.2.2 ~~The one year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~ Upon completion of any Work under or pursuant to Section 12.2.2 the two (2) year Correction Period specified by Section 12.2.2 shall begin anew with respect to the Work requiring correction.

~~**§ 12.2.2.3** The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.3 The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor ~~has~~ might have under the Contract Documents. Establishment of the ~~one year~~ two (2) year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Each Contractor shall guarantee work for two (2) years, except where a longer guarantee period is stipulated in the Contract Documents, from the date of Substantial Completion of the Project. No provisions of the Contract Documents nor the Final Certificate for Payment shall relieve the Contractor of responsibility for satisfactory material or workmanship within the period described above. It shall be the Contractors responsibility to remedy any faulty material or workmanship and any damage to other work by removing and replacing same without any extra charge whatsoever.

§ 12.2.7 Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

.1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or

.2 Are not accepted by the Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, or otherwise defective, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced ~~as appropriate and equitable.~~ by equitable amount which reflects the loss of value to the Owner caused by the Defective Work. Such adjustment shall be effected whether or not final payment has been ~~made.~~made, and if it occurs after Final Payment is made, the Contractor shall pay the Owner whatever sum is owed upon demand.

If, within one (2) years after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be defective, the Contractor shall, without interfering with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting rejected Work, without increase in the Cost, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.4 Owner's Right To Correct Or Remove Defective Work

§ 12.4.1 If the Contractor fails to cause defective Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Contractor shall pay the Owner all costs of correction (including the value of the Owner's staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Contractor (including the value of the Owner's staff time and reasonable attorneys' fees). If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency, plus interest. If payments then or thereafter due the Contractor are not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner immediately upon demand.

§ 12.4.2 The Owner's right to store and sell such defective Work shall not give rise to a duty to do so. Instead, the

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Owner may upon ten (10) day's prior written notice simply dispose of such defective Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum, any contingency or otherwise.

§ 12.4.3 Tests. If tests or inspections reveal that portions of the Work are Defective, any additional tests or inspections required to assure the Architect and the Owner that the defective Work has been remedied or is in an acceptable condition shall be conducted at the expense of the Contractor, without increase in the Contract Sum, and without use of any contingency. The Contractor shall pay all additional costs of the Architect and the Owner, which are associated with such additional tests or inspections.

§ 12.4.4 Periods of Limitation. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents or Applicable Laws. Establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work under this Article 12 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the Agreement.

§ 12.4.5 The Owner's Right to Stop the Work. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§12.5 Damage

§ 12.5.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum, any contingency or otherwise.

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

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the ~~place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ State of Michigan.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by national overnight courier service providing a tracking system and proof of delivery to, the last business address known to the party giving notice.

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Wherever the Contract Documents require the Contractor to give "Notice" or "Timely Notice" to the Architect, Public Authority, and/or others, it shall be the Contractor's responsibility to furnish all such notices sufficiently in advance to allow the party receiving the notice reasonable time to react to such notice, including travel time on the job site as necessary, when such notices require the on-site presence of the Architect, Public Authority, their authorized representatives, or others for field observation of inspections, testing or approvals. Reasonable time shall be defined as no less than 24 hours plus normal travel time from the home office of the party being notified to the job site and must also accommodate known, standard, or reasonable processing periods.

§ 13.4 Rights and Remedies

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

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

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by ~~applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.~~ Applicable Laws. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract ~~Documents,~~ Documents or Applicable Law, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid ~~unreasonable~~ delay in the Work.

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§ 13.6~~Interest~~

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

§ 13.7 Time Limits on Claims

The Owner shall commence all claims and causes of action in accordance with Michigan law, regardless of the time frames identified in this Agreement. The Contractor shall commence all claims and causes of ~~action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ action in accordance with this Agreement and in accordance with Michigan law.

§ 13.7.2 Regardless of any provisions to the contrary, the statute of limitations with respect to any defective or nonconforming Work which is not discovered by the Owner shall not commence until the discovery of such defective or nonconforming Work by the Owner.

§ 13.8 Surety Notice And Prior Approval

Except where otherwise expressly required by the terms of the Agreement, the Contract Documents or the General Conditions, exercise by the Owner of any contractual or legal right or remedy without prior notice to or approval by the Contractor's surety shall in no way bar or prohibit the Owner's ability to pursue such right or remedy. Further, pursuit of such a right or remedy without prior notice to or approval of surety shall in no way compromise, limit or bar any claim by the Owner against a surety bond of the Contractor.

§ 13.9 Owner Policies

The Construction Manager and Contractor agree to follow the Owner's policies and procedures in regards to working in and around school facilities. The policies are all available on the Owner's Website. The Owner reserves the right to remove individuals from the Project sites who do not strictly comply.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the ~~Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the~~ Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents subject to justifiable withholding of payment as described herein or in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven~~ thirty days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~executed.

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§ 14.1.4 If the Work is stopped for a period of ~~60~~ 90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven~~ thirty additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 The Contractor acknowledges that it has certified to the Owner that no owner, employee, agent, representative, contractor and/or other personnel of the Contractor will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). The Contractor acknowledges and agrees that if it is found to have submitted a false Certification or otherwise breaches or fails to comply with the requirements of the Certification, the Owner may immediately terminate the Contract and notwithstanding any other provision of this Contract, the Contractor shall be liable to the Owner for any and all costs and expenses incurred by the Owner to secure a replacement contractor to complete the Work in accordance with the Contract Documents, including, but not limited to, any costs or expenses required to be paid by the Owner to the replacement contractor in addition to those required to be paid to the Contractor, all attorney and/or professional service fees, and any and all other actual and consequential damages incurred by the Owner.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials;~~materials to the point of negatively impacting the Project and/or the related schedule;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 ~~repeatedly disregards applicable laws,~~ disregards Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents; or

.5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:~~three (3) days' written notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

In the event the Contractor's surety bond requires notice of intent to declare a default of the Contractor and if such bond notice is provided by the Owner, such notice shall be adequate to satisfy the three (3) day written notice described above in this section.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner in pursuing termination and completion of the Work, including actual attorney and legal fees and costs, and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the

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unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work ~~executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~executed as of the date of termination by the Owner and subject to negotiation by both parties.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the ~~Contract.~~ Contract, including but not limited to, additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the ~~Contract~~ Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.1.1 Changes in Law. If changes in ordinances, laws, requirements, or regulations or changes (which could not reasonably have been anticipated prior to the execution of the Contract) in judicial or agency interpretations of such ordinances, laws, requirements or regulations occur after execution which require an alteration of the Work or otherwise may result in a price or time impact, Contractor shall so notify Owner in writing consistent with Section 15.1.4 and comply with the procedures set out therein. Changes in the following areas of law are deemed to be within the scope of the Work hereunder and shall not be the basis for any change in price or time: requirements affecting the use or handling by Contractor of toxic or Hazardous Materials, Occupational Safety and Health Act requirements relating to Contractor's prosecution or conduct of the Work during the Project, or laws or requirements relating to operation of the business of construction contracting, engineering, or equipment manufacturing, or taxes affecting any such business.

§ 15.1.2 Notice of Claims. Claims by ~~either~~ the ~~Owner or~~ Contractor must be initiated by written notice to the ~~other party and to the Initial Decision Maker~~ Owner with a copy sent to the Construction Manager and ~~Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party~~ Architect. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later.~~ later except as provided in Sections 7.2, 8.3.4 and 8.4.3.

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§ 15.1.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction ~~Manager~~ Manager, assisted by the Architect, will prepare Change Orders and ~~the Architect will~~ issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the ~~Contract Time, written notice as provided herein shall be given.~~ Construction Time, written notice shall be given pursuant to Section 8.3.4. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made and governed by the provisions of Section 8.3.4 documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision ~~Maker, unless otherwise indicated in the Agreement.~~ Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation~~ litigation or any other mutually agreed upon dispute resolution forum of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or ~~Contract~~ Construction Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 ~~Mediation~~Alternate Dispute Resolution

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to ~~mediation~~ non-binding Alternative Dispute Resolution as a condition precedent to binding dispute resolution. On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to the Paragraph above. The mediator shall render his/her decision within seven (7) days of said meeting.

The purpose of the mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.

During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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AIA® Document B132™ – 2009

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the 4th day of August in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Bloomfield Hills Schools
Booth Center
7273 Wing Lake Road
Bloomfield Hills, Michigan 48301

and the ~~Architect:~~Architect
(Name, legal status, address and other information)

French Associates, Inc.
236 Mill Street
Rochester, Michigan 48307

for the following Project:
(Name, location and detailed description)

2020 Bond Election
See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D**.

The Construction Manager:
(Name, legal status, address and other information)

Barton Malow Builders LLC
26500 American Drive
Southfield, Michigan 48034

The Owner and Architect agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D**. The 2020 Bond issue is approximately $200,155,000.00. Notwithstanding the foregoing, once the Bond Election is successful, the Owner shall approve in writing the final Scope of the 2020 Bond Election Project with advice and input from the Owner's Architect and Construction Manager. Such Scope of Work shall then amend the Detailed Description of the Project attached hereto as **Exhibit D**. At that same time, the Owner will approve the fixed limit of the Cost of the Work which will not-exceed the amount of the Bonds.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D**. Notwithstanding the foregoing, once the Bond Election is successful, the Owner shall approve in writing the final Scope of the 2020 Bond Election Project with advice and input from the Owner's Architect and Construction Manager. Such Scope of Work shall then amend the Detailed Description of the Project attached hereto as **Exhibit D.**

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

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.1 The Owner's fixed limit on the Cost of the Work will be set by the Owner in accordance with Section 1.1.1. above. The fixed limit shall include the Cost of the Work, as defined in Article 6 of this Agreement, as well as all other elements of the Project for which the Architect has responsibility. Any services provided under this Agreement are subject to the fixed limit. In the absence of an express provision to the contrary in this Agreement, the Architect shall perform the required services in a manner that will render a Cost of the Work for the Project that does not exceed the most current Owner-approved fixed limit.

.2 Amount of the Owner's overall Budget for the Project, including all hard construction costs and contingency actually used in the Project. Notwithstanding the foregoing, the Cost of the Work does NOT include the compensation of the Architect, its employees, agents or the Architect's Consultants, the Construction Manager, its employees or the Construction Manager's consultants, or its Personnel Reimbursable Rates or General Condition Items, the costs of the land, rights-of-way, financing, other costs which are the responsibility of the Owner or other costs such as review and permit fees, marketing, Technology Designer, Project Financial Consultant, Project Market Study Consultant, Project Investment Banker, etc., and other "soft costs" that are the responsibility of the Owner.

.3 The Architect acknowledges that the Owner has established a fixed limit for the Cost of the Work as a condition of this Agreement. The Architect shall design the Project adhering to the Owner's established fixed limit for the Cost of the Work.

Notwithstanding anything contained herein to the contrary, the Owner, in its sole discretion, shall work with the Architect in determining how the contingency, if any, allocated for the Project shall be utilized.

§ 1.1.4 The Owner's anticipated design and construction ~~schedule:~~schedule (see **Exhibit F**):

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

.4 Other:

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:
(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

[ ] One Contractor

[X] Multiple Prime Contractors

[ ] Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

If any, to be determined later by mutual agreement.

§ 1.1.7 Other Project information:

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(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

If any, to be determined later by mutual agreement.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

Brian Goby
Director of Physical Plant Services
BGoby@bloomfield.org
248-341-5490
and
Christina Kostiuk
Assistant Superintendent for Finance & Operations
TKostiuk@bloomfield.org
248-341-5452

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

The Construction Manager shall assist the Architect during the Design Phases to ensure that the Architect's design complies with Project budget and schedule and confirm the constructability and completeness of the Design/Construction Documents.

§ 1.1.10 ~~The Owner will retain the following consultants:~~Unless provided by the Architect, the Owner will retain the following consultants, with whom the Architect shall coordinate.
(List name, legal status, address and other information.)

.1 Construction Manager: The Construction Manager is identified on the cover page. ~~If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:~~

.2 ~~Cost Consultant (if in addition to the Construction Manager):~~
~~*(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)*~~

~~.3~~ Land Surveyor:

To Be Determined

~~.4~~ .3 Geotechnical Engineer:

To Be Determined

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~~.5 Civil Engineer:~~

~~.6~~ .4 Other consultants:
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

Owner's Environmental Consultant and Others To Be Determined

§ 1.1.11 The Architect identifies the following representative in accordance with Section ~~2.4:~~2.3:
(List name, address and other information.)

The Architect agrees to commit key personnel throughout the duration of the Project as identified in **Exhibit C,** subject to the continued employment of any named individuals by the Architect. The Architect shall promptly notify the Owner if services of any one of the listed key personnel become unavailable due to circumstances beyond the Architect's control – e.g., extended illness or disability, death, or termination of employment, etc. Owner shall have the right to interview and select alternate key personnel employed by the Architect to replace the unavailable key personnel. The Architect shall agree to provide the services of the alternate key personnel selected by Owner. The Architect is not entitled to additional compensation for any such substitution(s) of the key personnel. The assignment of key personnel shall also include members of the Architect's Consultants.

§ 1.1.12 The Architect will retain the ~~consultants~~ Consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic ~~Services:~~Services (also see **Exhibit C**):

.1 Structural Engineer:

Shymanski & Associates, LLC
33426 5 Mile Road
Livonia, Michigan 48154

.2 Mechanical Engineer:

Strategic Energy Solutions, Inc.
4000 West 11 Mile Road
Berkley, Michigan 48072

.3 Electrical Engineer:

Strategic Energy Solutions, Inc.
4000 West 11 Mile Road
Berkley, Michigan 48072

.4 Civil Engineer:

Spaulding DeDecker Associates

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905 South Boulevard East
Rochester Hills, Michigan 48307

.5 Other Consultants:

Acoustical Design
Food Service Design
Landscape Architect
Pool Design
Theatre Planning/Lighting

§ 1.1.12.2 Consultants retained under Additional Services:

None unless agreed to in writing by the Owner

§ 1.1.13 Other Initial Information on which the Agreement is based:

The Architect's Proposal dated June 11, 2019, which is incorporated herein by reference and attached hereto as Exhibit H. The parties agree that where there is a conflict between the terms of this Agreement and the Architect's Proposal, this Agreement shall take precedence.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect ~~shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.~~ may adjust the schedule, and if the Owner deems an adjustment is warranted, the Architect's services and the Architect's compensation may be adjusted as mutually agreed to by the parties. The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Construction Team.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this ~~Agreement.~~
Agreement whether performed by the Architect, its employees or agents and the Architect's Consultants as enumerated in Sections 1.1.11 and 1.1.12 of this Agreement and any other services included in this Agreement as Basic Services.

§ 2.2 ~~The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect~~ Any other Section in this Agreement, the Construction Documents or any other document to the contrary notwithstanding, all services provided by the Architect under this Agreement shall be performed in a reasonably prompt manner and in accordance with the standard of reasonable care and skill exercised by an architect of recognized experience and expertise similar to the Architect's in the design and construction of public school facilities.

The Architect shall be responsible for the degree of care and skill for all services provided hereunder whether such services are provided directly by the Architect, by its employees or agents, or by any of the Architect's Consultants hired by the Architect.

The Architect acknowledges that the services to be provided by the Architect under this Agreement shall include assisting the Owner in complying with the Owner's obligations set forth in the Michigan Revised School Code (MCL 380.1 et seq., including, but not limited to 380.1264, as amended), the School Building Construction Act (MCL 388.851 et seq., as amended), the Occupational Code (MCL 339.2011, as amended), the Stille-Derossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.) and the Michigan Building Code. Therefore, the Architect hereby agrees to perform the services required of "an architect" pursuant to those Acts. The Architect and the Owner acknowledge that the Project will utilize the services of a Construction Manager who will be contractually responsible for supervision during the Construction Phase; provided however, the Architect acknowledges that nothing contained in this Agreement shall be construed to limit the Architect's services, duties or obligations pursuant to those Acts or otherwise provided by law.

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The Architect acknowledges the Owner is relying on the Architect's professional skills expertise, and experience in the projects of the type and scope herein. Therefore, the Architect shall perform its services as expeditiously ~~as is consistent with such professional skill and care and the orderly progress of the Project.~~ as would a highly competent professional within reasonable standard of care using Architect's skills and expertise, acting diligently and consistent with the Owner's interest without conflict, and with the orderly progress of the Project. Architect represents that the Architect's services and Instruments of Service shall comply with all applicable federal, state and local laws, codes, regulations, and ordinances in all material respects as they are in effect as of the time the latest construction and building permit is issued. The Architect shall submit for the Owner's written approval a schedule for the performance of the Architect's services which shall be consistent with the Milestone Dates and Master Design and Construction Schedule established in Section 1.1.4 provided for the Project, which shall only be adjusted by mutual agreement in writing as the Project proceeds. The schedules shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the schedule, as approved in writing by the Owner shall not, except for reasonable cause, be exceeded by the Architect.

§ 2.3 ~~The~~ Unless modified by this Agreement, the Architect shall provide its services in conjunction with and, where indicated in this Agreement, in reliance upon the services of a Construction Manager as described in AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager, as modified between the Owner and Construction Manager. The Architect shall not be responsible for actions taken solely by the Construction Manager.

§ 2.4 The Architect shall identify a ~~representative~~ Principal-in-Charge authorized to act on behalf of the Architect and fully commit the Architect's resources with respect to the Project. The Architect's Principal-in-Charge shall be identified on **Exhibit C.**

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance ~~for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~
during and for the duration of this Agreement at no additional cost to the Owner. Insurance carriers providing the required insurance policies shall be acceptable to the Owner and must have an A.M. Best's Rating of "A-" or better.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than ~~($) for each occurrence and in the aggregate for bodily injury and property damage.~~ the following

.1	General Aggregate:	$4,000,000
	Each Occurrence (Bodily Injury and Property Damage):	$2,000,000
.2	Excess Umbrella Liability Each Occurrence:	$1,000,000
	General Aggregate:	$1,000,000

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than ~~($) combined single limit and aggregate for b dily injury and property damage.~~ the following:

Bodily Injury:	
Each Person	$2,000,000
Each Accident	$2,000,000
Property Damage	
Each Accident	$2,000,000
or	
Combined Single Limit (Bodily Injury and Property Damage):	
Each Accident	$2,000,000

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§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation ~~at~~ that meets or exceeds the legal statutory limits and Employers Liability with a policy limit of ~~not less than ($)~~ the following:

Each Accident:	$500,000
Disease, Policy Limit:	$500,000
Disease, Each Employee:	$500,000

§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than ~~($) per claim and in the aggregate.~~ the following:

.1 The Architect shall obtain and maintain in force available for this Project professional liability insurance providing at a minimum $3,000,000 per occurrence and $5,000,000 in the aggregate, for liability arising out of any negligent acts, errors and omissions in the Architect, its employees, agents, and Architect's Consultants rendering of or failure to render professional services under this Agreement, including without limitation Architect's services described under Article 3 and Article 4, and all subsequent addition or additions or amendments thereto. Additionally, the Architect's Consultants agree to maintain the insurance amounts contained in the Certificate of Liability Insurance attached hereto as **Exhibit** E. Insurance amounts must be annually renewed and maintained in full force for a period of not less than the Statute of Limitation and Statute of Repose periods in the state where the Project is located after the Project's relevant Date of Substantial Completion or the last day service is rendered by the Architect on the Project, whichever shall be the later. The Architect shall immediately notify the Owner if this insurance becomes not available or the required coverage amount is substantially changed from the current coverage carried by the Architect or as required herein.

§ 2.6.5.1 WAIVER OF SUBROGATION.
See AIA A232-2009, Article 11.3.7.

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates ~~will show~~ shall be endorsed to name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess ~~policies.~~ policies and on all policies of the Architect's Consultants identified in Sections 1.1.11, 1.1.12.1 and **Exhibit C**. See Certificate(s) of Insurance attached hereto as **Exhibit E** and incorporated herein by reference. Such Certificate(s) of Liability Insurance must include the Owner as an additional insured on the commercial general liability, automobile policies and umbrella or excess policies and must provide that the Owner will be given at least thirty (30) days' notice of cancellation or change in insurance coverage.

With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are cancelled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be annually renewed and maintained in full force and effect for three (3) years from the date of completion of the Project.

In addition, if at any time throughout the Term of this Agreement Owner desires Architect to increase any or all of the above-referenced minimum insurance requirements, Owner shall request a price from the Architect for said cost. If Owner, then, chooses to increase said minimum insurance requirements, Owner shall reimburse the Architect for the difference of the insurance premium(s) at cost without any mark-up.

§ 2.7 The Architect, its employees, agents and Architect's Consultants shall maintain all necessary licenses, certifications, registrations, permits or other authorizations necessary to act as licensed (or registered) design and engineering professionals for the Project until the Architect's and Architect's Consultants' duties hereunder have been fully satisfied.

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§ 2.8 Basic Compensation of the Architect and of the underlying school construction Projects will be financed through the Owner's issuance of General Obligation Unlimited Tax Bonds (the "Bonds"). The Bonds establish as a condition of this Agreement a fixed limit of the Cost of the Work, if such election is successful. The Architect shall not provide any further services until the Architect receives written notice from the Owner that the Owner has issued the above-referenced Bonds and authorizes the Architect to proceed under this Agreement, unless otherwise directed by the Owner in writing. Notwithstanding any other provision of this Agreement to the contrary, the Architect acknowledges that compensation of any services to be performed by the Architect is expressly contingent upon the Owner's issuance of General Obligation Unlimited Tax Bonds for all Projects. In the event that the Owner does not issue such Bonds, in the complete discretion of the Owner, the Owner may terminate this Agreement and the Owner shall not be responsible for compensating the Architect. Notwithstanding any other provision of this Agreement to the contrary, the Architect acknowledges that the Architect must receive the Owner's Approval after each completed Phase hereunder and may not proceed to the next Phase without the Owner's express approval to proceed.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and ~~include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.~~ any other services identified in Article 12 or elsewhere in this Agreement as Basic Services and include architectural, civil structural, mechanical, electrical engineering services, acoustical design, food service design, landscape architecture, pool design, theatre planning/lighting, interior design services and any other consultants or services required to produce a complete and accurate set of Construction Documents to complete the Project. Mechanical engineering shall include, but not be limited to, plumbing, heating, ventilating, air-condition (cooling), temperature controls, and fire-protection system design and coordination. The Architect shall also coordinate with the Owner's Technology Designer relative to electrical design as it relates to information technology, complete access, access for DDC, Security and low voltage for telephone systems. **Exhibit A** attached hereto, describes the engineering and design services which shall be provided by the Architect, and further distinguishes whether such services shall be deemed Basic or Additional Services.

Notwithstanding the foregoing, the Architect shall provide all professional services necessary for the complete design and construction documentation of the Project necessary for the Owner's intended use and any other consultants or services required to properly and completely design the Project and prepare Construction Documents that fully indicate the requirements for the Work, whether or not those services are individually listed or referred to in this Agreement with the only exceptions being: (a) the cost of those services that are provided by third parties that are expressly designated herein as being "the Owner's Responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting services that become necessary as a result of a written and material Owner-directed change in the Project scope affecting the Architect. Accordingly, the Owner and the Architect acknowledge and agree that there are functions, responsibilities, activities and tasks not specifically described in this Agreement that are reasonably incidental to, and are required for, the proper performance and provision of the Basic Services and are a necessary and inherent part of, or a necessary sub-part included within, the Basic Services. To the extent reasonably incidental to and consistent with the Basic Services such functions, responsibilities, activities, and tasks shall be deemed to be implied and included within the scope of the Basic Services to the same extent and in the same manner as if specifically described in this Agreement, at no additional cost to the Owner. Services expressly excluded from Basic Services under this Agreement are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. The Architect shall coordinate the services provided by the Architect, its employees, agents, and the Architect's Consultants, and meetings and communications between the Architect, its consultants, Owner and Owner's consultants and the Construction Manager.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall coordinate and assist the Owner in obtaining the information and services described in Sections 5.6 and 5.7. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a ~~schedule~~ schedule, for the Owner's approval, consistent with the preliminary Project Milestone Schedule, of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once accepted by the Owner in writing and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause. With the Owner's written approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, ~~or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.~~made without the Architect's knowledge. However, the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. Prior to the commencing Schematic Design Services, the Architect shall obtain and evaluate the accuracy of drawings or other information depicting the utilities servicing the Project site or which may be affected by the Project and shall advise the Owner on any apparent discrepancies or incomplete information and suggest additional testing or surveys which might be desirable to understand the existing conditions affecting the Project so as to assist in avoiding differing site conditions claims arising during construction. The Architect shall also consider value engineering proposals by the Construction Manager and Contractors in the various phases of its design services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project, attending meetings and making presentations. The Architect shall assist the Owner in connection with any other services as requested by the Owner and governmental authorities having jurisdiction and/or reasonably required for the Project.

§ 3.1.9 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on the estimate, the Program, budget and aesthetics in developing the design for the Project.

§ 3.1.10 Upon request of the Owner, the Architect shall make presentations to explain the design of the Project to representatives of the Owner, Owner's consultant(s), Contractors and Construction Manager. When making such presentations, the Architect shall include correlating the design to the Owner's established Project Budget and schedule. If at any phase of design the Architect's opinion of probable Project Cost and/or Construction Manager's estimated Project Cost and schedule exceeds the Owner's established Project Budget and schedule, the Architect shall, in cooperation with the Construction Manager, present remedies or alternative designs that would (1) bring the estimated Project Cost within the Owner's established Project Budget and schedule; and (2) without sacrificing the Owner's Program and intent of the Project as established in Article 1.1, Initial Information.

§ 3.1.11 The Architect shall submit design documents to the Owner and Construction Manager at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on written approvals received from the Owner in the further development of the design.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review and analyze the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

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§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the ~~Project.~~ Project considering the Owner's long term plans regarding facilities, systems and equipment and shall arrive at a mutual understanding of such requirements with the Owner and shall prepare and submit a copy of such understanding to the Owner for approval before proceeding with drafting the preliminary designs. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components. Approval by the Owner shall be deemed to be approval of the concept, though not the means, techniques or particular material recommended by the Architect, unless the material or system is specifically required by the Owner.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's ~~review.~~ review sufficient to allow the Construction Manager to prepare a preliminary estimate of the Cost of the Work. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall ~~consider~~ review with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit ~~the Schematic Design Documents to the Owner and the Construction Manager.~~ to the Owner and the Construction Manager the Schematic Design Documents which shall also include Architect's opinion of probable Project Cost upon which the Architect's design is based. This estimate shall be based on the current area, volume or similar conceptual estimating techniques. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall ~~be entitled to rely on the accuracy of the estimates of the Cost of the Work,~~ receive, review and evaluate the estimates of Construction Cost which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner. The Architect shall be entitled to rely upon the Construction Manager's estimates in the performance of the Architect's services, unless the Architect knows or should have known the estimates to be incorrect. In that event, the Owner, Architect and Construction Manager must agree to meet in order to mutually agree upon the estimate, Program and schedule.

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§ 3.2.9 Based on the mutually agreed-upon estimate, Program and schedule, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components, and shall prepare for review by the Owner a preliminary estimate of the Cost of the Work as that phrase is defined in this Agreement. Design Documents shall comply with applicable laws, statutes, regulations, ordinances, codes, orders, rules and regulations. (See Article 2.2) These requirements shall not apply to elements of the Project which are not within the scope of the Architect's services. Approval by the Owner shall be deemed to be approval of the concept, though not the means, techniques or particular material recommended by the Architect, unless the material or system is specifically required by the Owner

§ 3.2.10 The Architect shall establish and conduct a mutually agreed upon system of communications, review and revision vehicles to ensure an informed "Owner Approval Process". This process shall include a reasonable number of Owner review meetings with individuals designated by the Owner. The Architect shall conduct a reasonable and sufficient number of such meetings to ensure the Owner's full opportunity to make detailed reviews, suggest revisions, and make an informed approval of such revised designs. The time line for this process shall provide for sufficient time to allow for review, revision and finalization of plans for approval by the Owner prior to timely commencement of the Design Development Phase. If requested by the Owner, finalized plans shall be provided to the Owner and Construction Manager in both reproducible drawing format digital format as specified by the Owner. Digital format shall include all of the following:

.1 Copies of all drawings in AutoCAD

.2 All digital files shall be presented on a flash drive in PDF format or transmitted via a large file drop box format.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, civil structural, mechanical and electrical ~~systems,~~ systems and materials, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit ~~the Design Development Documents~~ to the Owner and the Construction ~~Manager.~~ Manager the Design Development Documents which shall also include Architect's opinion of probable Project Cost upon which the Architect's design is based. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall cooperate with and assist the Construction Manager to take action as required under Sections 6.5 and ~~6.6~~ 6.6, advise the Owner in writing, of any adjustments based on the Construction Manager's estimate of the Cost of the Work previously provided to the Owner, and request the Owner's approval of the Design Development Documents. The Architect shall cooperate with and assist the Construction Manager to update the estimate of the Cost of the Work.

§ 3.3.4 The Architect shall establish and conduct a mutually agreed upon system of communications, review and revision vehicles to ensure an informed "Owner Approval Process". This process shall include a reasonable number of Owner review meetings with individuals designated by the Owner. The Architect shall conduct a reasonable and sufficient number of such meetings to ensure the Owner's full opportunity to make detailed reviews, suggest revisions, and make an informed approval of such revised designs. The time line for this process shall provide for sufficient time to allow for review, revision and finalization of plans for approval by the Owner prior to timely commencement of the Construction Documents Phase. If requested by the Owner, finalized plans shall be provided to the Owner and

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Construction Manager in both reproducible drawing format digital format as specified by the Owner. Digital format shall include all of the following:

.1 Copies of all drawings in AutoCAD

.2 All digital files shall be presented on a flash drive in PDF format or transmitted via a large file drop box format.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare and provide Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of well-coordinated Drawings and Specifications setting forth in detail the quality levels of materials and ~~systems~~ systems, their quality levels, and other requirements for the construction ~~of the Work.~~ of the Work including, but not limited to, the work required for the architectural, structural, mechanical, civil, electrical, plumbing, service-connected equipment, and site work. The Architect shall provide the services of professional structural, mechanical, civil, electrical and other engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by the Architect to the Owner, in advance, for the Owner's review and approval, which approval shall not be unreasonably withheld, and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with applicable laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project. Selection by the Owner of a "particular material" recommended by the Architect for the Project shall constitute approval of that "particular material" by the Owner for aesthetic purposes only. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall expressly require in the Bid Documents and which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, ~~if requested by the Owner,~~ the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding ~~or proposal~~ forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms. Architect shall not distribute any bidding or procurement information to any third party without the Owner's and/or Construction Manager's prior written approval.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit ~~the Construction Documents~~ to the Owner and the Construction ~~Manager.~~ Manager the Construction Documents which shall also include Architect's opinion of probable Project Cost upon which the Architect's design is based. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section ~~6.7~~ 6.7, advise the Owner of any adjustments based on the Construction Manager's estimate of the Cost of the Work previously provided to the Owner indicated by changes in general requirements or market conditions, and request the Owner's approval of the Construction Documents.

