

**MASON CONSOLIDATED SCHOOLS  
ARCHITECTURAL SERVICES**

REQUEST FOR PROPOSALS ("RFP")

March 1, 2024

## Mason Consolidated Schools

### REQUEST FOR PROPOSAL FOR ARCHITECTURAL SERVICES PART 1 -- GENERAL INSTRUCTIONS

#### A. Instructions

Qualified firms are invited to submit a proposal to Mason Consolidated Schools (the "District") for Architectural Services for a proposed project which may include: (1) Pre-Design Phase Services, (2) Design Phase Services, (3) Construction Phase Services, (4) Post-Construction Phase Services, and (5) other potential components to be determined (collectively the "Project"). The successful firm is also expected to provide the District assistance in developing the full scope of the District's construction program and Project.

The scope of the Project is not yet fully determined. Proposing firms are expected to evaluate the District's facilities immediately and assist in developing the Project program and pre-bond planning. However, Attachment "D" provides a brief description of what the District envisions for the Project at this time. The District expects to pay for the Project through voted bonds that will be placed on the ballot at a future election.

The District expects that it will use a **Construction Manager- At-Risk/Constructor** for this Project. However, the District reserves the right to modify the project delivery method (including, but not limited to, utilizing a Construction Manager-Adviser) at any time prior to execution of an agreement between the selected architect and District based on the proposals submitted. Unless the District modifies the project delivery method, the form of agreement between the selected bidder and the District will be as set forth in Attachment "A," hereto, which is a modified version of AIA Document B133 – 2019 Edition. For the purpose of this RFP, the terms "proposal" and "bid" shall be treated as one and the same.

**The District reserves the right to reject any or all proposals and to make any award that it considers to be in the best interest of the District.**

#### B. Proposal Submission

To be considered by the District, ten (10) copies of the complete proposal must be received no later than 3:00\_p.m., March 29, 2024. Proposals should be addressed to:

Kelli Tuller  
Superintendent  
Mason Consolidated Schools  
2400 Mason Eagles Drive  
Erie, MI 48133

The lower left corner of the submittal envelope should be marked: PROPOSAL FOR ARCHITECTURAL SERVICES.

Submitted proposals become the property of the District and will not be returned.

#### C. Late Proposals

The District may choose, in its sole discretion, not to consider any proposal received by the District after the time specified above. The party submitting a proposal shall bear full and total responsibility for ensuring timely receipt of that proposal.

**D. Withdrawal of Proposals**

Proposals may be withdrawn by written notice received at any time prior to the submission deadline. Proposals may be withdrawn in person, provided that the firm's representative signs a receipt for the proposal prior to the submission deadline.

**E. Questions Concerning this RFP**

Inquiries may be made to Kelli Tuller at the address above, via telephone at (734) 848-9304 or via email at ktuller@eriemason.k12.mi.us. Information about the District is available during business hours (8:00 a.m. – 4:00 p.m.).

**F. Economy of Preparation**

Proposals should be prepared simply, providing a concise description of the proposer's ability to meet the requirements of this RFP. Please limit your proposal to the information requested in Part 3 – Proposal Details and Part 4 – Proposal Summary.

**G. Proposal Signature**

The section entitled, Part 4 – Proposal Summary, should be signed by the person responsible to decide the level of services and costs being offered. In the case of a joint proposal, each party should respectively certify its response as to services and costs.

**H. Prime Responsibilities**

The selected proposer will be required to assume responsibility for all services offered in the proposal, regardless of who actually provides such services and regardless of whether the selected firm utilizes separate consultants. The selected proposer shall be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. *The proposer shall provide all necessary services that may be provided for the Project by an architect or engineer as described in 1937 PA 306, as amended, the School Building Construction Act, and 1980 PA 299, as amended, and other applicable laws. This Project is subject to the prevailing wage and fringe benefit rate requirements of MCL 401.1101, et seq.* In the event of a joint proposal, such proposers shall be jointly and severally responsible for all services offered in the proposal, regardless of who produces them.