§ 3.4.6 If phasing of construction is required for the Project, the Construction Documents shall also include necessary phasing plans and specifications.

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§ 3.4.7 If the Project includes renovation of existing facilities, the Construction Documents shall also include necessary demolition plans and specifications.

§ 3.4.8 Based on the mutually agreed-upon Program, estimate, schedule and budget, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of drawings and other documents illustrating the scale and relationship of Project components, and shall prepare for review by the Owner a preliminary estimate of the Cost of the Work as that phrase is defined in this Agreement. Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations in all material respects as they are in effect as of the time the latest construction and building permit is issued. These requirements shall not apply to elements of the Project which are not within the scope of the Architect's services. Approval by the Owner shall be deemed to be approval of the concept, though not the means, techniques or particular material recommended by the Architect, unless the material or system is specifically required by the Owner.

§ 3.4.9 The Architect shall establish and conduct a mutually agreed upon system of communications, review and revision vehicles to ensure an informed "Owner Approval Process". This process shall include a reasonable number of Owner review meetings with individuals designated by the Owner. The Architect shall conduct a reasonable and sufficient number of such meetings to ensure the Owner's full opportunity to make detailed reviews, suggest revisions, and make an informed approval of such revised designs. The time line for this process shall provide for sufficient time to allow for review, revision and finalization of plans for approval by the Owner prior to timely commencement of the Bidding Phase. If requested by the Owner, finalized plans shall be provided to the Owner and Construction Manager in both reproducible drawing format digital format as specified by the Owner. Digital format shall include all of the following:

.1 Copies of all drawings in AutoCAD

.2 All digital files shall be presented on a flash drive in PDF format or transmitted via a large drop box format.

§ 3.4.10 The Architect shall be responsible with the assistance of the Owner for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Owner shall have the final authority as to which governmental authorities have jurisdiction over the Project as well as the extent to which they have jurisdiction over the Project. As such, the Architect shall only file with governmental authorities those documents the Owner concurs should be so filed.

§ 3.4.11 The Architect shall include in the bidding information, plans or Specifications, a requirement that the successful Contractor(s) shall provide operation manuals to the Owner and shall provide adequate training for the Owner in the operation of any and all facility systems installed by the Contractor(s), including mechanical, civil, electrical, heating and/or air conditioning systems, and any and all systems necessary for the operation of the Project/building.

§ 3.5 ~~Bidding or Negotiation Phase Services~~Bidding Phase Services

§ 3.5.1 General

The Architect shall ~~assist the Owner and Construction Manager~~ cooperate with and assist the Construction Manager, in consultation with the Owner, in establishing a list of prospective ~~contractors.~~ bidders. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining ~~either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.~~ competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and (4) recommending awards and preparing contracts for construction.

§ 3.5.1.1 The Architect shall assist the Construction Manager in assisting the Owner in complying with all of the Owner's competitive bidding requirements under Sections 1267 and 1274 of the Michigan Revised School Code, as amended.

§ 3.5.1.2 The Architect, following the Owner's approval of the Construction Documents and of the Construction Manager's latest estimate of Cost of the Work, shall assist the Construction Manager in obtaining bids and assist in by rendering interpretations and clarifications of the Drawings and Specifications in appropriate written form. The

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Architect shall assist the Owner and the Construction Manager in conducting pre-award conferences with successful bidders and assist in recommending awards and preparing contracts for construction, which contracts shall be subject to review and approval by the Owner's legal counsel. When recommending awards to the Owner, it is the Architect's responsibility to confirm to the Owner in writing that the successful bidder is the "lowest responsible bidder" as that term is used in Attorney General Opinion, 1959-60, No. 3303, Vol. 1, p. 169. All references to Arbitration shall be removed from each AIA type contract prepared, including, but not limited to, Arbitration language within the Standard Form of Agreement Between Owner and Contractor and the General Conditions of the Contract for Construction.

§ 3.5.1.3 In the event that the lowest bid (or bids) relative to any Project (or Projects) exceed(s) the fixed limit of the Cost the Work for the Project or the final estimates provided by the Construction Manager, as approved by the Owner, the Architect shall assist the Construction Manager in consultation with and at the direction of the Owner, shall proceed in accordance with Section 6.5 hereof, as part of the Architect's Basic Services with no additional cost to the Owner.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding ~~requirements and proposed Contract Documents.~~ requirements, bidding information, bidding forms, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings and other necessary Contract Documents. As much as possible, the bidding and contract forms shall use AIA Contract Documents, modified as necessary and appropriate to protect the Owner.

§ 3.5.2.2 The Architect shall cooperate with and assist the Owner and Construction Manager in bidding the Project by

.1 ~~facilitating the reproduction~~ Facilitating electronic posting of Bidding Documents for distribution to prospective ~~bidders,~~ bidders by the Construction Manager,

.2 participating in a pre-bid conference for prospective bidders, and

.3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents ~~in the form of addenda.~~ in the form of addenda,

.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda, and

.5 if required and directed by the Owner, participate in selection interviews and negotiations with prospective bidders, and major subcontractors, vendors and suppliers; and follow-up with preparing a summary report of the interviews and negotiation results.

§ 3.5.2.3 The Architect ~~shall~~ shall, as part of the Architect's Basic Services, consider requests for substitutions, if the Bidding Documents permit substitutions, in compliance with the means and timeliness described in the Construction Documents, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

~~**§ 3.5.3 Negotiated Proposals**~~

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by~~

~~.1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~

~~.2 participating in selection interviews with prospective contractors; and~~

~~.3 participating in negotiations with prospective contractors.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser ~~Edition. If the Owner and Contractor modify AIA Document A232–2009, those modifications~~

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~~shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~Edition, as modified by this Agreement or as mutually agreed to by the Owner, Architect and Construction Manager. The terms of this Agreement shall control any inconsistencies between this Agreement and the General Conditions of the Contract.

§ 3.6.1.2 The Architect shall at all times be a representative of the Owner and shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, ~~nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of~~ except to ensure that the Work is in accordance with the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, and that of its employees, agents, and Architect's Consultants, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the ~~Contractor~~ Contractor(s) or of any other persons or entities performing portions of the Work. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights. Safety precautions and programs in connection with the Work are solely the Contractor's responsibility under the Contract for Construction. Nothing contained in this Section shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of ~~the~~ any Contract for Construction and terminates on the date the ~~Architect issues~~ Owner accepts the final Certificate for ~~Payment.~~ Payment, issued by the Architect.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall ~~visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar~~ assign a representative of the Architect to the Project who shall be present while Work is in progress, and on-site, in the Architect's professional judgment, as often as necessary and appropriate, to the stage of construction (with particular emphasis on structural work), to inspect the site and Work; to familiarize the Architect with the progress and quality of the ~~portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits,~~ Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the Contract Documents and the construction schedule. A document or report is produced subsequent to such inspections that either confirms or confutes [the witnessed construction] compliance with plans and specifications requirements. The Architect shall attend construction progress meetings, as requested by the Owner and/or the Construction Manager. On the basis of the Architect's on-site inspections as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall use reasonable care to guard the Owner against defects and deficiencies in the Work and against the Contractor's failure to carry out the Work in accordance with the intent of the Construction Documents and the construction schedule, and shall provide prompt notice in writing to the Owner of any major or material deviations from the Contract Documents in the Work. The Architect shall provide services at no additional cost, made necessary by major defect or deficiencies in the Work of the Contractor(s) which, through reasonable care, should have been discovered by the Architect and promptly reported to the Owner and the Contractor(s), but which the Architect failed to so discover and/or report. Additionally, any design or Specification error furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner.

If errors and omissions in the Project are detected in the Plans and Specifications before Work is bid, the cost of any re-design required to incorporate the item or feature omitted or to correct the error shall be borne by the Architect. Any additional construction costs in this instance resulting from the inclusion of the omitted item or feature or to correct the error shall be borne by the Owner. If, however, the error or omission is not detected until the Construction Phase, and if correction of the error or the incorporation of the omitted item or feature should reasonably been provided by the Architect in the Documents, then the cost of re-design and any removal and/or reconstruction required to begin incorporation of the omitted item or correction of an error shall be borne by the Architect. In the case of an omitted item, the Owner shall bear the cost of the item as if the item had been included in the original Construction Documents.

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For purposes of this Agreement, the term "inspect" or "inspection" shall be defined as the evaluation of construction and materials used therein, sufficient to permit the Architect to render his or her professional opinion as to the Work conforming with the Contract Documents

On the basis of its inspections, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies ~~observed~~ inspected in the Work.

§ 3.6.2.2 The Architect ~~has the authority to reject~~ shall make timely recommendations to the Owner regarding rejection of the Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall ~~have the authority to~~ require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith ~~either to exercise or not to exercise such authority~~ shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance ~~by both Owner and~~ of the Contractor, shall not show partiality to ~~either,~~ either the Owner or Contractor, and shall not be liable for results of interpretations or decisions rendered in good ~~faith.~~ faith and without negligence. The Architect's decisions on matters relating to aesthetic effect shall be final if affordable within the Project Cost (as defined in Section 3.1.10) and if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2009, the~~ The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

.1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.

.2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's visits, inspections and evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract ~~Documents.~~ Documents, and (4) the Architect has confirmed receipt of required waivers and releases by the Contractor(s) against the previous Applications' Sworn Statements. The foregoing representations are subject (1) to an

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evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the ~~Architect.~~Architect in writing. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (1) ~~made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2)~~ reviewed construction means, methods, techniques, sequences or procedures, ~~(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4)~~ or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain ~~a~~ an organized record of the applications and certificates for payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the ~~approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness~~ submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate ~~review.~~review and approval.

§ 3.6.4.2 In accordance with the ~~Architect-approved Project~~ submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals with reasonable promptness such as Shop Drawings, Product Data and Samples, ~~but only~~ for the ~~limited~~ purpose of checking for conformance with ~~information given and the design concept expressed in the Contract Documents. Review~~ the intent of the Contract Documents and applicable laws, statutes, ordinances, codes, rules and regulations. Review and approval of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain ~~a~~ an organized record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

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§ 3.6.5 **Changes in the Work**

§ 3.6.5.1 The Architect shall ~~review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager~~ assist the Construction Manager in reviewing and preparing Change Orders and preparing Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect with the Owner's written approval may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall ~~maintain records relative to changes in the Work.~~ review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect with the Owner's approval may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.5.5 The Architect shall maintain organized and accurate records relative to changes in the Work.

§ 3.6.5.6 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and the Contractor(s) relating to the execution or progress of the Work as provided in the Contract Documents.

§ 3.6.6 **Project Completion**

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected. After the walkthrough(s), the Architect shall incorporate all open punchlist items into a final punchlist for the Contractor to complete.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

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~~ARTICLE 4 ADDITIONAL SERVICES~~

§ 3.6.6.5 Prior to the termination of the Architect's services, the Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or the Architect is a party concerning the Project as part of its Basic Services.

§ 3.7 Other Miscellaneous Basic Services

§ 3.7.1 The Architect's Basic Services includes providing services to investigate existing conditions in facilities, interview Owner's staff and if necessary to make measurements and phasing drawings thereof with respect to demolition, facility renovation and addition. Where phased construction is planned or required, Architect's phasing drawings shall include interfacing of building systems and components during phased construction to maintain operation of building systems, building access and security, and site traffic and parking requirements as may be necessary.

§ 3.7.2 The Architect's Basic Services include design layout, selection, procurement and installation of fixed and loose furniture, furnishing, equipment and apparatus. However, prior to issuing Drawings to Contractors for bidding, the Architect shall confirm that its furniture design is supported by and coordinated with the appropriate technology and electrical infrastructure.

§ 3.7.3 The Architect's Basic Services include such services made necessary by the default of the Contractor, by major defects or deficiencies in the work of the Contractor provided that such defects or deficiencies are not caused in whole or in part by any act or omission of the Architect, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 3.7.4 The Architect may render Instrument of Service using Building Information Modeling (BIM) that is fully compliant with the National Building Information Model Standard Project (NBIMS); and providing that all plans and details for the Project are completed and integrated using a common interoperability and fully compatible BIM platform, without exception. A common interoperability and fully compatible BIM platform shall mean that the BIM files must have full interoperability and transparent to users of Revit, Bentley, and other major BIM software. All plans and details shall mean all architectural and engineering drawings (building information), including, but not limited to, architectural, civil, structural, mechanical, electrical, fire-protection, interior design, furniture, furnishings and equipment, etc., that are prepared by the Architect and/or Architect's Consultants/sub-consultants.

§ 3.7.5 Upon issuance of Construction Documents for bidding, the Architect shall provide, at no cost to the Owner, Construction Manager, or the bidders upon request, necessary usable AutoCAD [drawing] and BIM (when used/applicable) files in order to facilitate dimension and quantity take-offs, overlay of fire suppression systems, communication, annunciation and security systems, and furniture layout, etc. Architect shall be able to protect the AutoCAD and BIM files so that information cannot be altered for purposes other than to facilitate the bidding process. The Contractor/Subcontractor seeking to utilize Construction Documents shall complete a "hold harmless" form provided by the Architect as a safe-guard to the mis-use of the Documents.

§ 3.7.6 If the Owner elects to accept, and directs the Architect to incorporate, revisions to the design documents to include value engineering, value reduction, material substitution proposals or other changes recommended by the Construction Manager, the Contractor, the Owner's consultants or others (collectively, "VE Revisions"), and the Architect reasonably rejects such proposed VE Revisions, the Owner releases the Architect from any liability resulting from the incorporation of such VE Revisions, except to the extent of Architect's negligence.

§ 3.7.7 The Architect may sub-contract or sub-consult for structural, civil, mechanical, electrical design, only after the written approval by the Owner, including Owner's approval of the proposed contractor or Consultant. Such Owner approval does not in any way release the Architect from responsibility for the acts and omissions of its Consultant or Consultants; the Architect remains fully responsible to the Owner for the acts and omissions of any Consultant. The Architect must provide detailed information regarding the terms of any and all Consultant agreement when requested by the Owner.

§3.7.8 As a condition precedent to establishing the date of Substantial Completion, the Architect shall prepare and submit to the Owner and Construction Manager a comprehensive Punchlist of items to be completed or corrected by

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the Contractor (a "Punchlist"). The Contractor shall respond immediately to correct Work deficiencies and/or Punchlist items or provide written rationale to Construction Manager why correction will take longer. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

§ 3.7.9 As part of the Construction Manager's Basic Services, the Construction Manager is required to review and discuss any outstanding issues with the Owner at twenty-three (23) months following the Date of Substantial Completion. The Architect shall also be present at the twenty-three (23) month meeting/walk-through to assist the Owner and Construction Manager in resolving such outstanding issues, as necessary, and will provide call-back services related to such outstanding issues, facility operations and performance for a period of twenty-four (24) months following the date of Substantial Completion.

ARTICLE 4 BASIC SERVICES

§ 4.1 ~~Additional Services listed below are not included in Basic Services but may be~~ Basic Services identified as Architect's responsibility below are included in Architect's Basic Services and are required for the Project. The Architect shall provide the listed ~~Additional~~ Services ~~only if~~ specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section ~~11.2.~~ 11.1.
(Designate the ~~Additional~~ Services the Architect shall ~~provide~~ include and provide as Basic Services in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)	Architect	See Section 3
§ 4.1.2 Multiple preliminary designs	Architect	See Section 3
§ 4.1.3 Measured drawings	Architect	See Section 3
§ 4.1.4 Existing facilities surveys	Architect	See Section 3
§ 4.1.5 Site evaluation and planning (B203™–2007)	Architect	See Section 3
§ 4.1.6 Building ~~information modeling~~ Information Modeling (E202™–2008)	Architect	Provided as Architect's Choice
§ 4.1.7 Civil engineering	Architect	See Section 3.1
§ 4.1.8 Landscape design	Architect	See Section 3.1
§ 4.1.9 Architectural interior design (B252™–2007)	Architect	See Section 3.1
§ 4.1.10 Value analysis (B204™–2007)	Construction Mgr.	Architect to assist and cooperate
§ 4.1.11 Detailed cost estimating	Construction Mgr.	Architect to assist and cooperate
§ 4.1.12 On-site project representation (B207™–2008)	Architect	See Section 3.6.2.1
§ 4.1.13 Conformed construction documents	Architect	See Section 12.3
§ 4.1.14 As-designed record drawings	Architect	See Section 12.3
§ 4.1.15 As-constructed record drawings	Architect	See Section 12.3
§ 4.1.16 Post occupancy evaluation	Architect	See Section 3.6.6.4
§ 4.1.17 Facility support services (B210™–2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Architect	See Section 3.1.2
§ 4.1.20 Telecommunications/data design	Owner	Architect to assist and cooperate
§ 4.1.21 Security evaluation and planning (B206™–2007)	Architect	See Section 3
§ 4.1.22 Commissioning (B211™–2007)	Owner	Architect to assist and cooperate
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® certification (B214™–2012)	Architect	
§ 4.1.25 Historic preservation (B205™–2007)	Not Provided	
§ 4.1.26 Furniture, furnishings, and equipment design (B253™–2007)	Architect	See Section 3.7.2
Phased permitting	Architect	Construction Manager to assist

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Phased occupancy	Construction Mgr.	Architect to assist and cooperate
Acoustical design	Architect	See Section 3.
Pool design	Architect	See Section 3.
Food service design	Architect	See Section 3.
Landscape Architect	Architect	See Section 3.
Theatre planning/lighting	Architect	See Section 3.

§ 4.2 Insert a description of each ~~Additional~~ Basic Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

N/A

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating ~~the Agreement.~~ this Agreement if mutually agreed in writing prior to commencing such services, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 3.3.1. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing Additional Services and secure Owner's written approval prior to commencing such services. If the Owner deems that all or a part of such Additional Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall not provide those services. Except for services required due to the fault of or caused by the Architect, its employees, agents and Architect's Consultants, acts, errors, omissions, etc., the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. If however, services described in this Section or in Section 4.3 below are required due to circumstances within the control of the Architect, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Architect for Additional Services that became necessary as a result of the fault or professional negligence of the Architect, its employees, agents, and Architect's Consultants.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a ~~change in the Initial Information,~~ substantial (cardinal) change in the initially agreed upon Project scope, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery ~~method, or bid packages in addition to those listed in Section 1.1.6;~~ method;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;

.3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; when such changes are not the fault of or caused by the Architect's employees, agents and Architect's Consultants' negligent acts, errors, omissions, etc.;

.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;

.6 ~~Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~

.7 ~~Preparation of~~ Preparation of excessive design and documentation for alternate bid ~~or proposal~~ requests proposed by the Owner or Construction Manager;

.8 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~

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~~.9 Preparation for, and attendance~~ .7 Preparation for, and attendance at a dispute resolution proceeding or legal ~~proceeding,~~ proceeding subsequent to Substantial Completion, except where the Architect is party thereto; or

~~.10 Evaluation of the qualifications of bidders or persons providing proposals;~~

~~.11~~ Consultation concerning replacement of Work resulting from fire or other cause during ~~construction; or~~

~~.12 Assistance to the Initial Decision Maker, if other than the Architect.~~construction when such changes are not the fault of or caused by the Architect's employees, agents and Architect's Consultants' negligent acts, errors, omissions, etc.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 ~~Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;~~

~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~

~~.3~~ Preparing Change Orders, and Construction Change Directives that require ~~evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~preparation or revision of Instruments of Service when such changes are not the fault of or caused by the Architect's, its employees, agents and Architect's Consultants' negligent acts, errors, omissions, etc.;

~~.4~~ .2 Evaluating an extensive number of Claims ~~as the Initial Decision Maker;~~when such changes are not the fault of or caused by the Architect, its employees, agents and Architect's Consultants' negligent acts, errors, omissions, etc.;

~~.5~~ .3 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting ~~therefrom;~~ therefrom when such are not the fault of or caused by the Architect's employees, agents and Architect's Consultants' negligent acts, errors, omissions, etc.; or

~~.6~~ .4 To the extent the Architect's Basic Services are affected, providing Construction Phase Services ~~60~~ 90 days after ~~(1)~~ the date of Substantial Completion of the Work ~~or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.~~when such extensions are not the fault of or caused by the Architect's negligent acts, errors, omissions, etc.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the ~~Owner:~~Owner and proceed only upon the Owner's prior written approval:

.1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

~~.2 ( ) visits to the site by the Architect over the duration of the Project during~~ , construction

~~.3 (~~ .2 Three (3) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

~~.4 (~~ .3 Three (3) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within ~~( ) months of the date of this Agreement,~~ sixty (60) months from the date of the sale of the Bonds, and if sold in separate series, from the date of the sale for that particular series, , through no fault of the Architect, extension of the Architect's services beyond that time shall be ~~compensated as Additional Services.~~ subject to negotiation.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 ~~Unless~~ Acknowledging the Owner's status as a public body, and unless otherwise provided for under this Agreement, the Owner shall provide information reasonably requested by the Architect in writing in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to

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evaluate, give notice of or enforce lien rights. However, the failure by the Owner to furnish any information to the Architect shall not relieve the Architect of any liability hereunder, nor extend the time in which the Architect is to perform such duties unless the Architect notifies the Owner in writing that the lack of such information may impede the progress of the Project.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2009, Standard Form of Agreement Between Owner and Construction ~~Manager. The~~ Manager, as modified. If requested by the Architect, the Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner ~~shall~~ may adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and ~~quality.~~quality in writing.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals ~~in a timely manner~~ within a reasonable period of time in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. The Owner's Designated Representative is identified in Section 1.1.8 above.

§ 5.6 ~~The Owner shall furnish~~ Prior to the Architect commencing the Schematic Design Phase, the Owner shall furnish with assistance from the Architect and Construction Manager surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description ~~of the site.~~ of the site, if such surveys are reasonably required by the scope of the Project. The surveys and legal information 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.

§ 5.7 ~~The Owner~~ Prior to the Architect commencing the Schematic Design Phase, the Owner with assistance from the Architect and Construction Manager 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.~~recommendations, when such surveys are reasonably required by the scope of the Project. If the Architect is retained to provide structural and foundation design services, the Owner will furnish the Architect a geotechnical report prior to the commencement of Schematic Design. (Also see Section 3.1.2)

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall ~~furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall~~ require that

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its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, electrical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of ~~Service.~~Service; but the Owner's failure or omission to do so shall not relieve the Architect of its responsibilities hereunder and the Owner shall have no duty of observation, inspection, or investigation.

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's ~~consultants~~ Consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. ~~The~~ When requested by the Architect in writing the Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect reasonable access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractor to provide the Architect reasonable access to the Work wherever it is in preparation or progress. While visiting the Project site, the Architect, its employees, agents, and Architect's Consultants acknowledge that the Construction Manager/Contractor is responsible and in charge of the construction site safety by enforcing safety rules and regulations. Architect its employees, agents, and Architect's Consultant shall familiarize themselves of, observe and comply with such construction site safety rules. Prior to accessing and/or visiting the Project site, Construction Manager/Contractor may require the Architect, its employees, agents and Architect's Consultants to attend safety classes required by the Construction Manager/Contractor.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the ~~Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the~~ Architect. The Cost of the Work does NOT include the compensation of the Architect, its employees, agents or the Architect's Consultants, the Construction Manager, its employees, agents or the Construction Manager's consultants, Personnel Reimbursable Rates or General Condition Items, the costs of the land, rights-of-way, financing, ~~contingencies for changes in the Work or other costs~~ other costs which are the responsibility of the Owner, or other costs such as review permit fees, marketing, Technology Designer, Project Financial Consultant, Project Market Study Consultant, Project Investment Banker, etc. and other "soft costs", that are the responsibility of the ~~Owner.~~
Owner

§ 6.2 The Owner's budget for the Cost of the Work is ~~provided in Initial Information,~~ fixed as set forth in Section 1.1.3 above, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies

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or incompleteness in preparing cost ~~estimates.~~ estimates providing such revisions are not the fault of or caused by the Architect, its employees, agents and Architect's Consultant's negligent acts, errors, omissions, etc. The Architect may review the Construction Manager's estimates ~~solely~~ for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of ~~the Design Development~~ any Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;

.2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or

.3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents ~~Phase~~ as necessary to comply with the Owner's budget for the Cost of the Work ~~at the conclusion of the Design Development Phase Services,~~ , or the budget as adjusted under Section 6.5.1. The Architect's ~~modification~~ modifications of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article ~~6.6~~ except when such modifications are the fault of or caused by the Architect, its employees, agents and Architect's Consultant's negligent acts, errors, omissions, etc..

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, ~~as an Additional Service,~~ make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 ~~The~~ Unless otherwise stated conspicuously in writing, the Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the ~~copyright owner~~ originator of such information or has permission from the copyright owner to transmit such information for its use on the ~~Project.~~ Project or on subsequent projects. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Architect will not rely on any drawings or designs for the Project that are the subject of any copyright or patent held by any person other than the Architect without written notice to Owner and express written approval of the copyright or patent holder.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors ~~and owners~~ of their respective Instruments of Service, including the Drawings and ~~Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~ Specifications.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service ~~solely and exclusively~~ for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment

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suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article ~~7,~~ 7 and in Section 7.5 below, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 All construction plans, Specifications, Drawings and all other documents and like materials relating to the Project, including those in electronic form, prepared by the Architect and the Architect's consultants ("Instruments of Service") shall become the property of the Owner at the conclusion of the Project, or termination of the services of the Architect, whichever is earlier, and shall be delivered immediately to the Owner clearly marked and identified in good order. The Owner may use the Instruments of Service as it determines, but the Architect and the Architect's consultants shall incur no liability for the Owner's use of the Documents other than in connection with the Project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of ~~binding~~ dispute resolution selected in this Agreement within the period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2009, General Conditions of the Contract for ~~Construction.~~ Construction amended for the Project. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 ~~The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.~~ **INDEMNIFICATION**

The Architect shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assigns, from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with the Architect's performance of the services pursuant to this Agreement and/or from Architect's violation of any of the terms of this Agreement, including, but not limited to: (i) the negligent acts or willful misconduct of the Architect, its officers, directors, employees, successors, assigns, contractors, Consultants and agents; (ii) any breach of the terms of this Contract by the Architect, its officers, directors, employees, successors, assigns, contractors, Consultants and agents; (iii) any violation or breach of any applicable Federal, State or local law, rule, regulation, ordinance, policy and/or licensing and permitting requirements applicable to providing the services; or (iv) any breach

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of any representation or warranty by the Architect, its officers, directors, employees, successors, assigns, contractors, Consultants and agents under this Agreement. The Architect shall notify the Owner by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under this Agreement. This Section shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Architect's insurance obligations contained in this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 ~~Mediation~~Alternative Dispute Resolution

§ 8.2.1 ~~Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

A. The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

B. In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to Section 8.2.1A. The mediator shall render his/her decision within seven (7) days of said meeting.

C. The purpose of the mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

D. In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.

E. During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

~~**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~**§ 8.2.3** 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~

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~~*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*~~

~~[–] Arbitration pursuant to Section 8.3 of this Agreement~~

~~[–] Litigation in a court of competent jurisdiction~~

~~[–] Other: *(Specify)*~~

~~**§ 8.3 Arbitration**~~

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, unless the parties mutually agree otherwise. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.4 Consolidation or Joinder**~~

~~**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 ~~If~~ Except for payments reasonably disputed in good faith, if the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven (7) days' written notice to the Owner to cure within five (5) business days before suspending services. In the event of such a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to ~~suspension and any expenses incurred in the~~

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~~interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~suspension.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

§ 9.3 If the Owner suspends the Project for more than ~~90~~ one hundred eighty (180) cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 ~~Either party~~ The Architect may terminate this Agreement upon not less than ~~seven~~ thirty (30) days' written notice to the Owner should the ~~other party~~ Owner fail substantially to perform in accordance with the terms of this Agreement through no fault of the ~~party initiating the termination.~~ Architect and only if the Owner fails to cure said default within thirty (30) days of written notice.

§ 9.5 The Owner may terminate this Agreement for any reason upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses ~~then due and all Termination Expenses as defined in Section 9.7.~~ reasonably incurred prior to termination on the following basis: Architect's fee percentage, times a mutually agreed upon prorated portion of the in-progress phase percentage as defined in Article 11.5..

. If this Agreement is terminated due to the Architect's failure to substantially perform in accordance with the terms of this Agreement, the Architect shall receive no fees or Reimbursable Expenses other than those due for services actually rendered, without negligence, prior to the date of termination.

~~**§ 9.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article ~~7 and Section 11.9.~~7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~State of Michigan.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2009, General Conditions of the Contract for ~~Construction.~~Construction, as modified for the Project and the terms of this Agreement shall control any inconsistency between this Agreement and General Conditions of the Contract.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least ~~14~~ seven (7) days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least ~~14~~ seven (7) days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials ~~or toxic substances in any form at the Project site~~ in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances or regulated substances or wastes (collectively referred to as "Hazardous Materials"), except as described in this Section. It is, however, acknowledged by the Architect that the Owner has disclosed to it that the school buildings and facilities which are the subject of the architectural services to be provided by the Architect may contain Hazardous Materials. It is further acknowledged that in implementing the construction Projects which may result from the Architect's services, as herein defined, the removal or treatment of such Hazardous Materials may become necessary before any construction is commenced. The Architect shall not knowingly specify in the Project Contract Documents or approve the use of any asbestos containing building material (ACBM) or any known hazardous building materials to be used in the construction of the Project. Upon the issuance of the Final Certificate for Payment, Architect shall require each Contractor to certify to the Owner and the Architect that no ACBM or any known hazardous building materials were used in the construction of the Project. The Owner will provide written documentation to the Architect regarding any such Hazardous Material of which it is aware, that it discovers, or that is made known to the Owner. Additionally, as a Basic Service, the Architect will coordinate services of Hazardous Materials consultant(s) and/or contractor(s) with all other individuals or entities involved in the Project in an effort to minimize to the extent practicable disruption in the Project work and schedule, but shall not be responsible for the performance of such consultant and/or contractor. The Architect shall be responsible to the Owner if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site or generated during construction, or after it should have recognized such presence and general location, it exacerbates such contamination.

§ 10.7 ~~The~~ Only upon prior written consent by the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. ~~The~~ Only upon prior written consent by the Owner, the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary ~~information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~ information. The Architect shall furnish the Owner, without charge, copies of all such promotional and professional materials of the Project for Owner's use and record.

§ 10.8 ~~If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.~~

CONFIDENTIALITY

By accepting the Project engagement, the Architect agrees to the following:

.1 The Architect shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Architect, or (iv) as may be required to perform the Work or by any Applicable Law or to its professional advisors or lender (all of whom shall be required to maintain such information in confidence).

.2 The Architect shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner to the Contractor.

.3 The Architect shall maintain, and shall cause all members of the design and consulting team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement,

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the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by above Section 10.8.1.

.4 The Architect shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the Services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

.5 The Architect shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Architect to publicity released by the Owner that is detrimental to the reputation of the Architect. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Architect shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

.6 The Architect shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 10.8 are binding upon them.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation for Basic Services (including without limitation any and all Work that is subject to Change Orders or Construction Change Directives) is 5.6% of the Cost of the Work and Reimbursable Expenses shall not exceed Two Hundred Thousand and 00/100 Dollars ($200,000.00). Notwithstanding the foregoing, the parties may mutually agree to convert the Architect's compensation to a lump sum fee using the percentages outline above as the basis for the conversion. The definitive Cost of the Work shall be determined once bids are received from the Contractors by the Owner. If the actual detail of the Projects require additional Reimbursable Expenses, the Architect will request such approval in writing to the Owner prior to incurring the same. In any regard, all Reimbursable Expenses shall not include any markup. Notwithstanding the Architect's Proposal, even though the Architect provided the Owner with a number of hours budgeted for Basic Services, the Architect shall provide all Basic Services to the Owner under this Agreement for the not-to-exceed lump sum fee even if it takes the Architect additional hours over its budgeted hours.

In the event the Architect's Basic Compensation is converted to a lump sum fee and if the Cost of the Work is reduced or increased for any reason whatsoever, the parties shall mutually agree upon a reduced or increased lump sum fee respectively using the percentage of the Cost of the Work as the basis for such reduction or increase (being 5.6%).

The Architect's Basic Services and compensation for Architect's Basic Services includes the entire Project including all Instruments of Service through and inclusive of Project Punch-list and Closeout.

§ 11.2 ~~For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

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§ 11.3.1 On an hourly basis at the Architect's hourly billing rate provided in Section 11.7 for Architect's personnel who are directly engaged on the Project; plus Reimbursable Expenses at actual cost, without mark-up. Additional Services can also be provided based on Paragraph 11.1.

§ 11.3.2 Records of Additional Services performed on the basis of hourly rates and related Reimbursable Expenses shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 11.4 Compensation for Additional Services of the Architect's consultants ~~when not included in Sections 11.2 or 11.3,~~ as part of full service Scope of Work shall be the amount invoiced to the Architect plus one percent (1 %), or as otherwise stated below:

However, if the Additional Service is based only on an hourly rate (as described in Section 11.3 above), the Architect will have a mark-up, as mutually agreed to by the parties, to cover time coordinating and overseeing/instructing consultants.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of ~~services~~ services, on a Project by Project basis, shall be as follows:

Schematic Design Phase	fifteen	percent (	15	%)
Design Development Phase	twenty	percent (	20	%)
Construction Documents Phase	forty	percent (	40	%)
Bidding or Negotiation Phase	two and one half	percent (	2.50	%)
Construction Phase	twenty	percent (	20	%)
Project Punch-list & Closeout (See Section 12.3)	two and one half	Percent (	2.50	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide ~~bid or negotiated proposal, or~~ bid, or (2) if no such bid ~~or proposal~~ is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. ~~The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See **Exhibit B** attached hereto.

Employee or Category	**Rate ($0.00)**

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's ~~consultants~~ Consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and ~~subsistence;~~ subsistence costs but not without prior written authorization from the Owner;

.2 ~~Long-distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~

.3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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~~.4 Printing, reproductions, plots, standard form documents;~~.3 Printing, reproductions, plots, standard form documents, except for Architect's internal use, Owner reviews, agency approvals, public utility companies use and permitting;

~~.5~~ .4 Postage, handling and delivery;

~~.6~~ .5 Expense of overtime work requiring higher than regular rates, if authorized in advance and in writing by the Owner;

~~.7~~ .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the ~~Owner;~~

~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~Owner in writing;

~~.9~~ .7 All taxes levied on professional services and on reimbursable ~~expenses;~~expenses that are enacted subsequent to the execution of this Agreement.

~~.10 Site office expenses; and~~

~~.11 Other similar Project related expenditures.~~Any single reimbursable expense greater than $2,500.00 must have prior approval in writing by the Owner.

§ 11.8.2 See **Exhibit B** for Reimbursable Expenses. For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus one percent (1 %) of the expenses ~~incurred.~~ incurred as identified in **Exhibit B.**

~~**§ 11.9 Compensation for Use of Architect's Instruments of Service**~~

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

§ 11.10 Payments to the Architect

§ 11.10.1 ~~An initial payment of ($) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

If the 2020 Bond Election is not successful and the Owner chooses not to pursue a bond election afterwards, or the Owner chooses not to use the Architect in pursuing another bond afterwards, the Owner agrees to reimburse the Architect for time spent on pre-Bond services on an hourly basis, in an amount to be mutually agreed to by the parties, with a maximum not-to-exceed fee of $15,000.00 for its Facility Assessment and pre-Bond services; provided that, the Architect provides invoices to the Owner showing that it has incurred such fees. Notwithstanding the foregoing, if the 2020 Bond Election is successful, the Architect agrees to waive its fee of $15,000.00 for its Facility Assessment and pre-Bond services.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

zero % 0 per annum

§ 11.10.3 The Owner shall not withhold amounts, except for disputed amounts for Architect's and/or Architect's Consultant's services, from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

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§ 11.11 Architect shall submit detailed monthly invoices based on the progress of the Project and Reimbursable Expenses, if applicable, for approval and payment by the Owner. Owner's payments to the Architect shall not exceed the percentages of the total Basic Compensation for each phase of the Project as set forth in Section 11.5, or the maximum Reimbursable Expenses allowable.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 To the fullest extent possible, the provisions of this Agreement, including the Exhibits, General Conditions, Supplementary Conditions and all other documents constituting the Agreement shall be deemed to supplement and complement each other. In the event of any inconsistency between the provisions of the Contract Documents, which relates to the scope of the Project hereunder, such inconsistency shall be resolved in the manner that defines the Project most comprehensively. In the event of any other ambiguity between provisions of the Contract Documents, the ambiguity will be resolved by giving effect to the most stringent provision (i.e., the provision, which requires the highest standard of performance).

§ 12.2 The Architect agrees to render professional services in accordance with the Project schedule established between the Owner and Contractor/Construction Manager and agreed and accepted by the Architect. The Architect agrees to compensate Owner for those reasonable and necessary costs incurred by the Owner that are proximately caused by the Architect's failure to comply with the Project schedule. Such compensation shall not include any consequential damages.

§ 12.3 Architect shall furnish to the Owner as part of Architect's Basic Services a complete reproducible set of As-Constructed record drawings, for civil (including site work) engineering and As-Designed documents for all other disciplines and electronic files in AutoCAD, prepared by the Architect, showing significant changes in the Project resulting from addenda, accepted or deleted alternates, field orders, construction change directives, bulletins and/or from marked-up prints, drawings and/or other data generated by the Contractor during the course of construction of the Project and transmitted to the Architect by the Construction Manager. These drawings shall be submitted to the Architect within sixty (60) days of Project closeout and prior to Final Payment. These drawings need not include minor changes in the routing of conduit runs and plumbing lines, the exact order of wiring, receptacles or lighting fixtures. In addition, the Architect shall review Close-Out Documents provided by each Contractor through the Construction Manager to confirm that all required documents have been provided as required by the Architect's Specifications contained in the Project Manual. Upon Owner making its Final Payment to the Architect, the Architect hereby agrees to waive any and all claims for future payments under this Agreement.

§ 12.4 The Architect shall assist the Construction Manager in providing coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services in connection with construction performed and equipment supplied by the Owner, including a complete Project schedule and establishing and conducting regular meetings between Contractors and the Owner. Such meetings shall be held throughout the entire Construction Phase of the Project and shall be for the primary purpose of assessing the progress of the Work of each Contractor and recommending to the Owner such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. The Architect shall submit to the Owner and to the Contractors a full report of each such meeting as soon after the meeting as is practical.

§ 12.5 The Owner, being a public body, shall render decisions within a reasonable time after being requested to do so by the Architect. The Architect, assisted by the Owner Representative shall prepare and submit all recommendations for which approval is required by the Owner as soon as reasonably possible unless another schedule is agreed to by the Owner in writing.

§ 12.6 Architect agrees to render its professional services in accordance with the Project Schedule attached hereto as **Exhibit F.**

§ 12.7 As part of Basic Services, the Architect shall perform the services identified in the Team Responsibility Matrix, dated March 3, 2020, and attached hereto as **Exhibit G**, under the heading of "Architect." The services required to be performed by the Architect under the Team Responsibility Matrix demonstrates the coordination required by all of the parties, but does not in any way relieve the Architect of any of its contractual obligations required hereunder.

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§ 12.8 The Architect shall require that each owner/employee/Consultant of the Architect who will work on the Project and be on site at any of the Owner's facilities, certify to the Owner that no owner, employee, agent, representative, contractor, consultant and/or other personnel of the Architect will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). This Certification shall be accomplished through obtaining an Affidavit Of Compliance – Criminal Background Checks, in a form approved by the Owner.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition~~ Edition, as modified.

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Exhibit A – Menu of Services
Exhibit B - Hourly Billing Rates and Reimbursable Expenses
Exhibit C - Key Personnel
Exhibit D – Detailed Description of the Project
Exhibit E – Insurance Certificates
Exhibit F – Project Schedule
Exhibit G – Team Responsibility Matrix
Exhibit H – Architect's Proposal dated June 11, 2019
Exhibit I – AIA Document A232 – 2009, General Conditions of the Contract for Construction, amended for the Project

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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EXHIBIT A

MENU OF SERVICES

A. PURPOSE. This Menu of Services (hereinafter "Menu") is a checklist of professional services and functions as a guide to further describe those tasks to be performed by the Architect for this particular Project as set forth, in Article 2 of the attached Agreement. The Menu also introduces Pre-Design Phase services, Post Construction Phase Services, Supplemental services, and designates which services are deemed Basic Services or Additional Services for this Project.

The Menu is not intended in any way to alter, amend, change or supersede the terms of the Agreement Between Owner and Architect to which this Exhibit A is attached. In the event of any conflict between the Agreement Between Owner and Architect and this Exhibit A, the Agreement Between Owner and Architect shall control.

B. DESIGNATIONS. The following notations are applicable for each Menu item:

B: Basic Services
A: Additional Services
X: Not Required/Not Applicable

Those Menu items which have traditionally been designated as Basic Services have been "pre-designated" below by inserting a "B" in the check list.

C. PREDESIGN PHASE I

In the **Predesign Phase** the Architect will provide the following services to assist the Owner in establishing the program, financial and time requirements, and limitations for the project.

1. Project Administration services consisting of predesign administrative functions including:
   - **B** Initial consultation in development of the Project.
   - **B** Preparation of compensation estimates and professional services agreement(s).
   - **B** Project-related research.
   - **B** Conferences.
   - **B** Communications and progress reports.
   - **B** Travel time.
2. Owner-supplied Data Coordination services consisting of predesign activities including:
   - **B** Review and coordination of data furnished for the Project as a responsibility of the Owner.
   - **B** Assistance to Owner in obtaining existing drawings and related data.
   - **B** Assistance to Owner in obtaining soils investigation services.
   - **B** Assistance to Owner in obtaining topographic survey(s).
   - **X** Assistance to Owner in obtaining Phase I, Phase II and/or Baseline Environmental Assessment.
3. Facility Needs Study for each building and site in the District consisting of:
   - **B** Inspection and evaluation to identify and recommend major renovation and additional space needs for each.
   - **B** Estimate of the Cost of the Work.
   - **B** Estimate of Furniture and Equipment costs.
   - **B** Consultation with and recommendation for selection of projects to be included in the Bond issue.

4. Programming services required to establish the following detailed requirements for the Project:
   - B Design objectives, limitations and criteria.
   - B Space requirements.
   - B Space relations.
   - B Number and functional responsibilities of personnel.
   - B Flexibility and expansibility.
   - B Special equipment and systems.
   - B Site requirements.
5. Space Schematics/Flow Diagrams services consisting of diagrammatic studies and pertinent descriptive text for:
   - B Internal functions.
   - B Human and vehicular flow patterns.
   - B General space allocations.
   - B Special facilities and equipment.
   - B Flexibility and expansibility.
6. Existing Facilities Surveys services consisting of researching, assembling and reviewing information for Projects involving alterations and additions to existing facilities or determining new space usage in conjunction with a new building program and including:
   - B Photography or videography
   - B Field measurements and review of existing drawings.
   - B Analysis of existing architectural elements.
   - B Analysis of existing structural capabilities.
   - B Analysis of existing mechanical capabilities.
   - B Analysis of existing electrical capabilities.
7. Project Budgeting services relating to development of a Predesign Phase Estimate of Cost of the Work based on programming studies.
   - B Assistance to Construction Manager in preparation and concurrence with various elements of estimates, by Project/facility, of the Cost of the Work, in conjunction with the Construction Manager.
   - B Establishment of Contingency Budget.
8. Presentation services consisting of presentations of Predesign Phase analyses and recommendations by the Architect/Engineer to the following Owner representatives:
   - B Board/Administration/Staff
   - B Citizens committee(s).
9. Bond Issue Services.
   - B Coordination and consultation with Owner, Bonding Attorney and Financial Consultant.

     Compilation and preparation of:
   - B Summary of Estimated Costs for all Construction Projects Proposed.
   - B Summary-Existing and Proposed School Plant form.
   - B Project Cost Calculation form.
   - B Estimated Size and Cost of Proposed Construction Project forms with necessary attachments for each facility included in the Project.
   - B Site Acquisition and Development form.
   - B Certifications of forms prepared by Architect.

D. SCHEMATIC DESIGN PHASE

In the **Schematic Design Phase**, the Architect will provide the following services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale and relationship of project components for approval by the Owner. Design will

be conceptual in character based on the program and requirements developed under the Pre-Design Phase of the project and approved by the Owner.

1. Project Administration services consisting of schematic design administrative functions including:
   - B Consultation.
   - B Conferences.
   - B Communications and progress reports.
   - B Travel time.
2. Disciplines Coordination/Document Checking services consisting of schematic design activities for:
   - B Coordination between the architectural/engineering work of other involved disciplines for the Project.
   - B Review and checking of documents prepared for the Project.
3. Agency Consulting/Review/Approval services consisting of schematic design activities including:
   - B Agency consultations.
   - B Research and/or review of critical applicable regulations.
   - B Assistance in the preparation of written and graphic explanatory materials.
   - B Appearances on Owner's behalf at agency and Owner meetings.
4. Owner supplied Data Coordination services consisting of schematic design activities including:
   - B Review and coordination of data furnished for the Project as a responsibility of the Owner.
   - B Assistance in establishing criteria.
   - B Assistance in obtaining data.
5. Architectural Design/Documentation services responding to program requirements and consisting of preparation of:
   - B Conceptual site and building plans.
   - B Preliminary building elevations.
   - B Preliminary selection of building systems and materials.
   - B Development of approximate dimensions, areas and volumes.
   - B Perspective sketch(es).
6. Structural Design/Documentation services consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
   - B A proposed structural system.
7. Mechanical Design/Documentation services consisting of consideration of materials, systems and equipment and development of conceptual design solutions for:
   - B Energy source(s).
   - B Energy conservation.
   - B Heating and ventilating.
   - B Air conditioning.
   - B Plumbing.
   - B Fire protection.
   - B Development of Commissioning Model
8. Electrical Design/Documentation consisting of consideration of systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:
   - B Power service and distribution.
   - B Lighting.
   - B Telephones.
   - B Fire detection and alarms.

B Security systems.
B Electronic communications.
B Special electrical systems.
B Technology infrastructure.

9. Civil Design/Documentation consisting of consideration of materials, systems and development of conceptual design solutions for:
   B On-site utility systems.
   B Fire protection systems.
   B Drainage systems.
   B Paving/site improvements.
10. Interior planning services based on functional relationships, consideration of materials, systems and equipment and development of conceptual design solutions to establish furniture and equipment locations, etc.
   B Furniture, furnishings and loose equipment layouts.
11. Materials Specifications consisting of:
   B Identification of potential architectural materials systems and equipment.
   B Coordination of similar work by other disciplines.
12. Statement of Estimated Cost of the Work consisting of development of an estimated Cost of the Work range for each Project based on the most recent schematic design studies.
   B Assistance to Construction Manager in preparation and concurrence with various elements of estimates, by Project/facility, of the Cost of the Work, in conjunction with the Construction Manager.
   B Establishment of project Contingency Fund.
13. Presentations services consisting of presentations of Schematic Design Documents by the Architect/Engineer to the following Owner representatives.
   B Board/Administration/Staff
   B Citizen committee(s).

E. DESIGN DEVELOPMENT PHASE

In the **Design Development Phase**, the Architect will provide the following services necessary to prepare, from the approved Schematic Design Documents, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire project, including architectural, structural, civil, mechanical and electrical systems, materials, equipment and such other elements as may be appropriate for the approval by the Owner.

1. Project Administration services consisting of design development administrative functions including:
   B Consultation.
   B Conferences.
   B Communications and progress reports.
   B Travel time.
2. Disciplines Coordination/Document Checking services consisting of design development activities for:
   B Coordination between the architectural/engineering work and the work of other involved disciplines of the Project.
   B Review and checking of documents prepared for the Project.
3. Agency Consulting/Review/Approval services consisting of design development activities including:
   B Agency consultations.
   B Research and/or review of critical applicable regulations.
   B Assistance in the preparation of written and graphic explanatory materials.

B Appearances on Owner's behalf at agency and Owner meetings.

4. Owner supplied Data Coordination services consisting of design development activities including:
   - B Review and coordination of data furnished for the Project as a responsibility of the Owner.
   - B Assistance in obtaining data.

5. Architectural Design services consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
   - B Plans, sections and elevations.
   - B Three dimensional sketches.
   - B Typical construction details.
   - X Study model(s).
   - B Materials selection.
   - B Equipment layouts.

6. Structural Design services consisting of continued development of structural system(s) and Schematic Design Documents in sufficient detail to establish:
   - B Basic structural system and dimensions.
   - B Structural design criteria.
   - B Foundation design criteria.
   - B Preliminary sizing of major structural components.
   - B Critical coordination clearances.

7. Mechanical Design services consisting of continued development and expansion of mechanical Schematic Design Documents and development of outline Specifications to establish:
   - B Approximate equipment sizes and capacities.
   - B Preliminary equipment layouts.
   - B Required space for equipment.
   - B Required chases and clearance.

8. Electrical Design services consisting of continued development and expansion of electrical Schematic Design Documents and development of outline Specifications to establish:
   - B Criteria for lighting, electrical and communications systems.
   - B Approximate sizes and capacities of major components.
   - B Preliminary equipment layouts.
   - B Required space for equipment.
   - B Required chases and clearances.

9. B Civil Design services consisting of continued development and expansion of civil Schematic Design Documents to establish the final scope and preliminary details for on-site civil engineering work.

10. Interior planning services based on functional relationships, consideration of materials, systems and equipment and development of conceptual design solutions to establish furniture and equipment locations, etc.
    - B Furniture, furnishings and fixed and loose equipment layouts.

11. Materials Specifications services consisting of activities by architectural personnel in:
    - B Presentation for Owner's approval of proposed General and Supplementary Conditions of the Contract for Construction.
    - B Development of architectural outline Specifications and brief form identification of significant architectural materials, systems and equipment.
    - B Coordination of similar activities of other disciplines.
    - B Production of design manual including design criteria and outline Specifications or materials list.

12. Statement of Estimated Cost of the Work consisting of updating and refining the Schematic Design Phase Statement of the Cost of the Work of the Project.

B Assistance to Construction Manager in preparation and concurrence with various elements of estimates, by Project/facility, of the Cost of the Work, in conjunction with the Construction Manager.

B Establishment of project Contingency Fund.

13. Presentations services consisting of presentations of Design Development Drawings and other documents by the Architect/Engineer to the following Owner representatives:

B Boards/Administration/Staff

B Citizen committee(s).

F. CONSTRUCTION DOCUMENTS PHASE

In the **Construction Documents Phase**, the Architect will provide the following services necessary to prepare from the approved Design Development Documents, for approval by the Owner, Construction Documents consisting of Drawings, Specifications and other documents setting forth in detail the requirements for construction of the Project, and bidding and contracting for the construction of the Project.

1. Project Administration services consisting of construction documents administrative functions including:
   - B Consultation.
   - B Conferences.
   - B Communications and progress reports.
   - B Travel time.
2. Disciplines Coordination/Document Checking services consisting of construction documents activities for:
   - B Coordination between the architectural/engineering work and the work of Consultants and other involved disciplines for the Project.
   - B Review and checking of documents prepared for the Project.
   - B Coordination with Owner's asbestos/hazardous material abatement Consultant.
3. Agency Consulting/Review/Approval services relating to applicable laws, statutes, regulations and codes of regulating entities and consisting of Construction Documents Phase activities for:
   - B Agency consultations.
   - B Research of applicable regulations.
   - B Appearances on Owner's behalf at agency and Owner meetings.
4. Owner supplied Data Coordination services consisting of activities relating to the construction documents including:
   - B Review and coordination of data furnished for the Project as a responsibility of the Owner.
   - B Assistance in establishing criteria.
   - B Assistance in obtaining data.
5. B Architectural/Engineering/Design services consisting of preparation of Drawings based on approved Design Development Documents setting forth in detail the architectural construction requirements for the Project.
6. B Structural Design services consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the structural construction requirements for the Project.
7. B Mechanical Design services consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the mechanical construction requirements for the Project.
8. B Electrical Design services consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the electrical construction requirements for the Project.

9. B Civil Design services consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the civil construction requirements for the Project.
10. Interior planning services based on functional relationships, consideration of materials, systems and equipment and development of conceptual design solutions to establish furniture and equipment locations, etc.
    B Furniture, furnishings and fixed and loose equipment design services consisting of preparation of final calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the furniture, furnishings and loose equipment requirements for the Project.
11. Materials Specifications consisting of activities of architectural personnel in:
    B Development and preparation of architectural Specifications describing materials, system and equipment, workmanship, quality and performance criteria required for the construction of the Project.
    B Coordination of the development of Specifications by other disciplines.
    B Assistance to the Owner and Construction Manager in development and preparation of Bidding Documents which describe the time, place and conditions of bidding, bidding forms, and the form(s) of Agreement between the Owner and Contractor(s).
    B Assistance to the Owner in development and preparation of the Conditions of the Contract (General, Supplementary, and other Conditions).
    B Assistance to Construction Manager of compilation of Project Manual including Conditions of the Contract, Bidding Documents and Specifications.
12. Special Bidding Documents/Scheduling services consisting of:
    B Preparation and coordination of Drawings and Specifications for obtaining bids or prices on alternate subdivisions of the Work.
    B Preparation and coordination of Drawings and Specifications for obtaining alternate bids or prices on changes in the scope of the Work.
    B Preparation and coordination of Drawings, Specifications, and Bidding Documents for multiple prime contracts for subdivisions of the Work.
    B Review and update of established schedules for the Project.
    These services are to be utilized at the discretion of the Architect for benefit of the Owner or at the Owner's reasonable request, and do not represent services provided by a Construction Manager.
13. Statement of Estimated Cost of the Work consisting of advising the Owner of any adjustments to, and, when the Construction Documents are approximately 90% complete, updating the Design Development Phase Statement of the Cost of the Work of the Project.
    B Assistance to Construction Manager in preparation and concurrence with various elements of estimates, by Project/facility, of Cost of the Work, in conjunction with the Construction Manager.
    B Establishment of project Contingency Fund.
14. Presentations services consisting of Construction Documents and other graphic displays by the Architect/Engineer to the following:
    B Boards/Administration/Staff
    B Citizen committee(s).

G. BIDDING OR NEGOTIATION PHASE

In the **Bidding or Negotiation Phase** the Architect will provide the following basic services necessary to assist the Owner in obtaining competitive bids and in awarding and preparing contracts for construction based on the Owner's approval of the final Construction Documents and most recent Statement of Estimated Cost of the Work.

1. Project Administration services consisting of bidding or negotiation administrative functions including:
   - B Consultation.
   - B Conferences.
   - B Communications and progress reports.
   - B Travel time.
2. Bidding Materials services consisting of organizing and handling Bidding Documents for:
   - B Coordination.
   - B Reproduction.
   - X Distribution and distribution records.
   - B Providing reproducible Drawings and Technical Specifications to the Construction Manager for use during Bidding Phase.
3. B Addenda services consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings, Specifications, instructions and notice(s) of changes in the bidding schedule and procedure.
4. Bidding/Negotiations services consisting of:
   - B Assistance to Owner and Construction Manager in establishing list of Bidders.
   - B Assistance to Owner and Construction Manager in preparation/release of Advertisement for Bids.
   - B Participation in pre-bid conferences.
   - B Responses to questions from Bidders or proposers and clarifications or interpretations of the Bidding Documents.
   - B Attendance at bid opening(s).
   - B Documentation and distribution of bidding results to Owner.
5. B Analysis of Alternates/Substitutions services consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior or subsequent to receipt of Bids or proposals.
6. Bid Evaluation services consisting of:
   - B Assistance in receipt of Bids or proposals.
   - B Participation in reviews of Bids or proposals.
   - B Evaluation of Bids or proposals and report to Owner of findings.
   - B Participation in negotiations prior to or following decisions on award of the Contract(s) for construction.
7. Construction Contract Agreements services consisting of:
   - B Assistance in the notification of Contract award(s).
   - B Assistance in preparation of construction contract Agreement forms for approval by Owner.
   - B Preparation and distribution of sets of Contract Documents for execution by parties to the Contract(s).
   - B Receipt, distribution and processing, for Owner's approval of required certificates of insurance, bonds and similar documents.
   - B Preparation and distribution of Contractor(s), on behalf of the Owner, of notice(s) to proceed with the Work.

H. CONSTRUCTION CONTRACT ADMINISTRATION PHASE

In the **Construction Contract Administration Phase**, the Architect will provide the following basic services necessary for the administration of the construction contract as set forth in the General Conditions of the Contract for Construction and on-site project representation to inspect the construction process on behalf of the Owner.

1. Project Administration services consisting of construction contract administrative functions including:
   - B Consultation.
   - B Conferences.
   - B Communications and progress reports.
   - B Travel time.
   - B Coordination of multiple-prime construction contracts.
2. Office Construction Administration services consisting of:
   - B Processing of submittals, including receipt, review of and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.
   - B Distribution of submittals to Owner, Contractor and/or Architect/Engineer's representative as required.
   - B Maintenance of master file of submittals.
   - B Related communications.
3. The provision of Periodic or Continuous Project Representation in the field shall be as determined by the Owner and the terms and conditions of the Agreement between Owner and Architect for each specific project.
   - X Continuous Project Representative(s) (Checking of this service will require negotiation of the parties relative to paragraphs 3.6.2.1 and Article 11-Compensation).
   - B Periodic Project Representative(s)(see Paragraph 3.6.2.1).
4. Coordination services relating to independent inspection and testing agencies, consisting of:
   - B Administration of field testing required by the Contract Documents.
   - B Arranging for and coordination of testing and inspection on Owner's behalf.
   - B Review of reports on inspections and tests and notifications to Owner and Contractor(s) of observed deficiencies in the Work.
5. Supplemental Documents services consisting of:
   - B Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Contractor(s) or the Owner and as required by construction conditions of the work.
   - B Forwarding Owner's instructions and providing guidance to the Contractor(s) on the Owner's behalf relative to changed requirements and schedule revisions.
   - B Assistance to the Owner in the selection and preparation of a Color and Material Finish Schedule for the Project.
6. Quotation Requests/Change Orders services consisting of:
   - B Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified.
   - B Review of proposals from Contractor(s) for reasonableness of quantities and costs of labor and materials.
   - B Review and recommendations relative to changes in time for Substantial Completion.
   - B Negotiations with Contractor(s) on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
   - B Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
   - B Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.
7. B Project Schedule Monitoring services consisting of monitoring the progress of the Contractor(s) relative to established schedules and making status reports to Owner.
8. Cost of the Work Accounting services consisting of:
   - B Maintenance of records of payments on account of the Construction Contract Sum(s) and all changes thereto.

B Evaluation of Applications for Payment and certification thereof to include waivers of lien and release from the surety company as applicable.

B Review and evaluation of expense data submitted by the Contractor(s) for Work performed under cost-plus-fee arrangements.

9. Project Closeout services initiated upon notice from the Contractor(s) that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended, and consisting of:

B A field visit with the Owner's representative to check conformity of the Work to the Contract Documents to the list submitted by the Contractor(s) of items to be completed or corrected.

B Issuance of Certificate(s) of Substantial Completion.

B Recommendations of the amount(s) to be withheld until final completion.

B Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).

B Field inspection(s) upon notice by the Contractor(s) that the Work is ready for final inspection and acceptance.

B Notification to Owner and Contractor(s) of deficiencies found in follow-up inspection(s), if any.

B Field inspection(s) with the Owner's representative to verify final completion of the Work.

B Receipt and transmittal to the Owner of the guarantees, warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the Owner against liens.

B Review, approve and certify final Certificate(s) for Payment.

I. POST CONSTRUCTION PHASE

In the **Post Construction Phase**, the Architect will provide the following services necessary to assist the Owner in the use and occupancy of the facility on a Project-by-Project basis.

1. Project Administration services consisting of post construction administrative functions including:

B Consultation

B Conferences

B Communications and progress reports.

B Travel time.

2. Maintenance and Operational Programming services consisting of:

B Assistance in the establishment by the Owner of in-house or contract program(s) of operation and maintenance of the physical plant and equipment.

B Assistance in arranging for and coordinating instructions on operations and maintenance on equipment in conjunction with manufacturer's representatives.

B Assistance in the preparation of operations and maintenance manual(s) for the Owner's use.

3. Start-Up Assistance services consisting of:

B On-site observation and assistance in the operation of building systems during initial occupancy.

B Assistance and coordination of remedial work by the Contractor(s) after final completion.

4. As-Constructed Record Drawings for civil (including site work) engineering and As-Designed for all other disciplines services consisting of:

B Making arrangements for obtaining from Contractor(s) information certified by them on all changes made during construction from the initial Contract Documents and on the location of concealed systems as installed during construction.

B Transmittal of As-Constructed record drawings to the Owner.

5. Post Construction Evaluation services consisting of an on-site visit to the project nine months after completion of construction for:
   - **B** Warranty items in defect.
   - **B** Defective work and/or materials under contract requirements.
   - **B** Incomplete work by the Contractor under contract requirements.
   - **B** Report to the Construction Manager any defective Work and/or material to be corrected.

J. SUPPLEMENTAL SERVICES

In addition to the Basic Services provided by the Architect, the following **Supplemental Services** are provided and/or arranged by the Architect as required when requested and approved by the Owner.

These Supplemental Services may be provided during a single phase of the Basic Services or during several phases of the project as directed by the Owner.

1. Special Studies services consisting of investigation, research and analysis of the Owner's special requirements for the Project and documentation of findings, conclusions and recommendations for:
   - **X** Master planning to provide design services relative to future facilities, systems and equipment not intended to be constructed as part of this Project.
   - **A** Feasibility studies consisting of investigation, research, studies, analysis and final reporting on proposed Projects or other purposes.
2. Model Construction services consisting of preparation of:
   - **A** Large scale block model(s) of structure(s) designed for the Project.
   - **A** Large scale detailed model(s) of structure(s) designed for the Project showing both interior and exterior design.
3. Life Cycle Cost Analysis services consisting of assessment, on the basis of established relevant economic consequences over a given period of time, of:
   - **B** A given planning and design solution for the Project.
   - **B** Alternative planning and design solutions for the Project.
   - **B** Selected systems, subsystems or building components proposed for the Project.
4. Renderings services related to providing graphic pictorial representations of the proposed Project consisting of:
   - **B** Black and white elevation view(s).
   - **B** Black and white perspective view(s).
   - **B** Elevation view(s) in color.
   - **B** Perspective view(s) in color.
5. Specialized Promotions/Public Relations services relating to presentations to the public or identified groups consisting of:
   - **B** Preparation of special brochures and/or promotional pieces.
   - **B** Assistance in production and distribution of promotional materials.
   - **B** Presentations at public relations and/or promotional meetings.
6. Special Disciplines Consultation services consisting of retaining, directing and coordinating the work of special disciplines Consultants whose specialized training, experience or knowledge relative to specific elements and features of the Project are requested and approved by the Owner.
   - **B** Acoustical/Auditorium/Theatre/Sound Engineering.
   - **B** Food Service Design
   - **B** Interior Design Services, including Furniture, furnishings, fixed and loose equipment.
   - **B** Pool Consultant
   - **B** Technology (coordinate with Owner's Technology Designer)

B Surveys - Land and Topographical (Owner contracts directly, Construction Manager and Architect coordinate).

B Soils/Foundations (Owner contracts directly, Construction Manager and Architect coordinate).

B Traffic/Parking.

7. B Value Analysis services consisting of the review during design phases of the cost, quality and time influences of proposed building materials, systems and construction methods relative to design objectives in order to identify options for obtaining optimum value for the Owner.
8. B Architect will include Drawings and Specifications that outline quantity of materials and components that are required for the actual construction of the Projects.
9. Energy Study services consisting of special analyses of mechanical systems, fuel costs, on-site energy generation and energy conservation options for the Owner's consideration.
   B Construction Phase
   B Post-Construction Phase
10. Special furniture or furnishings design services related to Architect-designed special furniture, furnishings and/or equipment incorporated into the Project and consisting of:
    B Design and documentation.
    B Specifications or standards.
    B Management of procurement.
    B Coordination of installation.

11. Serving as witness for the Owner in a public hearing, arbitration proceeding, administrative law proceeding, or legal proceeding.
    B During Project phases
    A Post-Construction phase

END OF EXHIBIT A

EXHIBIT B
HOURLY BILLING RATES
AND
REIMBURSABLE EXPENSES

Personnel Classification	Rate
Principal	$182.00/per hour
Senior Associate	$162.00/per hour
Architect	$132.00/per hour
Architect Technician	$122.00/per hour
Interior Designer	$108.00/per hour
Drafts Person	$108.00/per hour
Administrative Support	$ 92.00/per hour

NOTE: The rates set forth above are good through December 31, 2020. French Associates, Inc., may thereafter annually adjust the personnel rates in accordance with normal salary review practices. Rate increases are limited to three (3%) percent per year.

Reimbursable Expenses:

Total Estimated Reimbursable Expenses $200,000.00

EXHIBIT C
KEY PERSONNEL

The Architect agrees to commit the following key individuals for the duration of the Project, as well as the necessary resources of the firm to meet the Project goals and schedule:

Individual	Position
Paul A. Corneliussen, AIA	Executive Vice President
Suzanne Carlson, AIA	Senior Associate
Dan Jerome, AIA	Senior Associate
Charles Marchetti	Associate

The Architect shall not remove any of the above referenced personnel identified herein from the Project without the prior written consent or request of the Owner, unless such Personnel cease to be in the employ of the Architect. In the event any such personnel must be replaced, Architect shall promptly find an acceptable replacement in consultation with the Owner.

EXHIBIT D
DETAILED DESCRIPTION OF THE PROJECT

(See Attached Bond Summary)

The Bond Projects are being divided into the following two (2) categories:

(1) Projects which are covered under the Architect's Basic Services:

(a) All Projects identified in the Bond Summary, except as set forth in (2) below; and

(2) Projects which the Owner, at a later date, has the option of assigning to the Architect, which will then be part of the Architect's Basic Services, or having the work performed by separate Contractors or the Owner's own forces:

(a) Buses;
(b) Roofing; and
(c) Technology.

Barton Malow
BUILDERS

BLOOMFIELD HILLS SCHOOLS
2020 BOND PROGRAM
SUMMARY: BUILDING-SCOPE

2/10/20

	FACILITY	Built	Size	Year 1 2020	Year 2 2021	Year 3 2022	Year 4 2023	Year 5 2024	Year 6 2025	Year 7 2026	TOTAL
1	CONANT ELEMENTARY SCHOOL	1960	50,970	0	408,080	4,623,752	0	10,900,056	2,815,752	0	**18,747,640**
2	WAY ELEMENTARY SCHOOL	1966	48,400	0	175,329	3,325,544	0	8,618,270	289,516	0	**12,408,660**
3	EAST HILLS ELEMENTARY	1962	113,102	0	322,481	28,665	6,390,601	6,647,073	0	0	**13,388,820**
4	WEST HILLS ELEMENTARY	1966	111,560	0	107,494	27,948	4,383,000	6,173,691	0	0	**10,692,134**
5	MIDDLE SCHOOL SOUTH (BHMS SITE)	1958	112,860	406,806	13,216,288	24,774,996	93,161	458,640	0	0	**38,949,892**
6	MIDDLE SCHOOL NORTH (LAHSER SITE)	1967	115,000	3,599,256	27,028,692	12,329,163	12,136,649	71,662	0	0	**55,165,423**
7	BLOOMFIELD HILLS HIGH SCHOOL	2015	381,687	0	0	0	3,345,204	8,530,935	0	6,147,381	**18,023,520**
8	BOWERS FARM	2010	9,916	0	0	5,016	0	0	4,592,611	0	**4,597,627**
9	INTERNATIONAL ACADEMY	1965	61,750	0	0	0	0	0	2,323,555	0	**2,323,555**
10	WING LAKE CENTER	2008	39,400	0	0	0	0	0	700,932	0	**700,932**
11	NATURE CENTER	1985	6,000	0	0	1,433	0	0	690,704	0	**692,138**
12	EASTOVER - EARLY CHILDHOOD CENTER	1955	60,295	0	0	23,649	0	100,327	7,041,150	0	**7,165,126**
13	DOYLE CENTER	1962	39,400	0	0	0	0	0	0	2,937,459	**2,937,459**
14	TRANSPORTATION/MAINTENANCE/STORAG	tbd	25,000	3,583,124	0	0	0	0	9,920,810	0	**13,503,934**
15	FOX HILLS ELEMENTARY	1967	44,352	0	0	0	0	0	0	530,394	**530,394**
16	LONE PINE ELEMENTARY	1967	60,030	0	0	0	0	0	0	666,762	**666,762**
17	BUS GARAGE	1966	5,644	0	0	0	0	0	70,957	0	**70,957**
18	FRANKLIN ROAD BUILDING	1969	15,500	0	0	0	0	0	0	0	**0**
	TOTAL		1,300,866	7,589,187	41,258,365	45,140,168	26,348,615	41,500,654	28,445,989	10,281,996	200,564,973

Series 1 Subtotal:	93,987,719	Series 2 Subtotal:	106,577,254	
Bond Issuance Costs:	858,600	Bond Issuance Costs:	1,188,557	2,047,157
Estimated Interest Earnings:	(796,319)	Estimated Interest Earnings:	(1,660,811)	(2,457,130)
Series 1 Total:	94,050,000	Series 2 Total:	106,105,000	200,155,000

EXHIBIT E
INSURANCE CERTIFICATE(S)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY): 07/14/2020

PRODUCER
DESIGNPRO INSURANCE GROUP
P.O. BOX 511106
LIVONIA, MI 48151
(734) 425-9710
PH: 734-425-9710

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: HANOVER/MASSACHUSETTS BAY INS. CO.	
INSURER B: HANOVER INSURANCE COMPANY	
INSURER C: RLI INSURANCE COMPANY	
INSURER D:	
INSURER E:	

INSURED
FRENCH ASSOCIATES, INC.
236 MILL STREET
ROCHESTER, MI 48307

COVERAGES Serial #

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	X	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC	#ODB-9318940-08	09-30-19	09-30-20	EACH OCCURRENCE	$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
						MED EXP (Any one person)	$ 10,000
						PERSONAL & ADV INJURY	$ 2,000,000
						GENERAL AGGREGATE	$ 4,000,000
						PRODUCTS - COMP/OP AGG	$ 4,000,000
A		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	#ODB-9318940-08	09-30-19	09-30-20	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
A		EXCESS / UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [X] RETENTION $ NIL	#ODB-9318940-08	09-30-19	09-30-20	EACH OCCURRENCE	$ 1,000,000
						AGGREGATE	$ 1,000,000
							$
							$
							$
B		WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	#WHB-A757069-04	09-30-19	09-30-20	[X] WC STATU-TORY LIMITS [X] OTH-ER	
						E.L. EACH ACCIDENT	$ 500,000
						E.L. DISEASE - EA EMPLOYEE	$ 500,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
C		OTHER ARCHITECTS/ENGINEERS PROFESSIONAL LIABILITY	#RDP0037639	09-30-19	09-30-20	PER CLAIM LIMIT : $3,000,000 AGGREGATE LIMIT : $5,000,000	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

THE CERTIFICATE HOLDER IS INCLUDED AS AN ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY INSURANCE.

CERTIFICATE HOLDER

BLOOMFIELD HILLS PUBLIC SCHOOLS
7273 WING LAKE ROAD
SUITE A
BLOOMFIELD HILLS, MI 48301-3774

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~XXXXXXXX~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO DO SO SHALL XXXXXXXXXXXXXXXXXX~~ ~~IMPOSE XXXXXXXXXXXXXXXXX

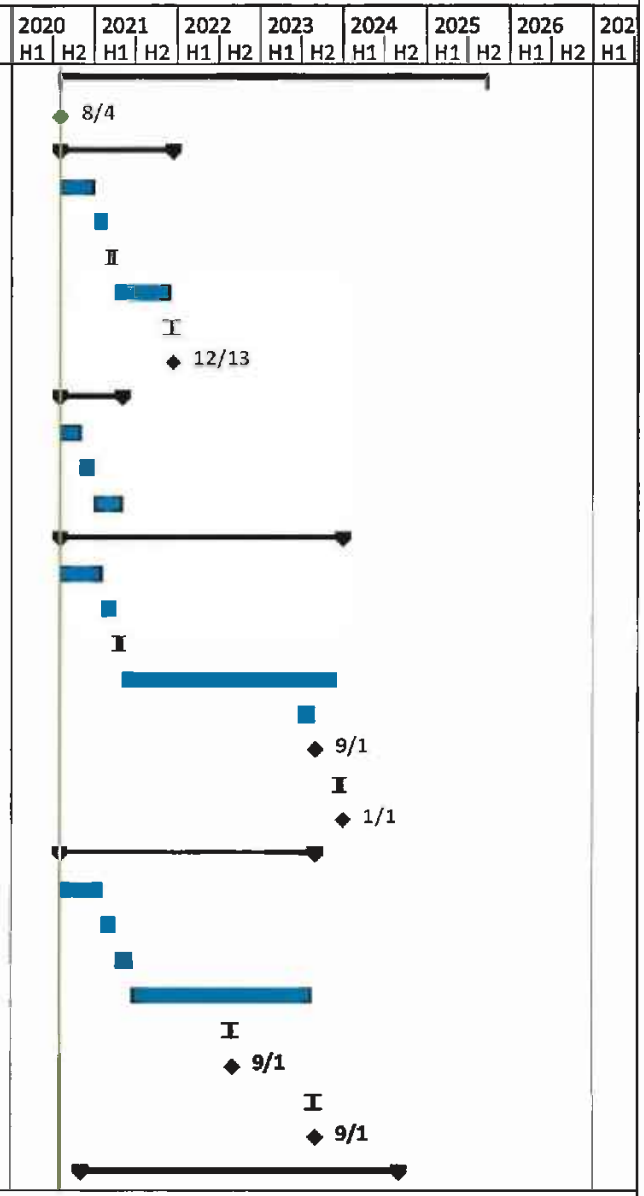
EXHIBIT F
PROJECT SCHEDULE

The Project Schedule is attached hereto, which schedule will be updated during the term of this Agreement as mutually agreed to by the parties.

Bloomfield Hills Schools
2020 Bond Program Master Schedule

Barton Malow BUILDERS

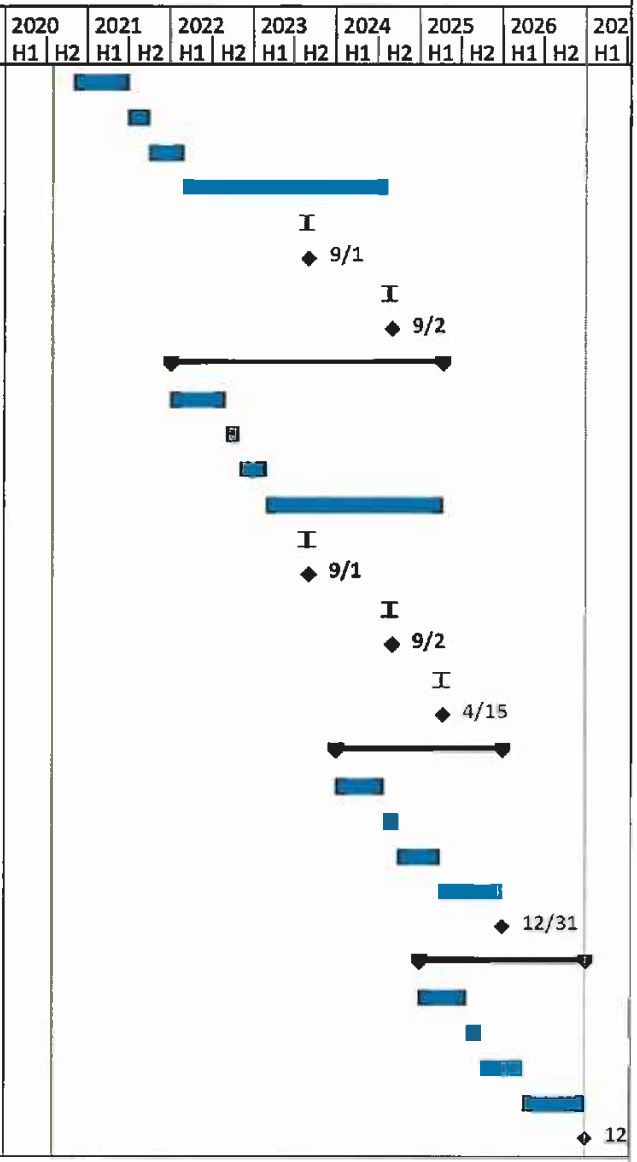
ID	Task Name	Start	Finish	Duration
1	**2020 Bond Issue Master Schedule**	Tue 8/4/20	Fri 9/26/25	1344 days
2	Bond Passes	Tue 8/4/20	Tue 8/4/20	0 days
3	**Bid Package No. 1 - District Priorities**			
4	Design Phase	Tue 8/4/20	Thu 12/31/20	108 days
5	Bid Phase	Fri 1/1/21	Fri 2/26/21	41 days
6	Procurement Phase	Mon 3/1/21	Wed 3/31/21	23 days
7	Construction Phase	Thu 4/1/21	Wed 12/1/21	175 days
8	Owner Move-In	Thu 12/2/21	Fri 12/10/21	7 days
9	Occupancy	Mon 12/13/21	Mon 12/13/21	0 days
10	**Bid Package No. 2 -** Middle School Demo, Utilities, **Abatemen**			
11	Design Phase	Tue 8/4/20	Wed 11/4/20	67 days
12	Bid Phase	Thu 11/5/20	Thu 12/31/20	41 days
13	Construction Phase	Fri 1/1/21	Tue 5/4/21	88 days
14	**Bid Package No. 3 - North** Middle School			
15	Design Phase	Tue 8/4/20	Thu 2/4/21	133 days
16	Bid Phase	Fri 2/5/21	Tue 4/6/21	43 days
17	Procurement Phase	Wed 4/7/21	Tue 5/4/21	20 days
18	Construction Phase	Wed 5/5/21	Fri 12/1/23	673 days
19	Owner Move-In	Thu 6/15/23	Thu 8/24/23	51 days
20	Occupancy (Phase 1)	Fri 9/1/23	Fri 9/1/23	0 days
21	Owner Move-In	Mon 12/4/23	Fri 12/29/23	20 days
22	Occupancy (Phase 2)	Mon 1/1/24	Mon 1/1/24	0 days
23	**Bid Package No. 4 - South** Middle School			
24	Design Phase	Tue 8/4/20	Thu 2/4/21	133 days
25	Bid Phase	Fri 2/5/21	Tue 4/6/21	43 days
26	Procurement Phase	Wed 4/7/21	Mon 6/14/21	49 days
27	Construction Phase	Mon 6/14/21	Wed 8/16/23	568 days
28	Owner Move-In	Wed 8/17/22	Wed 8/31/22	11 days
29	Occupancy (Phase 1 Renovations)	Thu 9/1/22	Thu 9/1/22	0 days
30	Owner Move-In	Thu 8/17/23	Thu 8/31/23	11 days
31	Occupancy (Phase 2 Addition)	Fri 9/1/23	Fri 9/1/23	0 days
32	**Bid Package No. 5 - Elementary Renovations (EHMS & WHMS**			



PRELIMINARY FOR DISCUSSION PURPOSES

Bloomfield Hills Schools
2020 Bond Program Master Schedule

ID	Task Name	Start	Finish	Duration
33	Design Phase	Tue 11/3/20	Thu 7/1/21	173 days
34	Bid Phase	Thu 7/1/21	Thu 9/30/21	66 days
35	Procurement Phase	Fri 10/1/21	Tue 3/1/22	108 days
36	Construction Phase	Tue 3/1/22	Tue 8/13/24	641 days
37	Owner Move-In	Mon 8/14/23	Thu 8/31/23	14 days
38	Occupancy (Phase 1 Renovations)	Fri 9/1/23	Fri 9/1/23	0 days
39	Owner Move-In	Mon 8/12/24	Fri 8/30/24	15 days
40	Occupancy (Phase 2 Renovations)	Mon 9/2/24	Mon 9/2/24	0 days
41	**Bid Package No. 6 - Elementary Renovations (Way & Conant)**			
42	Design Phase	Mon 1/3/22	Wed 8/31/22	173 days
43	Bid Phase	Thu 9/1/22	Mon 10/31/22	43 days
44	Procurement Phase	Tue 11/1/22	Tue 2/28/23	86 days
45	Construction Phase	Wed 3/1/23	Tue 4/15/25	555 days
46	Owner Move-In	Wed 8/16/23	Wed 8/30/23	11 days
47	Occupancy (Phase 1 Classroom Addition)	Fri 9/1/23	Fri 9/1/23	0 days
48	Owner Move-In	Thu 8/15/24	Fri 8/30/24	12 days
49	Occupancy (Phase 2 Multi Purpose Addition)	Mon 9/2/24	Mon 9/2/24	0 days
50	Owner Move-In	Tue 4/1/25	Mon 4/14/25	10 days
51	Occupancy (Phase 3 Media Center/STEM)	Tue 4/15/25	Tue 4/15/25	0 days
52	**Bid Package No. 8 - High School, Eastover, Bowers, IA, Natur**			
53	Design Phase	Mon 1/1/24	Mon 7/29/24	151 days
54	Bid Phase	Thu 8/1/24	Mon 9/30/24	43 days
55	Procurement Phase	Tue 10/1/24	Tue 4/1/25	131 days
56	Construction Phase	Tue 4/1/25	Wed 12/31/25	197 days
57	Owner Occupancy	Wed 12/31/25	Wed 12/31/25	0 days
58	**Bid Package No. 8 - Support Buildings**			
59	Design Phase	Wed 1/1/25	Wed 7/30/25	151 days
60	Bid Phase	Fri 8/1/25	Tue 9/30/25	43 days
61	Procurement Phase	Wed 10/1/25	Wed 4/1/26	131 days
62	Construction Phase	Wed 4/1/26	Thu 12/31/26	197 days
63	Owner Occupancy	Thu 12/31/26	Thu 12/31/26	0 days



PRELIMINARY FOR DISCUSSION PURPOSES

EXHIBIT G
TEAM RESPONSIBILITY MATRIX

See attached Team Responsibility Matrix dated March 2, 2020

RESPONSIBILITY MATRIX DATED MARCH 2, 2020

Bloomfield Hills Schools

PROJECT TEAM:

OWNER: Bloomfield Hills Schools

ARCHITECT: French Associates, Inc.

CONSTRUCTION MANAGER: Barton Malow Company

INTRODUCTION:

The following matrix lists functional tasks assigned to one or more members of the Bloomfield Hills Schools Project Team.

Tasks are listed by category and general sequence. Some tasks are clarified by footnotes.

RESPONSIBILITY MATRIX

TEAM SELECTION	OWNER	A/E	CM	
Initiate Project	1	0	0	
Owner Selects CM	1	0	0	
Owner Selects A/E	1	0	0	
Establish Team Responsibilities	1	1	1	
Establish Fees	1	1	1	
Execute Contractual Agreements	1	1	1	
Establish Communication Procedures	1	1	1*	
BOND CAMPAIGN				
Develop Owner's Program	1*	1	1	
Establish Owner's Budget	1	2	1	(1)
Establish Budget Guidelines and Controls	1	2	1*	
Analyze Program vs. Budget	1	1	1*	
Develop Hazardous Material Program	1	2	2*	
Establish Site Requirements	1	1*	2	
Conduct Site Evaluation	2	1	2	
Conduct Utilities Evaluation	0	1	2	
Develop Preliminary Project Master Schedule	1	1	1*	
Establish Preliminary Occupancy Schedule	1	2	1	(2)
Develop Preliminary Cash Flow Schedule	2	0	1	
Study Financial Feasibility	1	0	2	
Conduct Financing Studies	1	0	1	
Submit Necessary State or Federal Fund Applications	1	0	2	
Board's Review & Approval of Bond Documentation	1	2	2	
Fund Raising Promotion, Bond Campaign	1	2	2	
Obtain Financing & Invest Funds	1	0	2	
SCOPE VALIDATION & SCHEMATIC DESIGN				
Study Spatial Relationships	2	1	2	
Prepare Functional and Flow Diagrams	0	1	0	
Recommend Basic Materials & Systems	2	1	2	
Coordinate with Governmental Agencies	2	1	2	(3)
Update Project Master Schedule	1	1	1*	
Update Occupancy Schedule	1	2	1	
Prepare Detailed Design Schedule	2	1*	1	(4)
Complete Scope Validation Design Packages	0	1	0	
Develop Schematic Estimate	0	2	1	
Analyze Estimate (Program/Budget/Estimate)	2	1	1*	
Refine Program (Relating to Bond Scope/Budget/Estimate)	1	1*	1	
Scope Validation Report	0	1*	1	
Board's Review and Approval of Schematic Design & Estimate	1	2	2	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

DESIGN DEVELOPMENT	OWNER	A/E	CM	
Obtain Survey & Soils Testing	2	1	2	(5)
Retain Special Consultants	1	1	2	
Prepare Site Plan	0	1	0	
Evaluate Architectural Component & System Alternates	0	1	2	
Evaluate Structural Systems	0	1	2	
Evaluate Mechanical & Electrical Systems	0	1	2	
Prepare Outline Specifications	0	1	2	
Initiate Preliminary Utility Co. Review	2	1	2	
Complete Design Development Packages	0	1	0	
Prepare Design Development Estimate	0	2	1	
Analyze Estimate (Program/Budget/Estimate)	2	1	1*	
Conduct Value Engineering Analysis	0	1	1	(6)
Finalize Selection of Components & Systems	1	1*	2	
Design Development Report	0	1*	1	
Board's Review & Approval of Design Documents & Estimate	1	2	2	
Obtain Fed./State/Local Bldg. & Health Authority Reviews	2	1	2	(7)
Obtain State Fire Marshal Plan Review	2	1	2	(7)
Obtain Dept. of Natural Resources Review, if Required	2	1	2	(7)
Prepare Local Planning or Zoning Board Approvals, if Required	2	1	2	(7)
Update Master Schedule	1	1	1*	
Prepare Preliminary Construction Schedule	2	0	1	
Identify Long-Lead Purchase Items	0	2	1	
Prepare Long-Lead Purchase & Phased Construction Documents, if Required	0	1	2	
Bid and Purchase Long-Lead Items	2	2	1	
Evaluate Labor & Trade Contractor Market	0	0	1	
Establish General Conditions	2	2	1	
Update Cash Flow Schedule	2	0	1	
Establish Reporting & Accounting Procedures	2	2	1	

CONSTRUCTION DOCUMENTS	OWNER	A/E	CM	
Prepare Construction Plans & Technical Specifications	0	1	0	
Implement Phased Construction, if Applicable	2	2	1	
Review Construction Plans & Technical Specifications	1	1*	1	(8)
Final Government Agency Review Approval	2	1	2	
Final Insurance Requirements Review	1	0	2	
Finalize Owner Occupancy Schedule	1	0	1*	
Prepare Project Manual	0	2	1	(9)
Establish Contract Conditions	2	2	1	(10)
Determine Bid Divisions of Work	0	2	1	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

Update Construction Schedule	0	0	1	
Prepare Trade Contractor Bid Lists	2	2	1	
Review Trade Contractor Bid Lists	1	2	1*	
Update Cash Flow Schedule	2	0	1	
Construction Document Report	0	1*	1	
Board's Approval of Construction Documents & Schedule	1	2	2	
BIDDING AND AWARDING				
Advertise for Trade Contractor Bids	2	0	1	
Place Legal Ads for Bidding	2	0	1	
Distribute Bidding Documents	0	0	1	
Obtain Builders Risk Insurance	1	0	2	(11)
Conduct Trade Contractor Pre-Bid Conference	0	2	1	(12)
Prepare & Distribute Addenda	0	1	1*	
Receive & Tabulate Trade Contractors' Bids	2	2	1	(13)
Evaluate Bids for Specification Compliance	0	1	1*	
Evaluate Bids and Make Award Recommendations	2	2	1*	
Conduct Pre-Award Conferences	2	2	1	
Evaluate Cost of Project as Bid	0	2	1	
Update Construction & Master Schedule	0	0	1	
Board's Review & Approval of Trade Contracts	1*	2	1	
Issue Notice to Proceed	1	0	1*	
Develop Detailed Construction Schedule	0	0	1	
Set Disbursement Schedules	0	0	1	
Issue Trade Contracts	1	0	1*	

RESPONSIBILITY MATRIX

CONSTRUCTION	OWNER	A/E	CM	
Mobilization for Construction	0	0	1	
Verify & Monitor Insurance & Bond Requirements	2	0	1	
Provide Full Time Field Coordination & Reporting	0	0	1	
Establish Beneficial Occupancy Schedule	0	0	1	
Inspect & Monitor Trade Contractors' Work	0	2	1	
Inspect for Conformance to Design	0	1	2	
Interpret Plans & Specifications	0	1	2	
Evaluate Progress & Update Construction Schedule	0	0	1	
Process Shop Drawings & Sample Control	0	2	1	
Check & Approve Shop Drawings & Samples	0	1	2	
Approve Trade Contractor Progress Payments	1	1	1	(14)
Disperse Payments to Contractors	2	0	1	
Provide Project Cost Controls	0	0	1	
Conduct Job Meetings	0	2	1	
Prepare & Process Bulletins	0	1	2	(15)
Prepare & Process Change Documents	0	1	1*	
Review & Approve Change Documents	1	2	2	(16)
Administer Safety Program	0	0	1	
Administer Quality Control Program	0	2	1	(17)
Maintain As-Built Drawings	0	0	1	
Coordinate Owner Occupancy Schedule	1	2	1	
CLOSE OUT & OCCUPANCY				
Prepare Punch List	0	1	2	
Coordinate Completion of Punch List	0	2	1	
Certify Substantial Completion	2	1	2	
Obtain Final Approval from Fire Marshal	0	1	2	
Conduct Demonstration on Systems & Equipment	1	2	1	(18)
Start-Up & Recommended Maintenance	1	2	1	
Submit Operation Manuals & Warranties	0	1	1*	
Inspect for Final Compliance with Documents	2	1	2	
Perform Final Accounting	0	0	1	
Determine Final Payments	1	1	1*	
Coordinate Work under Guarantee	0	2	1	
Provide Continuing Consultation in Post Occupancy	0	1	1	
Owner's Acceptance	1	0	0	

Responsiblity:1 = Major, 2 = Minor, 0 = None,* = Lead

RESPONSIBILITY MATRIX

FOOTNOTES

(1) The Owner establishes limits of expenditures, the construction manager develops breakdowns for total cost.
(2) The Owner sets the desired occupancy based on the construction duration anticipated by the construction manager.
(3) Following consultation with the Owner, the architect/engineer coordinates governmental agency plan reviews as required and assisted by the construction manager.
(4) The Owner sets the desired occupancy based on the construction duration anticipated by the construction manager.architect/engineer set their production schedule milestones established by the construction manager.
(5) The architect/engineer obtains the necessary surveys and soil tests to properly execute his work, which is contracted and paid for directly by the Owner to the survey and testing agency.
(6) The construction manager recommends cost effective alternate systems for analysis by the architect/engineer with joint concurrence in recommending systems to the Owner for approval.
(7) The architect/engineer will submit all required drawings, specifications, transmittals, applications and fees to the appropriate governing agencies after approval from the Owner. Owner to reimburse fees to architect/engineer.
(8) The Owner reviews plans and specifications for program requirements, construction manager reviews for cost and duration control.
(9) Construction manager to prepare description of work for each trade and equipment contractor in accordance with the architect/engineer's specifications.
(10) Construction manager to initiate trade contract conditions to be reviewed and approved by the Owner.
(11) Builders Risk Insurance obtained by Owner.
(12) Chaired by construction manager with architect/engineer in attendance for questions and drafting of addenda.
(13) Owner receives bids, assisted by the construction manager at a public bid opening, with architect/engineer in attendance.
(14) Construction manager and architect/engineer approves certification for payment to trade contractors and submits summary to Owner for approval of payment.
(15) Architect/engineer prepares bulletins by trade or equipment contractors and submits to construction manager for distribution.
(16) Architect/engineer and construction manager approve bulletin pricing, and Owner approves expenditure.
(17) Architect/engineer establishes quality control standards in the Specifications and construction manager implements the plan.
(18) Contractors to conduct demonstration to Owner with architect/engineer and construction manager in attendance.

EXHIBIT H

ARCHITECT'S PROPOSAL

(The Owner and Architect agree that where there is a conflict between terms contained in **Exhibit H** and the Contract, including the other Exhibits, the Contract, including the other Exhibits, shall take precedence as the Contract and other Exhibits are more recent and up-to-date. However, the Owner and Architect also agree where there is not a conflict between terms contained in **Exhibit H**, to the extent accepted by the Owner, and the Contract, including the other Exhibits, all terms and conditions in the Contract, including the other Exhibits, shall be incorporated by reference into the Contract and shall be binding upon both parties.)

FRENCH associates
architects planners interiors

236 Mill Street
Rochester, MI
48307

June 11, 2019

Ms. Tina Kostiuk
Assistant Superintendent, Finance and Operations
Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

Subject: **Bloomfield Hills Schools**
Architectural /Engineering Assessment and Pre-Bond Services Proposal

Dear Tina:

We greatly appreciate the opportunity to submit our proposal for Bloomfield Hills Schools (BHS) for Architectural/Engineering Assessment Services and Pre-Bond Services. We have appreciated our nearly 19 years partnership with BHS and have enjoyed the variety of project assignments on which we have collaborated together.

We have also had some interesting responsibilities in other school districts in the community that we believe will give us *added insight* into the 2020 Vision that your Strategic Planning efforts have been focusing on.

In the West Bloomfield School District, we were the Facilitation Team that spent several community and staff-based workshops to develop the Educational Specifications and Imagining efforts that were the foundation for the planning and design of the New West Bloomfield Middle School.

In 2017 we opened the new Central Elementary STEM Facility for the Midland Public Schools. This was also planned with the visioning oversight by our team and it follows the Project Lead the Way curriculum path. Each grade level community has a curriculum focus which is highlighted in the design.

In short, we feel extremely prepared to take on this assignment as you structure these efforts towards a 2020 Bond Issue Campaign.

PROJECT DESCRIPTION
The existing district facilities and schools will be reviewed with Barton Malow Company and assessed to develop a general capital improvement plan for potential future upgrades and improvements. The primary areas of evaluation will be:

- Baseline site aerial reviews
- Assessment of existing drawings/documents
- Walk-through of existing facilities
- Code evaluation and life safety plan
- Site evaluations (parking, walks, play areas, access)
- Architectural envelope evaluations (doors, windows, roofing, exterior wall veneer)
- Architectural finishes evaluations
- Architectural casework evaluations
- Architectural/planning evaluations (Program)

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48307

- Mechanical and electrical systems evaluation
- Food service systems evaluation

SCOPE OF SERVICES
Services to be provided by FA will include:

Phase I – Facility Assessment
Services to be provided by FA will include:

1. Counsel BHS on general plan and design; suitability of site, building systems, building envelope and other observations.
2. Coordinate with our engineers and consultants to develop conceptual scope of remodeling work necessary to meet goals.
3. Attend administrative, community and/or Board of Education meetings as necessary to

Phase II – Pre-Bond Election & Campaign Services:
After completion of the Facility Assessment, FA will assist BMC and BHS in the formation of a bond proposal. We will provide the District with the required services to develop the necessary Campaign literature, graphics, brochures, etc. Our services will also include the collaboration with Banach, Banach, & Cassidy, whom we understand is part of the BMC team of services as a campaign consultant. We have also partnered with BB&C on nearly 20 successful Bond campaigns,

Phase III (future work) – Completed Schematic Design/ Design Development / Construction Documents / Bidding /Construction Administration:
If BHS selects to pursue a Bond Program FA would like to provide a continuation of professional architectural services under a mutually executed AIA Owner/Architect Agreement with BHS. The standard agreement would be for A/E services for the successful bond projects, and generally include architectural, civil, landscape, structural, mechanical, electrical engineering services required to prepare completed Schematic Design, Design Development, Construction Documents, Bidding and Construction Administration.

CLIENT RESPONSIBILITIES
It is understood that the owner will provide the following information and/or assistance to FA:

1. Assignment of a single point of contact to serve as a liaison between the owner and FA for the Facility Assessment.
2. Assignment of the Assistant Superintendent of Schools as the point of contact for the Campaign Services.

SERVICES NOT INCLUDED IN BASE FEE
The following services are not included in the above fee:

1. Wetlands consultation, determination or mitigation.
2. Detailed tree survey
3. Field measuring of existing buildings
4. Hazardous material identification or analysis.
5. Design for an expanded scope of work, in excess of, scope indicated under project description and scope of services.
6. Fees paid for securing approval of authorities having jurisdiction over the project.

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7. Computer generated renderings or 3D images

SCHEDULE
We are prepared to commence work on this project immediately after receiving authorization to proceed.

FEE
Phase I – Facility Assessment
We propose to provide the services described herein at no cost to the district.

Phase II – Pre-Bond Election & Campaign Services
We propose to provide the services described herein for a lump sum fee of $15,000.00. French associates would waive this fee in the event that BHS and FA enter into a formal agreement for AE services for the projects identified in the 2020 Bond Issue Proposal. If the bond issue were to fail and BHS decides not to pursue another attempt, these fees for services would be invoiced in full.

Phase III (future work) – Completed Schematic Design/ Design Development / Construction Documents / Bidding /Construction Administration
Fees for Phase III work will be subject to the final negotiations of the A/E Agreement but would be anticipated to be provided for at a percentage of construction cost fee that is part of the current Owner and Architect Agreement for Sinking Fund Projects between BHS and French Associates.

REIMBURSABLE EXPENSES
In addition, the following reimbursable expenses will be billed at 1.1 times cost:

1. Mileage costs related to the project.
2. Reproduction, postage, and handling of drawings and specifications.
3. Fees paid to authorities having jurisdiction over the project (typically owner pays fees direct to save on mark-up).

SERVICES NOT INCLUDED
The following services are not included in our fee proposal:

1. Preparation of **detailed** as-built documents (field measuring) for existing buildings and/or systems.
2. Design for an expanded scope of work.
3. Attendance at meetings to secure approval of agencies having jurisdiction.
4. Testing for hazardous materials, design services for removal or containment of hazardous materials or other indoor air quality analyses.
6. Geotechnical Services

CHANGES AND ADDITIONAL WORK
For additional work or changes in scope agreed to in writing, we will provide the services of our staff on an hourly basis in accordance with the attached billing rate schedule, plus reimbursable expenses.

INVOICING PROCEDURES

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Invoices for our services and reimbursable expenses will be submitted monthly. Payments against our invoices will be expected within thirty (30) days from date of invoice.

INSURANCE
For the protection of our clients as well as our firm, we carry insurance protection including professional liability insurance. The extent and types of insurance can be provided upon request.

TERMINATION OF AGREEMENT
In the event the project is abandoned, or the agreement terminated, we request seven (7) days written notice. It is agreed that FA will be reimbursed for all services performed and costs incurred up to the termination date on an hourly basis in accordance with the attached billing rate schedule, plus reimbursable expenses.

FA appreciates the opportunity to be of service to you. If you have any questions regarding our proposal or wish to discuss any aspect of the project, please contact me.

Respectfully,

Paul A. Corneliussen, AIA
Executive Vice President

ACCEPTANCE
Phase I, II and III
If this proposal meets with your approval, please indicate your authorization to proceed by signing this ACCEPTANCE and returning a copy to us. Should this proposal not be accepted within a 60-day period from the date of the proposal, FA reserves the right to review and update this proposal after that time.

ACCEPTED BY: CMKostuck
(Signature)
NAME: C. Kostuck
TITLE: Interim Superintendent
DATE: 10/25/19
PURCHASE ORDER #: N/a

EXHIBIT I

AIA DOCUMENT A232-2009, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, AMENDED FOR THE PROJECT

AIA® Document A232™ – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:
(Name, and location or address)

Bloomfield Hills Schools
2020 Bond Election
See Detailed Description of the Project for the 2020 Bond Election attached hereto as **Exhibit D**.

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Barton Malow Builders LLC
26500 American Drive
Southfield, Michigan 48034

THE OWNER:
(Name, legal status and address)

Bloomfield Hills Schools
Booth Center
7273 Wing Lake Road
Bloomfield Hills, Michigan 48301

THE ARCHITECT:
(Name, legal status and address)

French Associates, Inc.
236 Mill Street
Rochester, Michigan 48307

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the ~~Agreement),~~ "Agreement" or the "Contract"), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically ~~enumerated~~ excluded in the Agreement, the Contract Documents ~~do not~~ include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or ~~proposals, the Contractor's bid or proposal,~~ proposals including the Owner's Request For Proposals, including the Project Manual, (collectively the "RFP"), and the Contractor's bid or proposal (to the extent it does not conflict with the Owner's RFP, or portions of addenda relating to bidding requirements).

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate Contractor's performance of ~~their~~ its duties.

§ 1.1.3 The Work. The term "Work" ~~means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project), (ii) required of the Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, operate and maintain the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by Subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors ~~and~~ or by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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§ 1.1.8 Initial Decision Maker. The Initial Decision Maker ~~is the person identified~~ shall be the Architect, unless otherwise provided in the Agreement to render initial decisions on Claims in accordance with ~~Section 15.2~~ Article 15 and certify termination of the Agreement under ~~Section 14.2.2.~~ Article 14.

§ 1.1.9 Products. The term "Product(s)" as used in the Contract Documents refers to the materials, systems and equipment provided by the Contractor for use in the Work of the Project.

§ 1.1.10 Warranty/Guaranty. The terms "Warranty" and "Guarantee" as used in the Contract Documents shall have the same meaning and shall be defined as "legally enforceable assurance of satisfactory performance or quality of a product or Work."

§ 1.1.11 Quantity. Where materials, systems, goods and equipment items are referred to in the singular, such reference shall not serve to limit the quantity required. The Contractor shall furnish quantities as required by the Contract Documents to complete the Work.

§ 1.1.12 Project Manual. The Project Manual is a volume of documents and information assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, Drawings, the Contract and other information furnished by the Owner.

§ 1.1.13 Applicable Laws. Applicable Laws means all applicable federal, state and local codes, statutes, ordinances, laws (including, but not limited to, the Americans with Disabilities Act ["ADA"], the Revised School Code, MCL 380.1 et seq., (including, but not limited to 380.1264, as amended) the School Building Construction Act, MCL 388.851 et seq., the Stille-Derosett-Hale Single State Construction Code Act, MCL 125.1501 et seq., the Michigan Building Code, federal, state and local environmental laws and regulations, and the, rules and regulations, policies, guidelines and consent, administrative or other lawful orders of all public authorities having jurisdiction over the Project, the Work site, the Work or the prosecution of the Work.

§ 1.1.14 Construction Schedule. The Construction Schedule is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Contract Sum prepared by the Contractor and approved by the Owner, in writing, in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term "Construction Schedule" shall mean the most recent Owner-approved version. The initial agreed upon Construction Schedule is attached to the Contract as an Exhibit and is referred to as the Project Schedule.

§ 1.1.15 Milestone Dates. The Milestone Dates are those dates included in the Master Design and Construction Schedule and Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 1.1.16 Construction Team. The Construction Team includes the Contractor, Subcontractors, sub-subcontractor at any tier and suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

§ 1.1.17 Construction Time. The Construction Time is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract time shall be interpreted to mean Construction Time.

§ 1.1.18 Extraordinary Measures. Extraordinary Measures are corrective measures necessary to expedite the progress of the Work, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Contractor's rights under Section 7.5, the Owner shall have the right to order the Contractor to take Extraordinary Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents at Contractor's sole cost and expense.

§ 1.1.19 Master Design And Construction Schedule. The Master Design and Construction Schedule is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

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§ 1.1.20 Owner Delay. An Owner Delay means an actual delay to Contractor's completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Architect interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) unreasonable interference by the Owner or persons for whom it is responsible to the Contractor, including, the Architect or a separate contractor hired by the Owner, with the Contractor's performance of the Work, which is not cured within five (5) business days of written notice to the Owner.

§ 1.1.21 Intentionally Omitted.

§ 1.1.22 Punchlist. Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.23 Value Engineering. Value Engineering means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

§ 1.1.24 Hazardous Materials. Hazardous Materials means any solid, liquid or gaseous waste, regulated substance or material in any Applicable Law, and shall include, without limitation, any petroleum or petroleum products or by-products, Urea Formaldehyde, flammable explosives, radioactive materials, asbestos in any form, lead paint, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation. It is the intent of the parties, for purposes of this Agreement, that the term Hazardous Material is broadly construed.

§ 1.1.25 Word Clarifications.

§ 1.1.25.1 The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold such approval in its sole discretion.

§ 1.1.25.2 The word "provide" and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.25.3 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Agreement. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work and exercising the care, skill and diligence required of the Contractor by the Agreement.

§ 1.1.25.4 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.25.5 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a Section shall include all subsections beneath it bearing identical introductory numbers.

§ 1.1.25.6 Unless specifically limited in the Contract, the words "furnish," "install," and "provide," or any combination thereof mean to furnish and incorporate into the Work, including all necessary labor, materials, and equipment and other items required to perform the Work indicated.

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§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by ~~all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.~~ all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Construction Time and shall not result in the increase of the Contract Sum.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where responsibility for particular Work is required of the Contractor, the Contractor shall not be released from that responsibility by reason of the location of the Specification or Drawing information which establishes the responsibility. Thus, the Contractor shall be responsible for all Work required of it, even though that responsibility may be shown only in that portion of the documents typically pertaining to another contractor or trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Agreement is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the Work whenever necessary.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.4 Should there be any conflicts between or within the Drawings and/or Specifications which are not resolved in writing prior to receipt of bids that which requires the highest degree of performance (quality, quantity, strength, finish, completion, complexity, cost, etc.) will be required and shall be provided at no increase in Contract Sum. All such conflicts must be referred to the Construction Manager immediately upon discovery. Failure to do so will require Contractor to perform the work at no additional cost or expense to Owner. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.5 If there should be a conflict between two or more of the Contract Documents, the following order of interpretation shall apply:

.1 Where requirements specifically set forth in the Agreement are in conflict with other Contract Documents, the Agreement shall govern.

.2 Where there is conflict between the requirements of the General Conditions and the Agreement, the requirements of the Agreement shall govern, except where the requirements set forth in the Agreement are contrary to Applicable Laws, in which case the legal requirements shall govern.

.3 Where there is a conflict among Drawings and Specifications, or among any other Contract Documents not identified in Sections 1.2.5.1 or 1.2.5.2, the conflict shall be resolved by complying with the provision that requires the better quality or greater quantity of Work to the Owner.

.4 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Contract Documents, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Owner, Construction Manager and Architect will decide which Contractor(s) shall furnish the same and which Contract amount shall be adjusted for not incorporating such material or equipment into the Project.

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.5 Documents of a later date shall always govern, except that if a conflict exists between the Owner's Bidding Documents and the Contractor's proposal/bid the Owner's Bidding Documents shall control unless expressly modified in the Agreement.

.6 The specific shall govern over the general.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights.~~ All construction plans, Drawings, Specifications, the Project Manual and other documents and like materials relating to the Project, including those in electronic form, prepared by the Architect and the Architect's consultants ("Instruments of Service" or "Project Documents") and all data used in compiling, and the results of, any tests, surveys or inspections at the Project site, as well as all photographs, Drawings, Specifications, schedules, data processing output, computer-aided design/drafting (CAD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, or a third party, shall constitute the Project Documents, and shall belong to the Owner. The Contractor may retain one set of the Project Documents. All copies of them, except Contractor's record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Contractor shall not, without the prior written consent of the Owner, use or permit anyone to use any Project Documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project. The Owner shall at all times have access to and control over the disposition of any Project Documents pertaining to the Project.

The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Project Documents or Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect,~~ Owner, Architect, or Owner's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Project Documents or Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 Confidentiality

§ 1.7.1 The Contractor shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (1) with prior written consent of the Owner, (2) information which has become part of the public domain prior to the Date of the Contract, (3) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (4) as may be required to perform the Work or by any Applicable Law, or (5) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence.)

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§ 1.7.2 The Contractor shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other Project Documents furnished by the Owner to the Contractor.

§ 1.7.3 The Contractor shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain during and after the term of the Contract, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 1.7.1.

§ 1.7.4 The Contractor shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the services performed under the Contract, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

§ 1.7.5 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Contractor shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 1.7.6 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.7 are binding upon them.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially ~~changes~~ increases the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. ~~The~~ If requested in writing by the Contractor, the Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, ~~including~~ including, but not limited to, those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. All permits, fees, licenses

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and approvals not specifically identified in the Contract or Contract Documents as the responsibility of the Owner shall be the responsibility of the Contractor.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall immediately notify Owner of any errors, inaccuracies or problems which Contractor becomes aware of in the course of its use of the survey(s).

§ 2.2.4 ~~The~~ If requested in writing by the Contactor, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the ~~Owner shall furnish to the Contractor~~ Contractor shall receive at least one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or ~~entity, except to the extent required by Section 6.1.3.~~entity. This right shall be in addition to and not in limitation of the Owner's rights under any provision of the Contract Documents and Owner's right to stop Work shall not relieve Contractor of any of its obligations under the Contract Documents.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor fails, defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner or the Owner's designee to commence and continue correction of such failure, default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, ~~correct such deficiencies.~~ including any claim against the Contractor's Performance Bond, correct such deficiencies; provided, however, that if such failure, default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately correct such failure, default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses, including any and all legal expenses incurred to effectuate and enforce this provision, and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the Owner.

In the event the Owner directs another entity to perform Work pursuant to this Section that otherwise is the obligation of the Contractor, including correction of safety violations, either at the Contractor's request or as a result of the Contractor's failure to perform such Work, that other entity shall charge the Contractor all costs for labor, material and equipment plus that other entity's administrative, profit and overhead costs. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the Owner.

§2.5 Limitation on Owner's Responsibility

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§2.5.1 The Owner will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

§2.5.2 The Contractor shall only be entitled to rely upon instructions and directions provided by the Owner's authorized representative(s).

§2.5.3 The Owner may, in addition to delivering them to the Architect and Construction Manager, from time to time review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor, the Architect or Construction Manager of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or system designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents, and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Contract.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, Construction Manager or Architect in their administration of the ~~Contract,~~ Contract or the Contract Documents, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.5 These General Conditions refer to the relationship between the Owner and Contractor. As to the contract between the Contractor and its Subcontractors, the General Conditions shall be read as the Contractor having the position of the Owner and the Subcontractors having the position of the Contractor. The Subcontractors are bound to the Contractor just as the Contractor is bound to the Owner. The Subcontractor shall have all the rights, duties and obligations to the Contractor as the Contractor has rights, duties and obligations to the Owner. The Subcontractors shall agree to and accept the same responsibility to the Owner as the Contractor. In the event any failure of a Subcontractor causes any type of injury or loss to the Owner, direct or indirect, the Contractor shall be jointly and severally liable to the Owner for such injury or damage in addition to any responsibility or liability of the Subcontractor.

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project site, become generally familiar with local conditions (including weather conditions) under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Failure by the Contractor to report to, or request clarification from, the Architect and Construction Manager of any errors, omissions or inconsistencies shall result in interpreting and resolving such errors, omissions or inconsistencies in favor of the Owner and with no additional compensation to the Contractor.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,~~ Applicable Laws, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~Applicable Laws. If the Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum or otherwise. The Contractor shall not be liable to the Owner or Construction Manager or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Construction Documents unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Architect and Construction Manager.

§ 3.2.5 Prior to submitting its bid, the Contractor shall have studied and compared the Contract Documents and shall have reported to the Architect any error, inconsistency or omission in the Contract Documents. It will be presumed that the Contractor's bid and the Contract Sum include the cost of correcting any such error, inconsistency or omission, which should have been discovered by the exercise of reasonable diligence. Unless the Contractor establishes that such error, inconsistence or omission could not have been discovered by the exercise of reasonable diligence, the Contractor will make such corrections without additional compensation so that the Work is fully functional.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences

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and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction 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, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Such provision of labor and materials shall occur in sufficient time to satisfy the existing Project schedule. The Contractor bears the risk of any failure to timely provide such labor and materials for any reason. The Contractor agrees to execute the appropriate UCC forms to effectuate the Owner's ownership of the material and equipment furnished pursuant to the Contract.

§ 3.4.1.1 By making requests for substitutions based on Subsection 3.4.2 above, the Contractor:

(1) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

(2) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

(3) Certifies that the cost data presented is complete and includes all related costs, including but not limited to the Architect's redesign costs; and waives all claims for additional costs related to the substitution which subsequently became apparent; and

(4) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 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 employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other contractors and individuals associated with the Project. The Contractor shall also minimize the likelihood of any strike, work stoppage or other labor disturbance.

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§ 3.4.4 The Contractor agrees that neither it nor its Subcontractors, Sub-subcontractors, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor, will discriminate against any employee or applicant for employment, to be employed in the performance of the Work under the Contract, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of the Contract.

§ 3.4.5 ASBESTOS, PCB, LEAD, and Urea Formaldehyde-FREE PRODUCT INSTALLATION

§ 3.4.5.1 It is hereby understood and agreed that no product, substance, or material containing or treated with asbestos, including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestos in vermiculite, erionite, and taconite (hereinafter collectively "asbestos"), polychlorinated biphenyls (PCB), lead at or in excess of any limits imposed by Applicable Laws, or urea formaldehyde and any combination of these substances shall be installed or introduced into the Work by the Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier or other individuals or entities over whom the Contractor has control. The Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the Work all be asbestos, PCB, lead (as stated above), and Urea Formaldehyde-free.

§3.4.5.2 The Contractor shall also be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products or materials to be asbestos, PCB, lead, and Urea-Formaldehyde-free in accordance with the requirements of Section 3.4.5.1.

§3.4.5.3 The Contractor shall complete and submit to the Owner a certification evidencing asbestos, PCB, lead, and Urea Formaldehyde-free product and material installation prior to issuance of the final Certificate for Payment, in a form acceptable to the Owner.

§ 3.5 Warranty

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. ~~The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~In addition to any other warranties, guarantees or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

.1 The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be new;

.2 The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;

.3 The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;

.4 The Work and all materials and equipment incorporated into the Work will be merchantable; and

.5 The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy-two (72) hours after written notice thereof and thereafter will use its best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final payment hereunder, such seventy-two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

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§ 3.5.1 The Contractor shall assign and or pass-through to the Owner at the time of Substantial Completion any and all manufacturer's warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be in the form and substance required by the Owner and/or Contract Documents.

§ 3.5.2 If the Contractor uses any portion of the Work or the Owner's other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct defective Work includes the Contractor's obligations under this Section.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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. The Contract Sum includes all applicable taxes and the Contract Sum shall not be modified as a result of Contractor's failure to include all such applicable taxes, or a change in Contractor's tax liability. The Contractor shall pay all state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall indemnify the Owner and hold it harmless from any assessment and payment of the same.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Applicable Laws applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work ~~knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,~~ contrary to Applicable Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the Project 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 written and dated notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Owner and the Architect, in consultation with the Construction Manager, 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 Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the Project 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, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, ~~either party may~~ the Contractor shall proceed as provided in Article 15. The Contractor shall be on alert to any indication or evidence of existing underground or concealed utilities or structures not shown on the Contract Documents and shall immediately notify the Owner of discovery of such evidence. If the Contractor encounters such utilities or structures, it shall cease operations immediately to minimize damage and shall notify the Owner, Architect and Construction Manager. The Contractor shall bear the cost of damage resulting from its failure to exercise reasonable care in its construction activity or from continuing operations without notifying the Owner.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall ~~notify~~ provide written and dated notification to the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be ~~made~~ made, as needed, as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at Project the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the Project site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 Whenever costs are ~~more than or~~ less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Superintendent shall be on site and provide adequate supervision over the Work covered under the Contract. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove any superintendent from the Project whose performance is not satisfactory to the Owner and to replace such superintendent with a superintendent who is satisfactory to the Owner, and without additional cost or compensation to the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Owner and/or Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. ~~Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's ~~consent, which shall not unreasonably be withheld or delayed.~~ prior written consent, except with another superintendent who is satisfactory to the Owner.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, or at other times requested by Owner or set forth in the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a ~~Contractor's construction schedule~~ proposed Construction Schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In no event shall the Contractor's Construction Schedule be extended due to action or inaction of the Contractor, except with prior written approval of the Owner within the Owner's sole discretion. The Contractor shall cooperate with the Construction Manager in

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scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces. The Construction Schedule shall be in a detailed format satisfactory to the Owner which shall also: (1) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; (3) set forth Milestone Dates and manpower loading. Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not approved, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for approval.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction ~~Manager's and Architect's approval. The Architect and Construction Manager's~~ Manager's, Owner's and Architect's approval, which approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, ~~and~~ (2) allow the Construction Manager and Architect reasonable time to review ~~submittals.~~ submittals, and (3) shall provide for expeditious and practical execution of the Work. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other ~~Contractors,~~ contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall proceed strictly (not substantially) in accordance with the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delay or potential delays. If any progress report indicates any delays, the Contractor shall, at no cost to the Owner, propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Contract Time or any Milestone Date or the Construct Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

§ 3.10.5 The Contractor shall cooperate with the Construction Manager in scheduling and performing its Work to avoid conflict or interference with the Work of others, and shall be responsible for any such conflict or interferences caused. The Construction Manager and the Contractor acknowledge and understand that the work schedule will be modified from time-to-time to work around the work of other Contractors, in an effort to avoid conflicts or interference in the work of the Construction Manager or other contractors, and that such schedule changes do not give rise to a claim for damages by the Contractor for delay or otherwise. If the Construction Manager's schedule for the Work is revised, the Contractor shall conform to the most recent schedule. The Contractor acknowledges that the Construction Manager's schedule may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms of the conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes and the Contractor agrees that the Project Schedule, as modified, shall be an accepted term and contractual requirement. The Contractor shall complete work in accordance with the Project Schedule and Milestone Schedule(s).

§ 3.10.6 Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of the Construction Manager or any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' Subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the Work up to the proper schedule. In the event that Contractor does not take such

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action necessary to bring its part of the Work up to schedule, as determined by the Construction Manager, within twenty-four (24) hours of receiving notice from Construction Manager, then, Construction Manager, as allowed by law and with Owner's written consent, may supplement Contractor's forces or remove Contractor from the Project and retain others to complete part or all of the remainder of Contractor's Work. Contractor shall be responsible for any and all costs of performing or completing the Work. Contractor shall pay any such sums within ten (10) days of date of invoice. If not paid within ten (10) days, the amount will be withheld from Contractor and paid to the relevant parties from next payment due Contractor.

§ 3.10.7 The Contractor shall cooperate with the Construction Manager in working out the proper sequence of operations between the Work of the Contractor and that of other trades on the Project site. The Contractor acknowledges that the Construction Manager's schedule for the Work may change during the duration of the Project and the Contractor took that fact into account when it entered into the Contract. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the ~~Work as constructed.~~Work, as constructed, together with a certification that they are "as-built" documents.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. All Work shall be furnished and installed in accordance with the Drawings, Specifications and as additionally required by the manufacturer's printed instructions. The Contractor shall review the manufacturer's instructions, and where conflict occurs between the Drawings or Specifications and the manufacturer's instructions, the Contractor shall request clarification from the Architect prior to commencing the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Owner, Construction Manager and Architect, or in the absence of an approved Project Construction Schedule and submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.5.1 The Contractor shall check thoroughly all such submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

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§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the submittals that are found inaccurate or otherwise erroneous be corrected.

§ 3.12.5.3 After the Contractor has checked and approved such submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Construction Manager and Architect for review. The Construction Manager and/or Architect may refuse to check or review any submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be "Project Specific." Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness and consistency of all submittals.

§ 3.12.5.6 The Contractor shall notify the Owner when submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Construction Manager and Architect in writing if any submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, samples of all materials and finishes to be used in the execution of the Work. Such samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof. In all cases, samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted samples.

.1 Samples shall be forwarded to the Construction Manager and Architect with all shipping charges prepaid. Unless otherwise directed, samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor and the Project.

.2 The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents at to dimensions or design.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 The Architect will check and review the submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Construction Manager and Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Construction Manager and Architect, resubmit corrected submittals to the Construction Manager and Architect as soon as possible, for final check and review. Such final check and review by the Construction Manager and Architect of submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Construction Manager and Architect's specific attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

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§ 3.12.6.2 The Construction Manager and Architect's review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment of systems, all of which remain the responsibility of the Contractor. The Construction Manager and Architect do not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the submittals by the Architect, and even through the Work is done in accordance with such submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Construction Manager and Architect's attention by the Contractor in a separate written letter of communication, at the time of submittal, and the Construction Manager and Architect has given written approval of such error, omission or deviation.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in a detailed writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.8.1 Any proposed substitution which requires modification of any details on the Drawings, or which affects other work, to cause modification to that work, shall be accompanied by detailed Drawings from the proposer showing changes in the affected details. All cost for changes to the Contract Documents, and necessary changes in the work of others will be paid by the proposing Contractor.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Architect's review of shop drawings and samples does not constitute or imply final acceptance of materials, equipment, etc. actually furnished or installed if such should be defective or not as represented by reviewed shop drawings and/or samples.

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§ 3.12.12 Owner will provide shop drawings to Contractor for all fabricated materials, specialty items, pre-purchased equipment, etc. which will be furnished by Owner for installation by Contractor. Contractor must give Owner at least three (3) days' notice prior to time drawings will be required.

§ 3.12.13 The Architect's Basic Services under its agreement with the Owner limits the review of the Contractor's submittals to an initial submittal and two (2) re-submittals. Services by the Architect for review of additional re-submittals shall be billed to and paid directly to the Architect by the Contractor; provided however, upon receipt of the Owner's written approval the Architect shall give notice to Contractor prior to the commencement of such services for which Contractor will be liable.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the ~~site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Project site to areas permitted by Applicable Laws **and the Contract Documents and shall not unrea**sonably encumber the ~~site with materials or equipment.~~ Project site with materials or equipment. Only materials and equipment which are to be used for the Project or carry out the Work shall be stored at the Project site. Protection of such materials and equipment shall be the sole responsibility of the Contractor. No off-site storage is permitted without the Owner's prior written consent.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the Project site. No one except the Owner is permitted to connect to or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and unless otherwise specifically provided in the Contract Documents. In all cases, the Contractor shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy-two [72] hours in advance) in order to avoid delays to the Project's progress.

§ 3.13.3 The control of the use of the Project site will be through the Construction Manager. Contractors are responsible for cooperation in all matters involving the use of the Project site. The Contractor shall ensure that the Work is at all times performed in a manner that affords the Owner, the Construction Manager, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the Project site or (2) portions of the Project in which Work is not being carried out in the event of partial occupancy.

§ 3.14 Cutting and Patching

§ 3.14.1 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Only skilled tradespersons shall perform any cutting, fitting or patching work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The ~~Contractor shall keep the premises~~ Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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§ 3.15.2 If the Contractor fails to ~~clean up~~ keep the Project site clean as required by the Owner or as provided in the Contract Documents, or fails to clean up the Project site upon completion of the Project, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement for all costs and expenses for clean-up from the Contractor.

§ 3.15.3 Any areas and/or concurrently occupied space both occupied by the Owner and used in the progress of the Work, both within the limits of the construction site and the adjacent areas leading to it shall be maintained, opened to travel and kept in a clean condition. Failure by the Contractor to maintain said areas will result in the Owner's cleaning of same, at the expense of the Contractor for all costs and expenses for clean-up from the Contractor.

§ 3.15.4 Unless the Contract Documents require a higher standard, the Contractor shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold harmless the Owner, Construction Manager and Architect ~~harmless from~~ from any and all cost, damage and loss on account thereof, including, but not limited to, actual attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Architect, or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect through the Construction Manager. The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device or materials of any kind shall be for its adequacy in the Work and shall not be an approval for the use thereof by the Contractor in violation of any patent or other rights of any third person.

§ 3.18 Indemnification

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~

The Contractor shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, Architect, Construction Manager, successors and assignees (collectively "Indemnitees"), from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with Contractor's performance of the Work pursuant to the Contract and/or from Contractor's violation of any of the terms of the Contract, including, but not limited to: (i) the negligent acts or willful misconduct of the Contractor, its officers, directors, employees Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor; (ii) any breach of the terms of the Contract by the Contractor, its officers, directors, employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor; (iii) any

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violation or breach of any Applicable Law and/or licensing and permitting requirements applicable to providing the Work; or (iv) any breach of any representation or warranty by the Contractor, its officers, directors, employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor under this Contract. The Contractor shall notify School District by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under the Contract. This paragraph shall survive the expiration or earlier termination of the Contract and shall not be limited by the Contractor's insurance obligations contained in the Contract.

§ 3.18.2 In ~~claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless the Owner, Construction Manager and Architect from and against the payment of the following:

All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under the Contract;

All sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work; and

All pension, welfare, vacation, annuity and other benefit contributions payable under or in connection with respect to all persons by whomsoever employed, engaged in the Work to be performed and furnished under the Contract.

The Contractor shall indemnify, defend and hold the Owner harmless from any claim, damage, loss or expense, including but not limited to actual attorney fees, incurred by the Owner related to any Hazardous Material or waste, toxic substance, pollution or contamination brought into the Project site or caused by the Contractor or used, handled, transported, stored, removed, remediated, disturbed or dispersed of by Contractor.

§ 3.19 Record Documents

§ 3.19.1 The Contractor shall maintain at the Project site on a current basis for review by the Owner, the Architect, the Construction Manager, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner, Construction Manager and the Architect, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound and indexed. The Contractor shall monitor preparation of as-built Drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the Record Documents, for the Contractor to inspect and copy.

§ 3.19.2 The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Construction Manager or Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to markup said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shows; (3) changes to

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existing conditions or existing conditions found to differ from those shown on any existing drawings; (4) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (5) such other information as the Owner may reasonably request.

§ 3.19.3 The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and the Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Construction Manager and Architect. The Contractor shall submit the final Record Drawings to the Construction Manager and Architect for review.

§ 3.19.4 During construction, the Contractor shall maintain on the Project site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner, Construction Manager and the Architect at all times. The Contractor shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (1) revisions made except minor or non-critical dimensional changes, (2) omissions, including Work omitted by Change Order or accepted alternates, (3) exact dimensioned locations of concealed lines, (4) locations of all control devices, (5) any additions to Work, (6) changes in significant details, (7) and any other information of a similar nature.

§ 3.19.5 Upon substantial completion of the Project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

§ 3.20 Warranties and Manuals

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner, through the Construction Manager, two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions, or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "Project Specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of substantial completion.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The ~~Owner shall retain an architect~~ Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.

§ 4.1.2 ~~The Owner shall retain a construction manager~~ Construction Manager is the person lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without ~~written consent of the Owner, Construction Manager, Architect and Contractor,~~ the prior written consent of the Owner and the Construction Manager or Architect respectively. Consent shall not be unreasonably withheld.

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect ~~as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~.

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§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for ~~Payment.~~ Payment and, the Owner's and the Certificate for Payment is accepted by the Owner, during the correction period. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site ~~at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner,~~ as construction requires or as otherwise agreed to by the Owner or required by Applicable Law, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Construction Manager will schedule and coordinate the work of all Contractors on the Project, including the Contractors' use of the Project site. The Construction Manager will keep the Contractors informed of the Project Construction Schedule to enable the Contractors to plan and perform the Work in a timely manner.

§ 4.2.6 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of known or observed defects and deficiencies in the

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Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations ~~and decisions~~ of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, should the Construction Manager or Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, they shall immediately notify the Owner of the same to determine an appropriate corrective course of action or notify the Contractor of the same to correct the irregularities.

§ 4.2.12 The Construction Manager will ~~prepare~~ prepare, with the assistance of the Architect, Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article ~~7.~~7 and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 ~~Utilizing the documents provided by the Contractor, the~~ The Construction Manager will maintain at the Project site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner in good condition and reasonably organized upon completion of the Project.

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§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the Project site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of the Contract Documents on written request of the ~~Construction Manager,~~ Owner ~~or Contractor~~ through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Contractor shall reimburse Owner for all costs and expenses for the Architect's time to interpret and decide matters it deems clear and unambiguous.

§ 4.2.18 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such ~~interpretations and decisions,~~ interpretations, the Architect will endeavor to secure faithful performance by ~~both Owner and~~ the Contractor, will not show partiality ~~to either~~ and will not be liable for results of interpretations ~~or decisions so rendered in good faith,~~ rendered in good faith and without negligence. The Contractor shall, and shall cause all Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor to comply with an interpretation and decision of the Architect.

§ 4.2.19 The ~~Architect's decisions~~ Owner's interpretations on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~ promptness given the particular circumstances. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors. The term "Subcontractor" shall also include material and equipment suppliers. Each and every subcontract shall be understood to have the Owner as a third party beneficiary and the Owner shall enjoy all third party beneficiary rights permitted by law.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish supplies, materials or ~~equipment~~ equipment, including those fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager ~~may~~ will reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. ~~Failure of the Construction~~

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~~Manager, Owner, or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~All contractual agreements with additional persons or entities serving as a Subcontractor or Sub-subcontractor shall expressly identify the Owner as a third-party beneficiary, and the Owner shall enjoy all third-party beneficiary rights not prohibited by law.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner, the Architect and the Construction Manager of any proposed Subcontractor or Sub-subcontractor substitution a minimum of 10 days prior to such proposed change.

§ 5.3 Subcontractual Relations

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor and Sub-subcontractor, to the extent of the Work to be performed by the Subcontractor or Sub-subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's and Sub-subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor or Sub-subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor or Sub-subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

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.1 Requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;

.2 Requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;

.3 Waives all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;

.4 Recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Contract with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;

.5 Requires the Subcontractor performing labor at the Project site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;

.6 Includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";

.7 Requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Contract;

.8 Limits claims and damages in the manner provided in the Contract;

.9 Are in no way inconsistent with any provision of the Contract; and

.10 Requires the Subcontractor to indemnify the Owner the same extent required under Sections 3.6, 3.17, 3.18, 8.4.2, 9.3.3.1, 9.3.3.2, 9.10.2, 9.10.4, 10.1.1, 10.3.3, 10.3.4, 10.3.8 and Article 11.

Sub-subcontracts and supply contracts shall be subject to identical conditions, except: (1) suppliers that are not performing any Work on the Project site are not subject to the insurance requirements described in Article 11; and (2) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractor's insurance policies.

§ 5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, Sub-subcontract or Supply Contract to the Owner.

§ 5.3.2 Coordination of Subcontractors

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both supplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner, the Construction Manager and the Architect to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and Sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors and Sub-subcontractors whose Work has not been completed. All progress meetings minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval.

§ 5.3.2.3 Schedule of Subcontractors' Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the Construction Schedule. The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed schedule applicable to its portion of the Work within forty-five (45) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed schedules. However, the Construction Schedule will take precedence over any schedules prepared by Subcontractors with respect to

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time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The Contractor will require all their Subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their sub-subcontractor contracts.

§ 5.3.2.4 Subcontractors' Performance. The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

§ 5.3.2.5 Payments to Subcontractors. Upon award of the Subcontract, the Contractor shall have each Subcontractor prepare and submit a schedule of values allocating that portion of the Cost of the Work attributable to its Subcontract to the various portions of the Work. Each schedule of values shall be prepared in a form and substance acceptable to the Contractor (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Contractor shall develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

§ 5.3.2.6 Safety Programs. The Contractor shall provide a general review of safety programs developed by each of the Subcontractors, including a verification that each Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Contractor observes a safety violation, the Contractor shall require a Subcontractor to correct it. After written notification to the Subcontractor to correct the safety violation, if the Subcontractor does not correct the problem in a timely fashion, the Contractor shall cause the Work to be corrected by other means. The performance of such services by the Contractor shall not relieve the Subcontractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all federal, state and local statute, rules, regulations and orders applicable to the conduct of the Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with federal, state or local statutes, rules, and regulations relating to the Workers' safety or any other aspect of the Work.

§ 5.3.2.7 Work. The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Contractor shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall coordinate any inspections which may be required by any governmental agencies.

§ 5.3.2.8 Interpretation. The Contractor shall consult with the Architect, Construction Manager and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

§ 5.3.2.9 Insurance Certificates. The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner, through the Construction Manager. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

§ 5.3.2.10 System Readiness. The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall be equitably adjusted for increases in cost resulting from the suspension.~~may be equitably adjusted as negotiated by the parties.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. ~~If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.~~

§ 5.5 Contractor and Subcontractors' Warranty Acknowledgment. The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

> Warranty Acknowledgment
>
> (Name of Subcontractor) ("Contractor") warrants that all of its Work complies with the requirements of the Contract Documents. If, within two (2) years after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This two (2) year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (ii) with respect to warranty work for an additional two (2) year period following each correction. This obligation shall survive acceptance of the Work and termination of our Contract.

This warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the ~~right~~ right, but assumes no obligation, to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these including those portions related to ~~insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.~~insurance. The Contractor shall be responsible for coordinating the Work with the work of other Contractors, including the Owner's own forces or separate contractors, so as to complete the Work in accordance with the Project time schedule.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

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§ 6.1.3 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.~~

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.~~

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Construction Manager, with notice to the Architect, will~~ allocate the cost among those responsible. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change ~~Directive~~ Directive, written contract amendment or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect ~~alone.~~with the Owner's prior written approval.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 There shall be no changes on the Contract Sum as a result of a Change Order unless the Change Order is in writing and issued prior to effectuating the Work under the Change Order. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions

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of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility. In any event, in computing any increase in the Contract Sum, fees allowable for overhead and profit shall not exceed the following percentages: 10% for materials purchased and for Work completed by a Contractor's own forces; and 5% for Work completed by a Subcontractor.

§ 7.2 Change Orders

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:~~§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Construction Manager~~ Architect and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one or more of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.7.

However, the Contract Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted.~~adjusted, unless the Contractor provided such unit prices as a part of a competitive bid.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.6.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall ~~determine~~ determine, with the Owner's approval, the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, ~~an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ a reasonable amount allowance for overhead and profit but

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not to exceed five percent (5%) on changes in the Work performed by a Subcontractor and ten percent (10%) for changes in the Work performed by the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 ~~Costs~~ Actual costs of labor, including social security, ~~old age and~~ unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;

.2 ~~Costs~~ Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and

.4 ~~Costs~~ Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the ~~Work; and~~

~~.5 Additional costs of supervision and field office personnel directly attributable to the change.~~ Work.

§ 7.3.8 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 Contract Sum shall be actual net cost as confirmed by the Construction Manager and 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 net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for undisputed Work completed under the Construction Change Directive in Applications for Payment. ~~The~~ For those undisputed portions, the Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of ~~cost~~ cost, if agreed to by the Owner in writing, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of ~~either party~~ the Contractor to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree in writing with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the ~~adjustments,~~ adjustments in writing, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such Work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or the Construction Schedule.

§ 7.4 Minor Changes in the Work

The ~~Architect~~ Architect, with the Owner's approval, has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Construction Manager or Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4 that (1) are inconsistent with the intent of the Contract Documents; (2) render the Drawings and Specifications not in material conformity with the Work; or (3) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.

§ 7.5 Contractor Change Requests

In addition to the Contractor's remedies under Article 8 in the case of delays (which shall be governed solely by Article 8 and to which this Section 7.5 shall not apply), if the Contractor believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Architect and Owner's separate contractors, constitutes a change in the Work entitling it to additional compensation, it shall within twenty-one (21) days after the date the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the

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pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Contractor Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Contractor shall submit such additional information as may reasonably be required by the Owner to evaluate the Contractor Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Contractor within such ten (10) day period whether to grant, grant in part, or deny the Contractor Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Contractor disagrees with the Owner's decision, the Contractor shall pursue the remedies it has under Article 15. Failure of the Contractor to timely submit a Contractor Change Order Request strictly (not substantially) in accordance with the requirements of this Section 7.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby."

ARTICLE 8 TIME

§ 8.1 **Definitions**

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the ~~Contract~~ Construction Time is a reasonable period for obtaining all supplies, materials, tools and equipment necessary to perform the Work and for properly performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article ~~11~~ 11, or delivery of the performance and payment bonds required by law, to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Contract Time. The Contractor shall require overtime, multiple shifts and any other action necessary to complete of the Work within the Contract Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 in a Change Order or Construction Change Directive. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. All Work shall be completed in sufficient time to allow for clean-up and preparation for Owner move-in prior to the date of Substantial Completion.

§ 8.2.4 Without altering the applicability and obligations of Section 8.2.3, the Contractor shall prosecute the Work undertaken in a prompt and diligent manner wherever such Work, or any part of it, becomes available, or at such other times as the Owner and/or Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of any other contractor, the Owner, Construction Manager or the Architect. Any supplies, materials, tools and/or equipment that are to be furnished by the Contractor hereunder shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided for herein. If the Contractor, through its negligence or failure, including the negligence or failure of its Subcontractors, Sub-subcontractors or suppliers, fails to furnish the necessary labor and/or supplies, materials, tools and/or equipment to meet construction needs in accordance with the established Construction Schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the Work up to the proper schedule. In the event the Contractor fails to take such action necessary to bring its part of the Work up to schedule within twenty-four hours of receiving notice from the Owner or Construction Manager, then the Owner, at its sole option, may supplement the Contractor's forces, materials and/or equipment or remove the Contractor from the Project, and the Owner may complete part or all of the remainder of the Contractor's Work, either utilizing in the Owner's sole discretion its own forces, new contractors chosen by the Owner or any

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Subcontractor, Sub-subcontractor or supplier of the Contractor, which may include fixed price supplemental work time and materials supplemental work, or any combination thereof, which in Owner's sole discretion will most quickly and completely cure the failure of the Contractor. The Contractor shall be responsible for any and all costs of performing or completing the Work that are incurred by the Owner or any Contractor, Subcontractor, Sub-subcontractor, supplier, or other entity on the Owner's behalf. The Contractor shall pay the Owner for such costs within ten (10) days of the date of invoice. If not paid within ten (10) days, the amount will be withheld from the Contractor and paid to the Owner from the next payment due the Contractor under the Agreement. Exercise of such rights shall in no way limit or jeopardize the Owner's right to any other remedy, including but not limited to a claim against the Performance Bond of the Contractor.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 ~~If~~ Except as provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Contract Time will be extended only under the exact circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3. Provided the Contractor submits a written request for an extension not more than fourteen days after the occurrence that gives rise to the delay, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by ~~labor disputes,~~ fire, ~~unusual delay in deliveries,~~ unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending ~~mediation and arbitration,~~ litigation, mediation, or arbitration, as applicable, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time ~~shall be extended by Change Order for such reasonable time as the Architect may determine.~~ may be extended by Change Order. Failure of the Contractor to submit a timely request for an extension shall irrevocably waive the Contractor's right to such an extension of time. If the contract time is subject to extension pursuant to this subparagraph, such extension shall be the exclusive remedy of the Contractor and the Contractor shall not be entitled to recover damages from the Owner.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contractor shall use its best efforts to mitigate the effects of any delay.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ The Contractor acknowledges that the Construction Manager's Schedule for the Work may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms and conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies as a result of such schedule changes.

§ 8.3.4 Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Contractor and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Contractor shall also within twenty-one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Contractor is entitled to claim by reason of any such occurrence. If the Contractor intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a Change Order Request stating the specific extension or adjustment requested and justifying the reason for the request. The Contractor shall thereafter submit such additional information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or

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deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Contractor disagrees with the Owner's decision, it may pursue the remedies available to it under Article 15. However, failure of the Contractor to timely assert any alleged delay or claim for extension strictly (not substantially) in accordance with the provisions of this Section 8.3.2 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

§ 8.3.5 The Contract price includes all costs associated with known and current COVID-19 impacts, including impacts on materials, the supply chain, labor, productivity and schedule. To the extent the Contractor's performance of the Work under the Contract is impacted as a result of the COVID-19 pandemic after the date of Contract execution, any claims relating to delay and cost impacts associated with COVID-19 shall be made in accordance with the terms and conditions of the Contract Documents.

§8.3.6 The Contract price includes all costs associated with known and current COVID-19 impacts, including impacts on materials, the supply chain, labor, productivity and schedule. To the extent the Contractor's performance of the Work under the Contract is impacted as a result of the COVID-19 pandemic after the date of Contract execution, any claims relating to delay and cost impacts associated with COVID-19 shall be made in accordance with the terms and conditions of the Contract Documents.

§ 8.4 DELAY DAMAGE CLAIMS

§ 8.4.1 If the Contractor fails to complete its Work on time resulting in loss or damage to the Owner, whether or not liquidated damages are called for in the Contract Documents, the Owner shall be entitled to recover any damages caused by the Contractor's breach, including overhead, profit, extended general conditions, actual attorney fees, etc.

§ 8.4.2 In the event of Owner delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum. This adjustment shall be based solely upon and limited to additional actual out-of-pocket expenses to the extent they are incurred directly as a result of the Owner delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner delay. The Owner and Contractor shall mutually agree to the amount of this equitable adjustment in writing.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

~~Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment,~~ Before the first Application for Payment, the Contractor shall submit a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of ~~values, if required under Section 9.2,~~ values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Construction Manager and Contractor must provide copies

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of the insurance certificates, bonds, and the same for all of the Contractors and Subcontractors prior to commencing Work and prior to submitting the first Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders. A request for payment of sums related to Work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit with each monthly Application for Payment (1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied, (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialmen, supplier and laborer or the Contractor addressing all previous Applications for Payment submitted for the Project, and (3) if applicable, an updated Schedule of Values incorporating changes in the Work.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project site for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner and Construction Manager for approval to include such material costs in his next progress payment. The Contractor's request shall include the following information:

.1 A list of the fabricated materials consigned to the Project site (which shall be clearly identified, giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.

.2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.

.3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibility to complete the Work.

.4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.

.5 Costs incurred by the Owner, Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor.

.6 Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.

.7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

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

§ 9.3.3.1 Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the Contractor hereby expressly agrees to hold harmless, indemnify and defend the Indemnitees, at the Contractor's sole

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cost and expense, from and against any and all costs (including without limitation reasonable attorney fees), liabilities, actions, lawsuits, claims or proceedings brought against Indemnitees as a result of any lien or claim of lien filed against the Work, the site of any of the Work, the Project site or any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnitees. Notwithstanding the above, Contractor acknowledges that in accordance with Applicable Laws, public property cannot be liened.

§ 9.3.3.2 In the event of any lien or claim of lien, Owner may withhold from payments otherwise due Contractor, such amounts as Owner deems suitable to protect it from the adverse effect of such lien or claim of lien. The Owner shall release any payments or portions thereof withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than Two Hundred Percent (200%) of such lien or lien claim. By posting such bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend, hold harmless and indemnify the Indemnitees. Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not cause any adjustment to the Contract Sum.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the

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Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or ~~Architect.~~Architect, in writing, together with the Certification to which the qualification pertains.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect ~~has~~ has, unless otherwise required by Contract or law, (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

.1 defective Work not ~~remedied,~~remedied, or the Contractor is in default of the Agreement;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract ~~Documents.~~Documents;.
.8 failure to provide any documentation, Record Documents, etc., in a timely manner;
.9 any failure by Contractor or a Subcontractor to fully perform any obligation under the Contract;
.10 the Work not having progressed to the extent set forth in the Application for Payment; and
.11 representations of the Contractor are untrue.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Owner, Architect, or Construction Manager with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

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§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 ~~Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.~~The Owner may, in its sole discretion, after providing Contractor with ten (10) days prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor for which the Contractor has not provided a waiver of lien, in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project such that, in the Owner's determination, progress of the Project and the Project's schedule are jeopardized. All payments made pursuant to this section shall be considered the same as if paid directly to the Contractor and shall constitute partial payment of the Contract Sum. Payment under this provision shall not jeopardize any other remedy available to the Owner.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Subject to applicable law, if a petition in bankruptcy or any other arrangement or proceeding regarding insolvency, assignment for the benefit of creditors, trust, chattel mortgage, or similar state or federal proceeding, whether voluntary or involuntary, shall be filed with respect to the Contractor, the Owner may withhold the final balance, or any other payments, whether or not an application for progress payment has been properly filed, until expiration of the period of any guarantees or warranties required for the Contractor, and the Owner may pay out such funds the amount necessary to satisfy any claims or costs that otherwise would have been covered by such guarantees or warranties.

§ 9.6.9 Unless otherwise provided in the Agreement or Contract Document, the Owner may retain out of each progress payment a "Retainage" equal to ten percent (10%) of that payment, excluding any portion paid for the Contractor's General Conditions costs. Retainage on all individual Subcontractors which include both labor and material shall be ten percent (10%). Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and

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agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the ~~Contractor,~~ Contractor and without justifiable basis under the Contract Document, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by ~~binding~~ dispute resolution, then the Contractor may, upon ~~seven~~ twenty-one (21) additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive ~~list~~ Punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such ~~list~~ Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the ~~list,~~ Punchlist, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the ~~list,~~ Punchlist, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item ~~upon notification by the Architect.~~ immediately. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the ~~list~~ Punchlist accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion final acceptance of the Work by Owner following final completion and final payment under Section 9.10 or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive Punchlist of items to be completed or correct (a "Punchlist"). The Contractor shall respond immediately to correct Work deficiencies and/or Punchlist items. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

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§ 9.8.7 The Contractor shall promptly notify the Construction Manager, in writing, when the Work deficiencies and/or Punchlist items are completed. Upon the review of the Work by the Construction Manager after such notification by the Contractor, if Work deficiencies and/or Punchlist items shall continue to exist, the Owner may correct such deficiencies and pay such costs out of retainage held by the Owner on the Contractor's Contract.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor ~~and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.~~ shall proceed with the Work in such a manner as reasonably directed and shall cooperate with the Owner to limit interruptions.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 Any agreement as to the acceptance of non-conforming Work not complying with the requirements of the Contract Documents, shall be in writing in the form of a Change Order, acceptable to the Owner's authorized representative and signed by all parties.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and ~~(5),~~ (5)an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release

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executed by the Contractor on a form provided by the Construction Manager; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as close out documentation, the other documentation required by the Contract Documents, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and ~~reasonable~~ actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~
.3 terms of special warranties required by the Contract ~~Documents.~~Documents;
.4 Owner's Claims arising after final payment;
.5 Owner's claims for indemnification; or
.6 Claims about which the Owner has previously given notice to the Contractor.

§ 9.10.5 Acceptance of ~~final~~ Final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for ~~Payment.~~ Payment and specifically referenced as being an exception to the waiver contained in this Section.

§ 9.10.6 The amount of the Final Payment shall be the Contract Sum less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall ~~be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~ continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall repair any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and Owner's property as required by Applicable Law, the Contract Documents, or as otherwise required, to cause no damage to the Work and Owners' property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the Project site require. The Contractor shall also provide recommendations and information to the Owner regarding: (a) the assignment of responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of members of the Construction Team, the Owner, and the general public; (b) temporary facilities; and (c) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

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§ 10.1.1 The Contractor shall at all times observe and comply with all Applicable Laws which may in any manner affect the equipment and materials used in the proposed construction, those employed on the work, and the conduct of the Work. The Contractor shall hold harmless and indemnify the Owner and its Board of Education (in its individual and official capacities), employees and administrators, against any claim or liability arising from the violation of any Federal, State, local and/or municipal laws, ordinances, rules and regulations, whether the violations are by the Contractor or any Subcontractor, Sub-subcontractor or any other person employed or engaged by the Contractor or Subcontractor.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project Site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project site except those activities performed solely by the Owner. The Contractor shall provide the Owner, through the Construction Manager, a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

.3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

.4 construction or operations by the ~~Owner~~ Owner, Construction Manager or other Contractors.

§ 10.2.2 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~~ Applicable Laws on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the ~~Contract, reasonable~~ Work, adequate safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project site and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

.1 The various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured shall be substantially braced and held in place. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the Project site or due to any other methods of construction.

.2 The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor where necessary to divide the Work area from the Owner's occupied areas.

.3 During the prosecution of the Work, the Owner will use and occupy the buildings and site adjacent to and surrounding the Project site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Subcontractors.

§ 10.2.4 ~~When~~ No use or storage of explosives or other Hazardous Materials or equipment or unusual methods shall be allowed at the Project site without the Owner's express written consent. If the use or storage of explosives or other ~~hazardous materials~~ Hazardous Materials or equipment or unusual methods are necessary and permitted by the Owner

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for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel and shall store in compliance with all Applicable Laws. When in the course of the Work use or storage of explosives or other Hazardous Materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

.1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than seventy-two (72) hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.

.2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with Applicable Laws.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the 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, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not ~~permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.~~load or permit any part of the structure or Project site to be loaded with a weight that will endanger the structural integrity of the structure or Project site or the safety of workmen or any other persons on or about the Work. When required law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portion of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjourning land and/or property owners or other parties.

§ 10.2.8 ~~Injury or Damage to Person or Property~~

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~ The Contractor shall take all necessary precautions for the safety of employees and visitors on the Project site and shall comply with Applicable Laws and provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Project Site where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Construction Manager all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

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§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor ~~is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition,~~ shall not, nor shall it permit any member of the Construction Team to bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except permitted materials and as required by Section 10.3.8., subject to the requirements of §10.3.9. If Contractor or Construction Team encounters a Hazardous or potentially Hazardous Material on, in, under or about the Project Site that is not permitted or not in compliance with Section 10.3, Contractor shall immediately stop Work in the affected area and ~~report the condition to the Owner, Construction Manager and Architect~~ notify the Owner, Construction Manager, and Architect, in writing.

§ 10.3.2 ~~Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start up.~~ The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict (not substantial) compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials, Hazardous Materials or Potentially Hazardous Materials are released on the Project site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

.1 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum, any contingency or otherwise, fully and promptly remediate each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws to the most stringent standards, e.g., residential, available under all Applicable Laws, and in cooperation with the Owner, except to the extent the Hazardous Materials (i) existed uncontainerized, in or under the Project Site before Work began at the Project Site and neither the Contractor nor any other member of the Construction Team released or exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) were caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. Notwithstanding the foregoing limitations, the Contractor shall be responsible if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates the condition or area impacted by the Hazardous Materials.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~ The Contractor shall at its expense, without recovery from the Owner, the Contract or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold harmless the Indemnitees and the Project site from and against all claims, suits, administrative proceedings, personal injury, investigations, damages, costs, fines, judgments and liabilities, including, but not limited to, attorneys' fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of permitted materials or Hazardous Materials at the Project site by or due to any member of the Construction Team or

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for any noncompliance with the Agreement. The indemnity in the previous sentence and in Section 10.3.4 does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site or (ii) contamination that was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third-party. In both (i) and (ii), the exclusion of Contractor obligations does not apply to circumstances in which the Contractor has exacerbated the presence of Hazardous Materials or triggered a response or removal requirement. In addition, the obligations of the paragraph include, but are not limited to, Contractor's remediation and removal of any release of Hazardous Materials that it brought to the Project Site. Contractor's obligations herein are not limited by the extent of its insurance coverage.

§ 10.3.4 The ~~Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~Contractor's defense, indemnity, and hold harmless obligations shall include, but not be limited to, any and all governmentally mandated investigation, remediation, removal and/or clean-up of any such Permitted Materials or Hazardous Materials, and all related fees and costs.

§ 10.3.5 ~~The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~If the Contractor shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project site, the Contractor shall immediately notify the Owner, Construction Manager and Architect.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~If any member of the Construction Team encounters on the Project Site material, which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Contractor shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner, Construction Manager and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA/MIOSHA regulations and all Applicable Laws or the Hazardous Material is containerized for purposes of removal from the Project Site, in compliance with Applicable Laws. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. No member of the Construction Team shall bring any off-site materials or soil on the Project Site to use as fill that are not compliance with and accompanied by a Uncontaminated Soil Certification by a licensed professional engineer or geologist or, in the case of aggregate stone, a receipt from the originating quarry.

§ 10.3.7 Except as otherwise provided in the Agreement, including, but not limited to the exclusions in Section 10.3, and except to the extent covered by any insurance, the Owner, to the extent permitted by law, shall hold harmless the Contractor and Subcontractors from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of Hazardous Materials on the Project Site that pre-existed the Work.

§ 10.3.8 The Contractor shall work with asbestos or PCB or other Hazardous Material, except as provided for under the Work and in compliance with all Applicable Laws, including, but not limited to, employee protection, licensing, and training. In such a circumstance, the Contractor shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and decreasing obligations otherwise stated in Section 10.3, shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Contractor's or Construction Team's failure to so comply with an Applicable Law.

§ 10.3.9 The Contractor shall take care to minimize the use of any Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Contractor shall cause Permitted Materials which

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contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner's premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict (not substantial) conformity with Applicable Laws and the Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing the Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders. The term "Permitted Materials" as used in the Contract Documents shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties). The Contractor shall not permit inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials (www.epa.gov/iaq/schooldesign/construction.html) The Contractor shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 Security

§ 10.5.1 All members of the Construction Team shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties entering the Project site.

.1 The Construction Manager and Contractors shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Construction Manager and Contractor's written plan for Project Site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.

.2 The entrances to the Project site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Contractor. The Contractor shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

§ 10.6 Dust; Smoke; Fume

§ 10.6.1 The Contractor shall cause each member of the Construction Team to conduct operations in such a manner, which will control blowing dust. The amount of dust resulting from the operations of each of the Construction Team shall be controlled to prevent the spread of dust to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any Applicable Law. Temporary methods consisting of sprinkling or similar methods will be permitted to control dust. Use of water will not be permitted when it will result in, or create, hazardous or objectionable conditions such as ice, flooding and pollution. Dust control shall be performed as the Work proceeds and whenever a dust or nuisance or hazard occurs.

§ 10.6.2 Smoke pipes, exhausts and fumes from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect and the Owner.

§ 10.6.3 The Contractor shall enforce the Architect's or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted.

§ 10.7 Fire Precautions

§ 10.7.1 All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The members of the Construction Team shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

.1 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers,

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shall be stored in an orderly manner and shall be readily accessible.

.2 Before starting Work, the Contractor shall consult with the Owner, Construction Manager and Architect regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly (not substantially) conform and shall cause all members of the Construction Team to strictly (not substantially) conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.

.3 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.

.4 All tarpaulins used during the course of the Work shall be of flameproof type and shall be secured in place against damage or flapping from wind.

.5 All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.

.6 Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be containerized on-site and disposed of off-site, together will all flammable or waste material subject to spontaneous combustion, in compliance with Applicable Laws and in a manner to avoid hazard or damage to persons or property.

.7 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.

.8 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide continuously during operation properly trained personnel for said inspections.

.9 Temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.

.10 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

§ 10.7.2 The Contractor shall provide necessary personnel and firefighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.

§ 10.7.3 Not more than one day's supply of flammable liquids or gases, such as oil, gasoline, solvent, propane, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project site. Drums are to be equipped with approved vented pumps. The Contractor shall have a Spill Prevention, Control, and Countermeasure Plan ("SPCC"), all members of the Construction Team shall be trained with respect to the SPCC, and the SPCC shall provide for response materials to be available in all locations where Hazardous Materials that are brought to the Project Site by any member of the Construction Team are located, used, or stored.

§ 10.7.4 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

§ 10.8 Fire Protection

§ 10.8.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.8.2 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project site.

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§ 10.8.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for adequate fire protection, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner and/or the Architect.

§ 10.8.4 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual (FM) requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

§ 10.8.5 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

§ 10.8.6 All other parties with temporary structures on the Project site shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 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~~ and must have an A.M. Best's Rating of "A", XII or better. Such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed 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; and

.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 obligations under Section ~~3.18.~~3.18;

.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- Premises' Operations (deleting X, C, or U exclusions);
- Owner's and Contractor's Protective;
- Products and Completion Operations;
- Contractual – including specific for the Contractor's obligations under Paragraph 3.18;
- Any auto; and
- Broad Form Property Damage, including Completed Operations; and

.10 All Bonds required by law, including bid bond, performance bond and payment bond.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract or other Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether~~ must be maintained and written on an occurrence ~~or claims-made basis,~~ basis and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted by Contractor to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be ~~canceled~~ canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable ~~promptness.~~promptness, but not less than 30 days prior to any reduction in coverage.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) ~~the Owner~~ as an additional ~~insured~~ insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Such Certificates of Insurance shall be endorsed to specifically name the additional insureds.

§ 11.2 Owner's Liability Insurance

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

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner 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 Contract Sum, 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Architect, the Construction Manager, the Contractor, Subcontractors and Sub-subcontractors in the Project. Notwithstanding the foregoing, the Owner's Builder's Risk Policy excludes any tools, equipment, scaffolding, etc., owned or rented by the Contractor or Subcontractors and material stored on the site but not incorporated into the Project. The Contractor shall be responsible for protecting all product until the Date of Substantial Completion is established by the Architect/Engineer. The Contractor shall replace any Work if damaged prior to substantial completion. The Contractor may assume the risk itself or obtain insurance in an amount it deems sufficient to cover the risk.

§ 11.3.1.1 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 the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires ~~deductibles, the Owner~~ deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 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. Property insurance coverage for Contractor's owned or hired equipment, tools, automobiles, and materials not incorporated into the final Work shall be the sole responsibility of the Contractor.

§ 11.3.2 Boiler and Machinery Insurance. The Owner 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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 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.~~

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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 Section 11.3.7 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.~~

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 ~~**Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, 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 Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, 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.~~

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of

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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.

§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. 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 Article 7.~~

§ 11.3.10 The Owner 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 Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.~~insurers.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Owner ~~shall have the right to require the Contractor to furnish bonds~~ hereby requires the Contractor to furnish separate Performance and Labor and Material Payment Bonds covering faithful performance of the Contract and payment of obligations arising thereunder ~~as stipulated in bidding requirements or specifically required in the Contract Documents~~ each in the penal sum of 100% of the Contract Sum and in accordance with Applicable Laws on the date of execution of the Contract. Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of not less than A, XII or better and shall remain in effect for a period not less than two (2) years following the later of (i) the date of Substantial Completion, (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amount or expiration of the Warranty under the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Construction Manager shall obtain copies of the Performance Bond and Payment Bond required by the Agreement from the Contractor prior to Contractor beginning performance pursuant to the Agreement. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to Contractor beginning performance pursuant to the Agreement.

§ 11.4.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

§ 11.5 Insurance In General

§ 11.5.1 At the written request of the Owner to the Contractor, the Contractor shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Contractor fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum by the cost of the Replacement Insurance. The Contractor shall furnish all necessary information to obtain and maintain such Replacement Insurance.

§11.5.2 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.5.3 Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's sole cost and expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may ~~request~~ request, with the Owner's written consent, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. At the time Owner's consent is sought as described herein, the Architect and/or Construction Manager shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner or the separate Contractor, shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The ~~Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~Owner and/or the Architect may reject defective or unsatisfactory Work. The Contractor shall promptly cause all Work rejected by the Owner and/or Construction Manager and/or Architect, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Contract Sum and without use of any contingency. If any additional testing, inspections and compensation for the Architect's services and expenses are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two (2) years after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor ~~shall~~ shall, without interfering with the Owner's facilities, personnel or operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.2.2 ~~The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~ Upon completion of any Work under or pursuant to Section 12.2.2 the two (2) year Correction Period specified by Section 12.2.2 shall begin anew with respect to the Work requiring correction.

~~**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.3 The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor ~~has~~ might have under the Contract Documents. Establishment of the ~~one-year~~ two (2) year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Each Contractor shall guarantee work for two (2) years, except where a longer guarantee period is stipulated in the Contract Documents, from the date of Substantial Completion of the Project. No provisions of the Contract Documents nor the Final Certificate for Payment shall relieve the Contractor of responsibility for satisfactory material or workmanship within the period described above. It shall be the Contractors responsibility to remedy any faulty material or workmanship and any damage to other work by removing and replacing same without any extra charge whatsoever.

§ 12.2.7 Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

.1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or

.2 Are not accepted by the Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, or otherwise defective, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced ~~as appropriate and equitable.~~ by equitable amount which reflects the loss of value to the Owner caused by the Defective Work. Such adjustment shall be effected whether or not final payment has been ~~made~~ made, and if it occurs after Final Payment is made, the Contractor shall pay the Owner whatever sum is owed upon demand.

If, within one (2) years after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be defective, the Contractor shall, without interfering with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting rejected Work, without increase in the Cost, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.4 Owner's Right To Correct Or Remove Defective Work

§ 12.4.1 If the Contractor fails to cause defective Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Contractor shall pay the Owner all costs of correction (including the value of the Owner's staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Contractor (including the value of the Owner's staff time and reasonable attorneys' fees). If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency, plus interest. If payments then or thereafter due the Contractor are not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner immediately upon demand.

§ 12.4.2 The Owner's right to store and sell such defective Work shall not give rise to a duty to do so. Instead, the

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Owner may upon ten (10) day's prior written notice simply dispose of such defective Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum, any contingency or otherwise.

§ 12.4.3 Tests. If tests or inspections reveal that portions of the Work are Defective, any additional tests or inspections required to assure the Architect and the Owner that the defective Work has been remedied or is in an acceptable condition shall be conducted at the expense of the Contractor, without increase in the Contract Sum, and without use of any contingency. The Contractor shall pay all additional costs of the Architect and the Owner, which are associated with such additional tests or inspections.

§ 12.4.4 Periods of Limitation. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents or Applicable Laws. Establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work under this Article 12 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the Agreement.

§ 12.4.5 The Owner's Right to Stop the Work. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§12.5 Damage

§ 12.5.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum, any contingency or otherwise.

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

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the ~~place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ State of Michigan.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by national overnight courier service providing a tracking system and proof of delivery to, the last business address known to the party giving notice.

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Wherever the Contract Documents require the Contractor to give "Notice" or "Timely Notice" to the Architect, Public Authority, and/or others, it shall be the Contractor's responsibility to furnish all such notices sufficiently in advance to allow the party receiving the notice reasonable time to react to such notice, including travel time on the job site as necessary, when such notices require the on-site presence of the Architect, Public Authority, their authorized representatives, or others for field observation of inspections, testing or approvals. Reasonable time shall be defined as no less than 24 hours plus normal travel time from the home office of the party being notified to the job site and must also accommodate known, standard, or reasonable processing periods.

§ 13.4 Rights and Remedies

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

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

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by ~~applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.~~ Applicable Laws. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract ~~Documents,~~ Documents or Applicable Law, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid ~~unreasonable~~ delay in the Work.

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§ 13.6~~Interest~~

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

§ 13.7 Time Limits on Claims

The Owner shall commence all claims and causes of action in accordance with Michigan law, regardless of the time frames identified in this Agreement. The Contractor shall commence all claims and causes of ~~action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ action in accordance with this Agreement and in accordance with Michigan law.

§ 13.7.2 Regardless of any provisions to the contrary, the statute of limitations with respect to any defective or nonconforming Work which is not discovered by the Owner shall not commence until the discovery of such defective or nonconforming Work by the Owner.

§ 13.8 Surety Notice And Prior Approval

Except where otherwise expressly required by the terms of the Agreement, the Contract Documents or the General Conditions, exercise by the Owner of any contractual or legal right or remedy without prior notice to or approval by the Contractor's surety shall in no way bar or prohibit the Owner's ability to pursue such right or remedy. Further, pursuit of such a right or remedy without prior notice to or approval of surety shall in no way compromise, limit or bar any claim by the Owner against a surety bond of the Contractor.

§ 13.9 Owner Policies

The Construction Manager and Contractor agree to follow the Owner's policies and procedures in regards to working in and around school facilities. The policies are all available on the Owner's Website. The Owner reserves the right to remove individuals from the Project sites who do not strictly comply.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the ~~Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the~~ Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents subject to justifiable withholding of payment as described herein or in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven~~ thirty days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~ executed.

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§ 14.1.4 If the Work is stopped for a period of ~~60~~ 90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven~~ thirty additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 The Contractor acknowledges that it has certified to the Owner that no owner, employee, agent, representative, contractor and/or other personnel of the Contractor will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). The Contractor acknowledges and agrees that if it is found to have submitted a false Certification or otherwise breaches or fails to comply with the requirements of the Certification, the Owner may immediately terminate the Contract and notwithstanding any other provision of this Contract, the Contractor shall be liable to the Owner for any and all costs and expenses incurred by the Owner to secure a replacement contractor to complete the Work in accordance with the Contract Documents, including, but not limited to, any costs or expenses required to be paid by the Owner to the replacement contractor in addition to those required to be paid to the Contractor, all attorney and/or professional service fees, and any and all other actual and consequential damages incurred by the Owner.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials;~~materials to the point of negatively impacting the Project and/or the related schedule;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 ~~repeatedly disregards applicable laws,~~ disregards Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents; or

.5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:~~three (3) days' written notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

In the event the Contractor's surety bond requires notice of intent to declare a default of the Contractor and if such bond notice is provided by the Owner, such notice shall be adequate to satisfy the three (3) day written notice described above in this section.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner in pursuing termination and completion of the Work, including actual attorney and legal fees and costs, and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the

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unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work ~~executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~executed as of the date of termination by the Owner and subject to negotiation by both parties.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the ~~Contract.~~ Contract, including but not limited to, additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the ~~Contract~~ Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.1.1 Changes in Law. If changes in ordinances, laws, requirements, or regulations or changes (which could not reasonably have been anticipated prior to the execution of the Contract) in judicial or agency interpretations of such ordinances, laws, requirements or regulations occur after execution which require an alteration of the Work or otherwise may result in a price or time impact, Contractor shall so notify Owner in writing consistent with Section 15.1.4 and comply with the procedures set out therein. Changes in the following areas of law are deemed to be within the scope of the Work hereunder and shall not be the basis for any change in price or time: requirements affecting the use or handling by Contractor of toxic or Hazardous Materials, Occupational Safety and Health Act requirements relating to Contractor's prosecution or conduct of the Work during the Project, or laws or requirements relating to operation of the business of construction contracting, engineering, or equipment manufacturing, or taxes affecting any such business.

§ 15.1.2 Notice of Claims. Claims by ~~either~~ the ~~Owner or~~ Contractor must be initiated by written notice to the ~~other party and to the Initial Decision Maker~~ Owner with a copy sent to the Construction Manager and ~~Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party~~ Architect. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later.~~ later except as provided in Sections 7.2, 8.3.4 and 8.4.3.

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§ 15.1.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction ~~Manager~~ Manager, assisted by the Architect, will prepare Change Orders and ~~the Architect will~~ issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the ~~Contract Time, written notice as provided herein shall be given.~~ Construction Time, written notice shall be given pursuant to Section 8.3.4. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made and governed by the provisions of Section 8.3.4 documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision ~~Maker, unless otherwise indicated in the Agreement.~~ Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation~~ litigation or any other mutually agreed upon dispute resolution forum of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or ~~Contract~~ Construction Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 ~~Mediation~~Alternate Dispute Resolution

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to ~~mediation~~ non-binding Alternative Dispute Resolution as a condition precedent to binding dispute resolution. On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to the Paragraph above. The mediator shall render his/her decision within seven (7) days of said meeting.

The purpose of the mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.

During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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AGREEMENT BETWEEN OWNER AND TECHNOLOGY DESIGNER FOR TECHNOLOGY DESIGN SERVICES

THIS AGREEMENT BETWEEN OWNER AND TECHNOLOGY DESIGNER FOR TECHNOLOGY DESIGN SERVICES (the "Agreement") is made as of the 4th day of August in the year of 2020 ("Effective Date") between **BLOOMFIELD HILLS SCHOOLS**, a Michigan general powers school district, whose address is 7273 Wing Lake Road, Bloomfield Hills, Michigan 48301 (the "Owner") and **BARTON MALOW BUILDERS LLC**, a Michigan limited liability company, whose address is 26500 American Drive, Southfield, Michigan 48034 (the "Designer"). School District and Designer may each be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, this Agreement constitutes the understanding of the responsibilities and obligations of Barton Malow Company, as Designer for Bloomfield Hills Schools, relative to its technology projects undertaken through its 2020 School Building and Site Bonds ("Bond").

B. Designer shall provide services to design technology systems in accordance with criteria consistent with the goals of the School District's Technology Plan, based upon the Bond Projects identified in **Exhibit A**, which is attached hereto and incorporated herein by reference and that will integrate data, voice and video applied technology as it relates to instruction, administration, business operations, communications, library and media, including IT infrastructure, video surveillance, door access and various end user technologies to meet the needs of the Owner, in the most cost efficient manner necessary to bring an integrated system of technology to all of the buildings, sites and Facilities of the Owner (the "Project").

C. Owner desires to obtain an integrated technology system which will deliver a final solution for the design and implementation of technology systems, upon the terms and conditions set forth herein and in the Project Documentation, which will warrant identifiable deliverables, upon the terms and conditions set forth herein.

The Owner and Designer agree as set forth below.

ARTICLE 1

DESIGNER'S RESPONSIBILITIES

1.1 DESIGNER'S SERVICES

1.1.1 Designer's services consist of those services to be performed by Designer, its employees, consultants and agents as enumerated in Articles 2 and 3 of this Agreement and in the Project Documentation. The Designer agrees to commit key

individuals throughout the duration of the Project as identified in **Exhibit B** attached hereto and incorporated herein by reference (the "Key Personnel"). The Designer shall not remove any of the Key Personnel from the Project without the prior written consent or request of the Owner unless such personnel cease to be in the employ of the Designer. In the event any such personnel must be replaced, Designer shall promptly find an acceptable replacement in consultation with the Owner.

1.1.2 Designer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Designer shall submit for the Owner's approval a schedule for the performance of Designer's services which may be adjusted in writing by mutual agreement of the Parties as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by Designer or Owner.

1.1.3 Designer represents that it will follow the high standards of its profession in performing all services under this Agreement and in accordance with the standard of reasonable care and skill exercised by a technology designer of recognized experience and expertise similar to Designer's in the design and implementation of technology for public school facilities. Designer shall be responsible for the degree of care and skill for all technology design services provided hereunder whether such technology design services are provided directly by the Designer, its employees, consultants or agents. Designer acknowledges that the services to be provided by Designer under this Agreement shall include assisting the Owner in complying with the Owner's obligations set forth in the Michigan Revised School Code (MCL 380.1 et seq., including, but not limited to, 380.1264, as amended), the School Building Construction Act (MCL 388.851 et seq., as amended), the Occupational Code (MCL 339.2011, as amended), the Stille-Derossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.) and the Michigan Building Code, as applicable. Therefore, Designer hereby agrees to perform the services required of "an architect" pursuant to those Acts; provided however, Designer acknowledges that nothing contained in this Agreement shall be construed to limit Designer's services, duties or obligations pursuant to those Acts or otherwise provided by law. Additionally, Designer acknowledges that the services to be provided by Designer under this Agreement shall include assisting the Owner in complying with all of the Owner's competitive bidding requirements under Sections 1267 and 1274 of the Michigan Revised School Code, as amended.

1.1.4. Basic Compensation of the Designer and of the underlying school technology Projects will be financed through the Owner's issuance of General Obligation Unlimited Tax Bonds (the "Bonds"). The Bonds establish as a condition of this Agreement a fixed limit of the Cost of the Work, if such election is successful. The Designer shall not provide any further services until the Designer receives written notice from the Owner that the Owner has issued the above-referenced Bonds and

authorizes the Designer to proceed under this Agreement, unless otherwise directed by the Owner in writing. Notwithstanding any other provision of this Agreement to the contrary, the Designer acknowledges that compensation of any services to be performed by the Designer is expressly contingent upon the Owner's issuance of General Obligation Unlimited Tax Bonds for all Projects. In the event that the Owner does not issue such Bonds, in the complete discretion of the Owner, the Owner may terminate this Agreement and the Owner shall not be responsible for compensating the Designer. Notwithstanding any other provision of this Agreement to the contrary, the Designer acknowledges that the Designer must receive the Owner's Approval after each completed Phase hereunder and may not proceed to the next Phase without the Owner's express approval to proceed.

1.1.5 The services provided by Designer hereunder are inherently advisory in nature. Designer shall not be responsible for decisions made by the Owner under this Agreement only when the Owner elects not to follow the recommendations(s) of the Designer.

ARTICLE 2

SCOPE OF DESIGNER'S BASIC SERVICES

2.1 DEFINITION

2.1.1 Designer's Basic Services consist of those described in Paragraphs 2.2 through 2.4, and include all engineering and other services necessary to produce a reasonably complete and accurate set of Detailed Design Documents as described in Paragraph 2.2.

2.2 PRELIMINARY DESIGN PHASE, DETAILED DESIGN PHASE AND PROGRAMMING

2.2.1 Designer shall review and analyze the needs of the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner, and shall commit its understanding of the Owner's requirements to writing and shall submit a copy to the Owner for approval before proceeding with drafting the preliminary designs. Designer's review shall include, but shall not be limited to, a review of all technology systems listed in the Program of Services. It shall also include a comparison of the anticipated total cost of ownership and services of various solutions spanning a five year planning horizon, taking into account Owner's existing equipment. Once this writing is approved by the Owner, it shall become the "Program of Services". All services rendered pursuant to this Paragraph shall be Basic Services.

2.2.2 Designer shall provide to the Owner the Program of Services, a Project schedule, a Project budget and a preliminary design, all sufficiently detailed to allow Owner to properly size all technology aspects, as well as mechanical and electrical aspects, associated with technology improvements of its Bonds, including design for future growth. Designer, in preparing its Program of Services, shall coordinate with the Owner's Architect and Construction Manager. Designer shall coordinate with the Owner's Architect for physical equipment sizing, electrical and mechanical requirements, and site work requirements. Designer shall coordinate with the Construction Manager the Project budget, schedule, technology installation, and Project closeout. Designer shall coordinate with the Owner the systems to properly design and size technology systems for systems growth, operations and flexibility. Designer shall provide the services of professionals, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project, and shall submit a list of the names of the professionals to be employed by Designer to the Owner, in advance, for the Owner's review and approval. Said Documents shall be prepared in cooperation with and provided for coordination with the Owner and the Owner's agents. Said Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations.

2.2.3 Designer shall review with the Owner, alternative approaches to design and implementation of the Project as agreed upon per the Program of Services.

2.2.4 Based upon the mutually agreed upon Program of Services, schedule, budget requirements and preliminary design, Designer shall prepare, for approval by the Owner, Detailed Design Documents consisting of Drawings and Specifications setting forth in detail the requirements for the Project. These documents shall include a detailed description of the proper operating environment for all equipment which is to be installed as part of the Project, as well as Acceptance Testing Procedures, with verified results, for all Technology equipment, software and systems contemplated within the Program of Services and the Detailed Design Documents. Approval of the Detailed Design Documents by the Owner shall be deemed to be approval of the concept though not approval of the means or techniques recommended by Designer for the Project. Designer hereby specifically warrants that said Detailed Design Documents shall, when implemented in the Implementation Phase, yield a completed Project which conforms to the Program of Services and further warrants its detailed design and the implementation of its detailed design conforms to the Contract Documents and the representations of Designer as provided for in the Project Documentation (as defined in Paragraph 7.8).

2.2.5 Designer shall, after consultation with the Owner, prepare the necessary bidding information, bidding forms, Contract conditions and a final estimate of the Project Cost.

2.2.6 Designer shall advise the Owner, in writing, of any adjustments to previous preliminary estimates of Project Cost indicated by changes in requirements or general market conditions of which Designer should be reasonably aware.

2.2.7 Designer shall be responsible, with the assistance of the Owner, for filing documents required for the approval of governmental authorities having jurisdiction over the Project, when instructed to do so by the Owner. Designer shall be responsible for making such changes in the Detailed Design Documents as may be suggested by said governmental authorities at its expense when instructed to do so by the Owner.

2.2.8 Designer shall include in the bidding information a requirement that the Vendor/Contractor(s) making the bid shall provide operation manuals to the Owner and shall provide adequate training for the Owner in the operation of all systems installed by the Vendor/Contractor(s). Further, Designer shall require in the bidding information that all Vendors/Contractors must assume responsibility for systems which they are providing, as well as proper coordination of activities with all other Vendors/Contractors. Each bid must contain a Vendor/Contractor contract which has been approved by the Owner and the Owner's legal counsel, including all terms and conditions.

2.2.9 Designer shall remove any and all references to Arbitration from each Vendor/Contractor contract it prepares, including, but not limited to, Arbitration language within the Request For Proposals, the Standard Form of Agreement Between Owner and Contractor and the General Conditions of the Contract For Construction.

2.2.10 Designer is expected to attend, present and answer questions relating to the Technology Plan and/or Technology Design, as often as necessary, during any Board Meetings, and/or presentations to school or community groups and/or construction meetings with the Architect and Construction Manager.

2.3 BIDDING PHASE

2.3.1 Designer, following the Owner's approval of the Detailed Design Documents and of the latest preliminary estimate of Project Cost, shall develop bidding documents, assist the Owner in obtaining bids for the various Projects, conduct pre-award conferences with bidders and assist in recommending awards and preparing contracts for construction and/or implementation. The Designer shall act as an agent of the Owner. The Designer acknowledges that it is ineligible to bid on any equipment needed to implement the approved design herein. The Designer represents and warrants that it is an entity independent from any and all Vendor/Contractor(s) eligible to bid on any of the Request for Proposals prepared by the Designer in connection with the Project herein. The Designer further represents and warrants that it will receive no consideration, commission or remuneration of any kind by any Vendor/Contractor bidding on any contract herein. When

recommending awards to the Owner. It is the Designer's responsibility to confirm to the Owner in writing that the successful bidder is the "lowest responsible bidder" as that term is used in Attorney General Opinion, 1959-60, No. 3303, Vol. 1, p. 169.

2.3.1.1 Owner and Designer acknowledge that certain Projects may not be required to be bid by law. As such, if competitive bidding is not required by law or by the Owner's purchasing policies/procedures or such equipment may be purchased through a bidding cooperative that meets all of the Owner's bidding requirements, the Designer shall not be required to develop bidding documents, etc. for that particular project.

2.3.2 In the event that the recommended bid (or bids) relative to any component of the Project exceed(s) the fixed limit for the Project, or component thereof, or the final estimates provided by Designer, as approved by the Owner, pursuant to Subparagraph 2.2.4, the Owner shall:

.1 give written approval of an increase in such fixed limit;
.2 authorize rebidding of the Project within a reasonable time; or
.3 cooperate in revising the Project scope and quality as required to reduce the cost of the Project.

If the Owner chooses to proceed under Clause 2.3.2.3, the Designer, without additional charge, and in consultation with the Owner, shall modify the Detailed Design Documents as necessary to comply with the fixed limit, as established by the Owner, as part of Designer's Basic Services with no additional cost to the Owner.

2.3.3 Any defective designs or Specifications furnished by Designer shall be promptly corrected by Designer at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of Designer's services hereunder or the Project itself shall in no way diminish or limit Designer's obligations and liabilities or the Owner's rights.

2.3.4 Designer shall develop an Acceptance Testing Procedure which integrates all work being performed by all Vendors/Contractors, to the Owner's satisfaction, which shall insure that all work which is properly implemented shall be in accordance with the Detailed Design Documents and the Project Documentation so that an integrated technology system will be delivered as the final solution.

2.3.5 Designer shall obtain and review certificates of insurance, performance bonds and payment bonds, if such are required by law and/or by the Bid Specifications for that particular Project, from all Vendors/Contractors, and forward them to the Owner prior to commencement of the work.

2.4 IMPLEMENTATION PHASE – ADMINISTRATION

2.4.1 Designer's responsibility to provide Basic Services for the Implementation Phase under this Agreement shall commence with the award of each Vendor/Contractor Contract and shall terminate when all Projects of each phase are installed, integrated and operating properly for the Owner's intended purposes, to the Owner's satisfaction, pursuant to the Acceptance Testing Procedure. Notwithstanding the foregoing, if Basic Services covered by this Agreement have not been completed within sixty (60) months from the date of the sale of the Bonds, and if sold in separate series, from the date of the sale for that particular series, through no fault of the Designer, extension of the Designer's services beyond that time shall be subject to negotiation.

2.4.2 Designer shall provide administration of all Contracts with Vendors/Contractors for Implementation as set forth below and in the "Program of Services" as attached hereto.

2.4.3 Duties, responsibilities and limitations of authority of Designer shall not be restricted, modified or extended without written agreement of the Owner and Designer.

2.4.4 Designer at all times shall be a representative of and shall advise and consult with the Owner. Designer shall submit to Owner, not less than monthly, updated reports on the progress of the Project, unless otherwise requested by the Owner. Designer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement, unless otherwise modified by written instrument. Instructions to the Vendor/Contractor's shall be forwarded through Designer.

2.4.5 Designer shall assign a representative of the Designer to the Project who shall be on-site, in the Designer's professional judgment, as often as necessary and appropriate to the stage of implementation to inspect the site and the Project; to familiarize Designer with the progress and quality of the Project; and to determine for the Owner's benefit and protection if the Project is proceeding in accordance with the intent of the Detailed Design Documents, schedule and the Acceptance Testing Procedure which is more particularly described in the attached "Program of Service".

Designer assumes complete responsibility for properly reviewing the Acceptance Testing Procedures of various Vendors/Contractors and directing said Vendors/Contractors to re-test, if necessary, as well as conducting the Acceptance Testing Procedure and documentation of such procedure as provided for in the attached Program of Services. Designer shall attend technology and implementation progress meetings, and meetings with the Owner's Construction Manager as necessary or as reasonably directed by Owner, and report back regularly to the Owner's Director of Learning Technology, in conjunction with or in addition to

visiting the site in satisfaction of other responsibilities. On the basis of its on-site observations and inspections, Designer shall keep the Owner informed of the progress and quality of the Project and shall guard the Owner against defects and deficiencies in the Project and against the Vendor/Contractor's failure to carry out the Project in accordance with the intent of the Detailed Design Documents, the schedule and the Acceptance Testing Procedure, and shall give prompt notice in writing to the Owner of any deviations from the Detailed Design Documents in the Project. Designer shall provide those services contemplated within this Agreement, as part of its Basic Services, made necessary by defects or deficiencies in the Project of the Vendor/Contractor's which, through reasonable care, should have been discovered by Designer and promptly reported to the Owner and Vendor/Contractor, but which Designer failed to discover and/or report. The Owner shall pay the Designer for any such services, only if the Vendor/Contractor(s) or the Vendor/Contractor's surety or insurer reimburses the Owner for such services.

2.4.5.1 Designer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; provided that, on the basis of its on-site inspections the Designer has reported to the Owner any construction means, methods, techniques, sequences or procedures that do not appear to conform with industry standards, and has also reported to the Owner any work that appears not to be on conformance with Contract Documents. Except as provided in this Agreement, the Designer shall not be responsible for the Vendor/Contractor's schedules or failure to carry out the Project in accordance with the Detailed Design Documents and shall not have control over or charge of acts or omissions of the Vendor/Contractors, Subcontractors, or their agents or employees, or of any other persons performing portions of the work. The Owner's approval, acceptance, use of or payment for all or any part of the Designer's technology design services hereunder or the Project itself shall in no way diminish or limit the Designer's obligations and liabilities or the Owner's rights. Safety precautions and programs in connection with the work are solely the Vendor/Contractor's responsibility under their contracts. Nothing contained in this Paragraph shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Designer.

2.4.6 Designer shall ensure that the Project is being implemented in accordance with the Detailed Design Documents and the Acceptance Testing Procedure as accepted by the Owner, all as set forth in Subparagraph 2.4.5 hereof.

2.4.6.1 Designer shall provide those services contemplated within this Agreement, as part of its Basic Services, made necessary by major defects or deficiencies in the work of the Vendor/Contractor(s) or its agents or employees which, through reasonable care and/or the Acceptance Testing Procedure, Designer

should reasonably have discovered and promptly reported to the Owner, but failed so to do. Any defective designs or Specification furnished by Designer shall be promptly corrected by Designer at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of Designer's services hereunder or the Project itself shall in no way diminish or limit Designer's obligations and liabilities or the Owner's rights.

2.4.7 The Owner and Designer shall at all times have access to the Project, whenever it is in preparation or progress.

2.4.8 Except as may otherwise be provided in the Detailed Design Documents or when direct communications have been specially authorized, the Owner and Vendor/Contractor shall communicate through Designer. Communications by and with Designer's agents shall be through Designer. Designer should also be available for direct communication with Construction Manager and Architect as required.

2.4.9 Based on Designer's observations and inspections of the Project as set forth in Subparagraph 2.4.5 hereof, and evaluations of the Vendor/Contractor's Applications for Payment, Designer shall review and certify the amounts due the Vendor/Contractor to the Owner. Said review and certification shall take place within twenty (20) days of Designer's receipt of the Application.

2.4.10 Designer's certification for payment shall constitute a representation to the Owner, based on Designer's observations and inspections at the site as provided in Subparagraph 2.4.5 and on the data comprising the Vendor/Contractor's Application for Payment, that the Vendor/Contractor's work has progressed to the point indicated, that the quality of the Vendor/Contractor's work is in accordance with the Detailed Design Documents and the Acceptance Testing Procedure and that the Vendor/Contractor's work has been performed in a good and workmanlike fashion. The issuance of a Certificate for Payment shall further constitute a representation that the Vendor/Contractor is entitled to payment in the amount certified.

2.4.11 Where Vendor/Contractor's work does not conform to the Detailed Design Documents or the Acceptance Testing Procedure, Designer shall promptly reject such nonconforming work and notify the Owner of Designer's said rejection. Whenever Designer considers it necessary or advisable for implementation of the intent of the Detailed Design Documents, Designer will have authority to require additional inspection or testing of the Vendor/Contractor's work in accordance with the provisions of the Detailed Design Documents, whether or not such work is fabricated, installed or completed. Where such additional inspection and testing is to be at additional cost to the Owner, such additional inspection and testing is to be required by Designer only upon advance notice and approval by the Owner.

2.4.12 Designer shall review and approve or take other appropriate action upon Vendor/Contractor's submittals such as Shop Drawings, Product Data and Samples,

for the purpose of checking for conformance with the Detailed Design Documents and all applicable laws, statutes, ordinances, codes, rules and regulations. Designer's action shall be taken with such reasonable promptness as to cause no delay in the Vendor's/Contractor's work or in the work of separate Vendors/Contractors, while allowing sufficient time in Designer's judgment to permit adequate review.

2.4.13 Designer shall be required to administer all contracts with contractors/vendors on behalf of the Owner. This responsibility shall commence with the award of each contractor/vendor contract and shall terminate when all systems are installed, integrated, and operating properly to the satisfaction of the Owner. To this end, the Designer shall monitor all work in progress by contractors/vendors and keep the Owner informed of the progress and the quality of the work and shall guard the Owner against defects and deficiencies in the work and the contractors'/vendors' failure to carry out the work in accordance with the design documents prepared by the Designer and approved by the Owner. The duties and responsibilities of the Designer under this Paragraph are not intended to excuse or diminish the statutory or contractual responsibilities of the Vendors/Contractors or its sureties. Designer shall develop an acceptance testing procedure which integrates all work being performed by all contractors/vendors, to the satisfaction of the Owner which shall insure that all work which is properly implemented shall be in accordance with the design documents and the Owner's expectations of the solution to be delivered by the design documents.

2.4.14 Designer shall prepare Change Orders and Change Directives, with supporting documentation and data, for the Owner's approval and execution in accordance with the Detailed Design Documents, and may authorize, minor changes in the Project not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Detailed Design Documents.

2.4.15 Designer shall, as part of the inspections required by this Agreement, determine the date or dates of Substantial Completion and the date of final completion. Designer shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Detailed Design Documents and assembled by the Vendor/Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Detailed Design Documents.

2.4.16 Designer shall interpret and decide matters concerning performance of the Vendor/Contractor under the requirements of the Detailed Design Documents on written request of either the Owner or the Vendor/Contractor. Designer's response to such requests shall be made within reasonable promptness and with any time limits agreed upon.

2.4.17 Interpretations and decisions of Designer shall be consistent with the intent of and reasonably inferable from the Detailed Design Documents and shall be in writing or

in the form of drawings. When making such interpretations and initial decisions, Designer shall endeavor to secure faithful performance by the Vendor/Contractor and shall not be liable for results of interpretations or decisions so rendered in good faith and without negligence.

2.4.18 Designer shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Vendor/Contractor relating to the execution or progress of the Vendor/Contractor's work as provided in the Detailed Design Documents.

2.4.19 Designer shall provide services to investigate existing conditions of facilities or to make measured Drawings thereof, if required, or to verify the accuracy of technology drawings furnished by the Owner.

2.4.20 Designer shall provide methods for coordination of all projects performed by separate Vendors/Contractors or by the Owner's own forces and coordination of services in connection with implementation performed and equipment supplied by the Owner, including establishing and conducting a regular schedule of meetings between Vendors/Contractors and the Owner and in conjunction with the general construction meetings of the District, when appropriate. Such meetings shall be held throughout the entire Implementation Phase of the Project and shall be for the primary purpose of assessing the progress of the work of each Vendor/Contractor and recommending to the Owner such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. Designer shall submit to the Owner and to the Vendors/Contractors the minutes of each such meeting as soon after the meeting as is practical, unless it is agreed upon at that meeting that one of the other professionals, i.e. the Construction Manager, will take the minutes and distribute the same to the others.

2.4.21 The Owner shall have final authority on questions relating to aesthetic effect and shall be final if consistent with the intent expressed in the Detailed Design Documents.

2.4.22 Designer shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or Designer is a party concerning the Project as part of its Basic Services.

2.4.23 Designer shall prepare, or require the Vendor/Contractor to prepare, and provide a set of "As-Constructed" drawings showing changes in any Vendor/Contractor work made during implementation based on marked-up prints, drawings and other data furnished by the Vendor/Contractor to Designer. Designer shall certify these drawings are accurate; provided the Designer's certification shall be made to the best of the Designer's knowledge. These drawings shall be provided in the form of

reproducible drawings and digital documents as specified by the Owner. Digital format shall include all of the following:

1. PDF, with native file format, which format shall be mutually agreed to by the Parties.

2.4.24 Designer shall provide services in connection with evaluating substitutions proposed by the Vendor/Contractor and making subsequent minor revisions to Drawings, Specifications and other documentation, as well as materials, resulting therefrom, as necessary.

2.4.25 Designer shall provide services in evaluating claims submitted by the Vendor/Contractor or others in connection with the work.

2.4.26 Designer shall provide analysis of the Owners' needs and program the requirements of the Project.

2.4.27 Designer shall develop an Acceptance Testing Procedure which integrates all work being performed by all Vendors/Contractors, to the Owner's satisfaction, which shall insure that all work which is properly implemented shall be in accordance with the Detailed Design Documents and the Project Documentation so that an integrated technology system will be delivered as the final solution.

2.4.28 Designer shall provide services in connection with all phases outlined above as part of its Basic Services even if the scope of the work changes; provided that, the combined Projects/technologies implemented are within the fixed limit of the Cost of the Work.

2.4.29 Designer shall provide services for tracking the technology contract expenditures, projected technology contract expenditures, technology contingencies or the technology Bond approved budgets.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified elsewhere in this Agreement as Basic Services, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraph 3.2 shall only be provided if authorized in advance, in writing, by the Owner. If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond Designer's control, Designer shall advise the Owner in writing prior to

commencing such services. If the Owner deems that such services described under Paragraph 3.2 are not required, the Owner shall give prompt written notice to Designer. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, Designer shall have no obligation to provide those services. If, however, services described under Paragraph 3.2 are required due to circumstances within the control of Designer, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to Designer for additional services that became necessary as a result of the fault or negligence of Designer or its agents or employees.

3.2 CONTINGENT ADDITIONAL SERVICES

3.2.1 Making material and substantial revisions in Drawings, Specifications or other documents when such revisions are:

.1 inconsistent with approvals or instructions previously given the Owner, including revisions made necessary by adjustments in the Owner's Program of Services or Project budget;

.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

.3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

.4 required due to significant inaccuracies in Drawings furnished by the Owner or where none were provided, or

.5 providing Special Studies, or services beyond the Scope of the Project.

3.2.2 Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

3.2.3 Providing services made necessary by the default of the Vendor/Contractor, by major defects or deficiencies in the work of the Vendor/Contractor, or by failure of performance of either the Owner or Vendor/Contractor under the Contract.

3.2.4 Providing services associated with design or management for technology systems for amounts in excess of the Owner's budget for technology.

ARTICLE 4

OWNER'S RIGHTS AND RESPONSIBILITIES

4.1 The Owner shall consult with Designer regarding additional requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Project Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions within a reasonable period of time pertaining to documents submitted by Designer in order to avoid unreasonable delay in the orderly and sequential progress of Designer's services, acknowledging the Owner's status as a public body.

4.4 Prompt notice shall be given by the Owner to Designer if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Detailed Design Documents, but the Owner's failure or omission to do so shall not relieve Designer of its responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation. Designer shall provide prompt written notice to the Owner if Designer becomes aware of any fault or defect in the Project or nonconformance with the Detailed Design Documents.

4.5 Owner shall have the right to reject any of Designer's employees or agents whose qualifications in Owner's good faith and reasonable judgment do not meet the standards established by Owner as necessary for the performance of the technical services. In the event any of Designer's employees or agents must be replaced, for any reason, Designer shall promptly supply an acceptable replacement in consultation with Owner.

4.6 Owner or Owner's agent(s) shall provide Designer with CAD backgrounds and license to use and modify such files/documents for the Project, at no additional cost to Designer, if available and in Owner's possession.

4.7 Owner shall provide Designer with an inventory of relevant existing equipment and systems, including version numbers, if available and in Owner's possession. Designer shall only be responsible for incorporating the information provided and what is inspected, or should have been inspected, in the final building walkthroughs, into the final design.

4.8 The Owner shall provide moving services for temporary relocation of furniture and equipment (computers, phones, peripherals, etc.) as needed to facilitate renovations or the installation of pilot systems for the purpose of evaluation.

ARTICLE 5

USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

5.1 The Drawings, Specifications and all other documents, electronic or otherwise, prepared by Designer and or its consultants (collectively referred to as the "Documents') for this Project are instruments of Designer's service for use solely with respect to this Project and, unless otherwise provided, Designer shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies of the Documents for information and reference in connection with the Owner's use and occupancy of the Project. The Documents may be used by the Owner or others for additions to this Project or for completion of this Project by others, in which case Designer is relieved of any liability as a result of such future use and Owner agrees to indemnify and hold harmless the Designer to the extent permitted by law. The Designer agrees to immediately provide the Documents to the Owner at the end of the Project, or, in the event of early termination of this Agreement, in accordance with Article 6 hereof.

5.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes, or for purposes of presentations, public relations or communications, or as required by law in connection with the Project is not to be construed as publication in derogation of Designer's reserved rights.

ARTICLE 6

TERMINATION, SUSPENSION OR ABANDONMENT

6.1 This Agreement may be terminated by either Party upon not less than thirty (30) days written notice should the other Party fail substantially to perform in accordance with the terms of this Agreement through no fault of the Party initiating the termination. If this Agreement is terminated by the Owner, after said thirty (30) day cure period, due to Designer's failure to substantially perform in accordance with the terms of this Agreement, Designer shall receive no fees or reimbursable expenses other than those due for services actually rendered, without negligence, prior to the date of termination.

6.2 If the Project is suspended by the Owner for more than one hundred twenty (120) consecutive days, Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Designer may seek an equitable adjustment from the Owner for expenses incurred in the interruption and resumption of Designer's services. However, if the Parties cannot agree on the amount of the adjustment, Designer may follow the alternative dispute resolution procedure contained in Article 8 below.

6.3 The Agreement may be terminated for any reason by the Owner upon not less than seven (7) calendar day's written notice to Designer. If the Project is abandoned by the Owner for

more than ninety (90) consecutive days, Designer may terminate this Agreement by giving written notice.

6.4 Subject to Subparagraph 6.5, the failure of the Owner to make payments to Designer in accordance with this Agreement shall be considered substantial non-performance and cause for termination.

6.5 If the Owner fails to make payment when due Designer for services and expenses, Designer may, upon thirty (30) days written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by Designer within thirty (30) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Designer shall have no liability to the Owner for delay or damage caused by the Owner because of such suspension of services.

6.6 In the event of termination not the fault of Designer, Designer shall be compensated for services performed prior to termination, together with Reimbursable Expenses reasonably incurred prior to termination. However, if the Parties cannot agree on the amount of compensation, Designer may follow the alternative dispute resolution procedure contained in Article 8 below.

6.7 The Parties acknowledge the current COVID-19 pandemic that was declared a national emergency by President Trump on March 13, 2020. Given the ongoing nature of the COVID-19 pandemic, the Parties recognize that there may be unknown and unforeseeable impacts on Designer's performance, its productivity, on pricing, material and labor availability and on the supply chain after Agreement execution ("COVID-19 Impacts"). To the extent Designer incurs additional costs or schedule impacts as a result of the COVID-19 Impacts after execution of the Agreement, then Designer may seek an appropriate adjustment to the Contract Time and/or the Contract Sum to cover such costs and impacts pursuant to a Change Order in accordance with the Contract Documents. However, if the Parties cannot agree on the amount of the adjustment, Designer may follow the alternative dispute resolution procedure contained in Article 8 below.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be governed by the laws of the State of Michigan and the Parties hereby agree to the exclusive jurisdiction and venue of courts sitting in Oakland County, Michigan.

7.2 The Owner and Designer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement. Neither Owner nor Designer shall assign this Agreement without the written consent of the other.

7.3 This Agreement may be amended only by written instrument signed by both Owner and Designer.

7.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Designer.

7.5 It is acknowledged by Designer that the Owner has disclosed to it that the school buildings and facilities which are the subject of the services to be provided by Designer may contain materials composed of asbestos fibers in various forms. Designer shall not be responsible for the handling or removal of asbestos, but rather the Owner shall be responsible for all such costs.

7.6 Designer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among Designer's promotional and professional materials. Designer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised Designer of the specific information considered by the Owner to be confidential or proprietary.

7.7 Unless otherwise required in this Agreement, Designer shall have no responsibility for the discovery, presence, analysis, handling, removal, treatment or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances and regulated substances (collectively referred to as "Hazardous Materials"). It is, however, acknowledged by Designer that the Owner has disclosed to it that the school buildings and facilities which are the subject of the services to be provided by Designer hereunder may contain Hazardous Materials. It is further acknowledged that in implementing the Projects which may result from Designer's services, as herein defined, the removal or treatment of such Hazardous Materials may become necessary before any work is commenced. Upon discovering any Hazardous Materials, Designer will immediately cease work and notify the Owner of the presence of the Hazardous Materials. Designer shall not knowingly specify in the Project Contract Documents or approve the use of any asbestos containing building material (ACBM) or any known hazardous building materials to be used in the connection with the Project. Upon the issuance of the Final Certificate for Payment, Designer shall require each Contractor to certify to the Owner and Designer that no ACBM or any known hazardous building materials were used in the Project. The Owner will provide written documentation to Designer regarding any such Hazardous Material of which it is aware, that it discovers, or that is made known to the Owner. Additionally, as a Basic Service, Designer will coordinate services of Hazardous Materials consultant(s) and/or contractor(s) with all other individuals or entities involved in the Project in an effort to minimize to the extent practicable disruption in the Project work and schedule, but shall not be responsible for the performance of such consultant and/or contractor. The Owner agrees that it shall place sole reliance upon the qualified Hazardous Materials consultant, and its contractor or subcontractor, as to the means of accomplishing the removal or treatment process. Designer shall be responsible if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the site, it exacerbates such contamination.

7.8 For purposes of this Agreement the following shall be referred to collectively as the "Project Documentation": (i) this Agreement between Owner and Technology Designer For Technology Design Services; and (ii) Program of Services, as shall be later attached as **Exhibit D**. To the extent that the terms and conditions of the Project Documentation are in conflict, the terms and conditions shall be interpreted in the above-referenced order from(i) to (ii). However, the Parties also agree that where there is not a conflict between any of the terms and conditions contained in the above-referenced Project Documentation, all of the Project Documentation shall be binding upon both Parties.

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

ARTICLE 8

ALTERNATIVE DISPUTE RESOLUTION

8.1 On those occasions when a dispute arises between the Parties to this Agreement, the Parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the Parties agree to the following terms and conditions:

.1 The Party bringing a claim shall give notice to the other Party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

.2 In the event the meeting between the Parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the Parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the Parties within a period of fourteen (14) days of the later of the initial meeting between the Parties or the date notice was given pursuant to Paragraph 8.1.1. The mediator shall render his/her decision within seven (7) days of said meeting.

.3 The purpose of the mediation is to attempt to resolve the dispute between the Parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

.4 In the event the independent mediator's attempt to resolve the dispute between the Parties fails, then each Party will be free to pursue recovery of claims at law.

.5 During the pendency of this alternative dispute resolution process, the Parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

ARTICLE 9

BASIS OF COMPENSATION

The Owner shall compensate Designer as follows:

9.1 BASIC COMPENSATION

For Basic Services as described in Article 2, and any other services included in Article 9 as part of Basic Services, Basic Compensation shall be computed as follows:

Lump Sum Not-To-Exceed Fee of $1,298,100.00

Notwithstanding the foregoing, the lump sum Not-To-Exceed Fee is based upon the Program of Services and Project Schedule. In the event the Scope of Work materially or substantially changes, the Parties shall mutually agree upon a reduced or increased lump sum fee based on the remaining scope and schedule. Even though the Designer provided the Owner with a number of hours budgeted for Basic Services, the Designer shall provide all Basic Services to the Owner under this Agreement for the not-to-exceed lump sum fee even if it takes the Designer additional hours over its budgeted hours.

The Designer Basic Services and compensation for Designer's Basic Services includes the entire Project including all Instruments of Service through and inclusive of Project Punch-list and Closeout.

9.1.1 Monthly progress payments for Basic Services shall be payable equal monthly increments beginning in August of 2020 with the final payment due upon completion of the Project scope if it varies from the ending date. The progress payment schedule shall be as follows:

77 monthly payments of $16,642.31 from August 2020 through December 2026 and 1 payment of $16,642.13 upon Project completion

9.1.2 Reimbursable Expenses are in addition to compensation for the Designer's Services and include expenses incurred by the Designer, Designer's employees, and consultants directly related to the Project. The Owner shall reimburse the Designer for the Reimbursable Expenses at the Designer's actual cost, without any mark-up; provided the same are approved in writing by the Owner in advance of the expense being incurred by Designer. A budget for these Reimbursable Expenses shall be mutually agreed upon by the Parties before a Project is bid out to Vendor/Contractor(s).

9.2 COMPENSATION FOR ADDITIONAL SERVICES

9.2.1 For Project Representation beyond Basic Services, as described in Article 3, compensation shall be computed as follows:

Compensation for additional services will be billed at the rates identified in **Exhibit C** attached hereto.

ARTICLE 10

OTHER CONDITIONS OR SERVICES

10.1 Designer shall maintain, at no additional cost to the Owner, the following insurances during and for the duration of this Agreement (see Certificate of Insurance attached hereto and incorporated herein by reference as **Exhibit E**:

(1) Workers' compensation coverage that meets or exceeds legal requirements;

(2) Employer's Liability with policy limits not less than $ 1,000,000.00 each accident, $ 1,000,000.00 for each employee, and $ 1,000,000.00 policy limit.

(3) Automobile Liability Insurance covering all owned, hired and non-owned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan No Fault Insurance Law, including residual liability insurance with a minimum combined single limit of $1,000,000.00 each accident for bodily injury and property damage;

(4) Professional liability insurance coverage with minimum limits of $3,000,000.00 per claim and $5,000,000.00 per occurrence; and

(5) A minimum Commercial General Liability limit of $1,000,000.00 per occurrence, $2,000,000.00 in the aggregate and umbrella coverage of not less than $5,000,000.00.

Such Certificate(s) of Insurance (other than Professional Liability and Workers Compensation) must be endorsed to include the Owner as an additional insured and must include the Owner as an additional insured on both the commercial general liability and automobile policies and must provide that the Owner will be given at least thirty (30) days' notice of cancellation or change in insurance coverage. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

Insurance carriers providing the required insurance policies shall be authorized by the State of Michigan, have an A.M. Best's Rating of "A" or better, and be acceptable to the Owner. The Designer shall notify the Owner if, during the required coverage period, any of the required overage either becomes unavailable or the Designer's coverage deviates, or limits are eroded, from the requirements set forth under this Agreement and shall take necessary action to restore the required limits at the Designer's expense. The Certificates of Insurance shall be updated and provided to the Owner at least annually or as the prior Insurance Certificates expire.

In addition, if at any time throughout the Term of this Agreement Owner desires Designer to increase any or all of the above-referenced minimum insurance requirements, Owner shall request a price from the Designer for said cost. If Owner, then, chooses to increase said minimum insurance requirements, Owner shall reimburse the Designer for the difference of the insurance premium at cost without any mark-up.

With respect to any of the insurance policies provided by the Designer pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are cancelled or not renewed, the Designer shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Designer shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project.

The Owner agrees that the Designer in the Bidding documents prepared by the Designer on behalf of the Owner, Designer may require in all contracts with Contractors/Vendors for the Technology Services, that the Contractors/Vendors name Designer as an additional insured on their policies of insurance and require that the Contractors/Vendors name Designer as an indemnitee in any indemnification provision where the Contractor/Vendor is required to indemnify the Owner.

Additionally, the Designer shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assignees, from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs,

expenses, damages, injuries and liabilities, including actual attorney's fees and expert witness fees ("Claims") arising out of or resulting from Designer's performance of the services pursuant to this Agreement and/or from Designer's violation of any of the terms of this Agreement, including, but not limited to: (i) the negligent acts or willful misconduct of the Designer, its officers, directors, employees, agents, Consultants and contractors; (ii) any breach of the terms of this Agreement by the Designer, its officers, directors, employees, agents, Consultants and contractors; (iii) any violation or breach of any applicable Federal, State or local law, rule, regulation, ordinance, policy and/or licensing and permitting requirements applicable to providing the services; or (iv) any breach of any representation or warranty by the Designer, its officers, directors, employees, agents, Consultants and contractors under this Agreement. Designer's indemnity obligations do not extend to Claims arising out of or resulting from the Owner's acts or omissions. The Designer shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this Agreement. This Section shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Designer's insurance obligations contained in this Agreement.

10.2 The Owner, in its sole discretion, shall work with Designer in determining how the contingency allocated for the Project shall be utilized.

10.3 For purposes of this Agreement the term "inspect" shall be defined as the evaluation of construction and materials used therein, sufficient to permit the Designer to render his or her professional opinion as to the work conforming with the Contract Documents.

10.4 As part of Basic Services, if requested by Owner, Designer shall make a written record of all formal meetings with the Owner, Vendor/Contractor(s), Architect, Construction Manager or any subcontractor or third party and shall provide a copy of said record to the Owner.

10.5 If errors or omissions in the Project are detected in the Designer's Detailed Design Documents, the cost of any redesign required to incorporate the item or feature omitted or to correct the error shall be borne by the Designer. Any additional construction costs in this instance resulting from the inclusion of the omitted item or feature or to correct the error shall be borne by the Owner. If, however, the negligent errors or omissions are not detected until the Construction Phase, and if correction of the error or the incorporation of the omitted item or feature should have reasonably been provided by the Designer in the Construction Documents, then the cost of redesign and the cost of any removal and/or reconstruction required to begin correction of a negligent error shall be borne by the Designer. Under no circumstances shall the Designer be responsible for any improvements or betterments to the Project. In the case of an omitted item, the Owner shall bear the cost of the item as if the item had been included in the original Construction Documents. Notwithstanding the foregoing, if the Parties do not agree on resolution of which Party bears the cost, either Party may follow the alternative dispute resolution procedure contained in Article 8 above.

10.6 As part of Basic Services, if requested by Owner, Designer shall provide warranty call back services directly related to the services provided for herein for a period of twelve (12) months after final completion of each Project, including punch list work.

10.7 Designer agrees to render its professional services in accordance with the Project Schedule attached hereto as **Exhibit F.**

10.8 All attachments and inserts are hereby made a part of this Agreement and are herein incorporated.

This Agreement entered into as of the day and year first written above.

"OWNER":	**"TECHNOLOGY DESIGNER":**
BLOOMFIELD HILLS SCHOOLS	**BARTON MALOW BUILDERS LLC**
By:_____	By:_____
Its:_____	Its:_____

EXHIBIT A

DETAILED DESCRIPTION OF THE PROJECT

(See Attached – Scope of Work*)

NOTE:

*** THE TECHNOLOGY BOND BUDGET MAY BE UPDATED PERIODICALLY, FROM TIME TO TIME, UPON MUTUAL AGREEMENT OF THE OWNER AND DESIGNER**

EXHIBIT A: PROJECT SCOPE

Technology Designer Scope of Work

In general technology refers to replacement of the outside fiber-optic cabling system, structured data cabling, electrical raceway coordination, network/wireless infrastructure, security cameras, classroom audiovisual equipment, and audiovisual systems related to building renovations, additions, and new building construction.

Fall 2020 - Summer 2021

1. Audiovisual and other technology pilots
2. High School video surveillance
3. District-wide PA and clock systems. Install phased with building renovations and construction.

Fall 2021 – 2022

1. North and South Middle Schools
    a. Infrastructure cabling
    b. Audiovisual systems
    c. Video surveillance
    d. Visitor management systems
2. District-wide WAN fiber replacement. Install phased with building renovations and construction.
3. District-wide network and wireless. Install phased with building renovations and construction.
4. Data center / network storage replacement
5. Access Control. Install phased with building renovations and construction.

2023

1. Elementary Schools (EHMS and WHMS)
    a. Infrastructure cabling
    b. AV systems
    c. Video surveillance
    d. Visitor management systems
2. District-wide network/wireless replacement, phased installation with construction coordinated with renovations and construction at each site.

2024

1. Elementary Schools (Conant and Way)
    a. Infrastructure cabling
    b. AV systems
    c. Video surveillance
    d. Visitor management systems

2025-2026

1. Support buildings
    a. Infrastructure cabling
    b. Audiovisual systems
2. High School
    a. Classroom and learning space audiovisual systems
    b. Performance audiovisual systems (Auditorium)

TBD

1. Teacher computers
2. Student devices

EXHIBIT B

KEY PERSONNEL

Paul Twigg	Project Director
Brian Jessie*	Project Manager

*** The Owner's Director of Learning Technology reserves the right to require personnel substitutions if deemed beneficial to the timely completion of the Project.**

The Designer shall not remove any of the above-referenced personnel from the Project without the prior written consent or request of the Owner. In the event any such personnel must be replaced, the Designer shall promptly find an acceptable replacement in consultation with the Owner.

EXHIBIT C
HOURLY BILLING RATES

POSITION TITLE	RATE (through 2021)
Designer & Project Manager	$95.00
Project Director	$155.00
Vulnerability Assessment & Management Specialist	$195.00
Mechanical Engineer	$155.00
Electrical Engineer	$155.00
Project Executive	No Charge for this Project
Finance/Accounting/Budgeting	See Note 1, below
Project Engineer	See Note 1, below
Acoustician	See Note 2, below

Notes:

1. Designer will not charge additional labor costs for a project manager, superintendent, project engineer, or accountant while such Barton Malow personnel are on-site at Bloomfield Hills Schools to support the construction management services Barton Malow is performing per the Construction Manager-At Risk Contract between Barton Malow and the School District, provided that the Construction Management schedule aligns with the Technology Services schedule for the Project. In the event such personnel are no longer on-site, Designer and the School District agree to negotiate in good faith the rates for such services/personnel.

2. The rates set forth above are good through December 31, 2021. Barton Malow Builders LLC may thereafter annually adjust the personnel rates in accordance with normal salary review practices. Rate increases are limited to three (3%) percent per year.

EXHIBIT D
PROGRAM OF SERVICES

TO BE ATTACHED PURSUANT TO PARAGRAPH 7.8
(SEE ATTACHED TECHNOLOGY BOND BUDGET)

******* **THE ATTACHED PROGRAM OF SERVICES MAY BE UPDATED PERIODICALLY, FROM TIME TO TIME, UPON MUTUAL AGREEMENT OF THE OWNER AND DESIGNER**

EXHIBIT D: PROGRAM OF SERVICES

Technology Designer Scope of Work

In general technology refers to replacement of the outside fiber-optic cabling system, structured data cabling, electrical raceway coordination, network/wireless infrastructure, security cameras, classroom audiovisual equipment, and audiovisual systems related to building renovations, additions, and new building construction.

Fall 2020 - Summer 2021

1. Audiovisual and other technology pilots
2. High School video surveillance
3. District-wide PA and clock systems. Install phased with building renovations and construction.

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1. North and South Middle Schools
    a. Infrastructure cabling
    b. Audiovisual systems
    c. Video surveillance
    d. Visitor management systems
2. District-wide WAN fiber replacement. Install phased with building renovations and construction.
3. District-wide network and wireless. Install phased with building renovations and construction.
4. Data center / network storage replacement
5. Access Control. Install phased with building renovations and construction.

2023

1. Elementary Schools (EHMS and WHMS)
    a. Infrastructure cabling
    b. AV systems
    c. Video surveillance
    d. Visitor management systems
2. District-wide network/wireless replacement, phased installation with construction coordinated with renovations and construction at each site.

2024

1. Elementary Schools (Conant and Way)
    a. Infrastructure cabling
    b. AV systems
    c. Video surveillance
    d. Visitor management systems

2025-2026

1. Support buildings
    a. Infrastructure cabling
    b. Audiovisual systems
2. High School
    a. Classroom and learning space audiovisual systems
    b. Performance audiovisual systems (Auditorium)

TBD

1. Teacher computers
2. Student devices

EXHIBIT E
INSURANCE CERTIFICATES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: Detroit.certrequest@marsh.com CN102957321--Cas-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Old Republic Insurance Company — 24147 INSURER B : XL Insurance America Inc. — 24554 INSURER C : XL Specialty Insurance Company — 37885 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CHI-009544848-01 **REVISION NUMBER:** 5

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC OTHER:			MWZY 315247 20	01/01/2020	01/01/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 5,000,000 $ 5,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			CAH740935705	01/01/2020	01/01/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
B	[ ] UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			US00064722LI20A	01/01/2020	01/01/2021	EACH OCCURRENCE AGGREGATE	$ 15,000,000 $ 15,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		CWD740935505	01/01/2020	01/01/2021	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
B	Excess General Liability			CGE 7409929	01/01/2020	01/01/2021	Each Occurence General/Prod-Comp Ops Agg	2,000,000 4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Bloomfield Hills Schools is/are included as Additional Insured (except Workers Compensation) where required by written contract.

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE of Marsh USA Inc.

Manashi Mukherjee

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: detroit.certrequest@marsh.com CN102957321--Prof-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : Indian Harbor Insurance Company — 36940 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CHI-009544851-01 **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			CEO742018205	01/01/2020	01/01/2021	Limit	5,000,000
	Including Pollution Coverage						SIR each claim	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee — Manashi Mukherjee

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/28/2020

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA Inc. One Towne Square, Suite 1100 Southfield, MI 48076 Attn: Detroit.certrequest@marsh.com CN102957321--Crime-20-21	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Barton Malow Company 26500 American Drive Southfield, MI 48034-2252	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Westchester Fire Insurance Company — 10030 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CHI-009544854-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Crime			G25143346005	01/01/2020	01/01/2021	Limit	5,000,000
							Deductible	250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Bloomfield Hills Schools
7273 Wing Lake Road
Bloomfield Hills, MI 48301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee — Manashi Mukherjee

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EXHIBIT F
PROJECT SCHEDULE

The Preliminary Project Schedule is attached hereto, which schedule will be updated during the term of this Agreement as mutually agreed to by the Parties.

Bloomfield Hills Schools
2020 Bond Program
Exhibit F - Project Schedule

Barton Malow
7/30/2020