**I. Proposal Preparation Costs**

All costs incurred in preparing the proposal, providing reasonably requested or required presentations, or in negotiating applicable contracts shall be the sole responsibility of the proposer. The District shall not be responsible for, and will not pay, the cost for any information solicited or received.

**J. Acceptance of Proposal Contents**

The contents of the selected proposer's proposal will become contractual obligations upon issuance of a contract, except with regard to particular contents which are rejected by the District. Failure of the successful proposer to abide by such obligations, without the express consent of the District's Board of Education, will result in cancellation of the award.

**K. Proposed Project Schedule**

The District expects to commence work on the Project about Spring 2025 and an anticipated completion date as determined by the owner upon finalization of the scope of the project. The District and all bidders recognize that this schedule may be modified once the Architect and Construction Manager have been selected and reviewed the Project requirements. Notwithstanding the foregoing, a review of the District's facilities is time critical and may be expedited.

**L. Collusive Bidding and Relationship Disclosure.**

The Proposer certifies that its proposal is made without any previous understanding, agreement or connection with any person, firm, or company making a Proposal for the same project and is in all respects fair and without outside control, collusion, fraud, or other illegal action.

The Proposer shall submit a Familial Relationship Disclosure in substantially the form attached hereto as Attachment "B."

The Proposer shall submit an Iran Economic Sanctions Act Certification in substantially the form attached hereto as Attachment "C."

**M. Scope of Services**

It is assumed that any proposal submitted will include, but shall not necessarily be limited to, the performance of all services identified in this section, elsewhere in the RFP, and as set forth in the form of Agreement attached as Attachment "A." The District will consider alternate proposals. However, any alternate proposals must clearly indicate any activities that have been deleted and/or added from the requested scope of services. References to the "Architect," "Engineer," "Designer," "Bidder," "Proposer," "firm," or other similar term shall all be intended to refer to the entity submitting a response to this RFP.

1. Pre-Design Phase Services

- a. Conducting a full facilities review with the District and potentially the Construction Manager.
- b. Assist in developing a construction program and project scopes and establishing an estimated cost of each desired improvement in accordance with MCL 339.2011 (which cost estimating obligation shall continue after programming).
- c. Assist in determining the estimated cost of the desired improvements and in sizing the Project.
- d. Attend meetings and make presentations concerning the proposed Project.
- e. Assist the District in the development of the District's construction program and Project scope.

2. Design Phase Services

- a. Develop Preliminary Design including, but not limited to, Space Planning, Schematic Design and Design Development specific to the Project.
- b. Complete Final Design including, but not limited to, working drawings, specifications, cost estimates, prospective bidders list, approvals (State and local authorities), technical addenda and clarifications for all of the following,

as applicable for each particular project:

- i. Landscape/Site Design
  - ii. Structural Design
  - iii. Architectural Design
  - iv. Mechanical Design
  - v. Electrical Design
  - vi. Civil Design
  - vii. Theater/Stage/Lighting Design
  - viii. Acoustical Design
  - ix. Technology Design and Procurement
  - x. Energy Efficiency Design
  - xi. Playground Design
  - xii. Traffic Engineering
- c. Attend meetings with each committee to develop goals, explain options, and reach consensus on final plans.
  - d. Provide copies of meeting minutes for distribution to appropriate staff and Board members.
  - e. Review the construction schedule and recommendations for appropriate bidding categories and phases.
  - f. Review an occupancy schedule to be implemented upon completion of construction.
  - g. Produce and review projected cash flow schedules for all aspects of the Project.
  - h. Review commissioning options with District and incorporate appropriate commissioning duties into the plans and specifications.
  - i. Provide necessary cost estimates to satisfy statutory requirements and to permit the Architect to perform basic services.

### 3. Bidding Phase Services

- a. Complete bid package of all required construction documents and specifications, including reproduction of same.
- b. Develop the necessary advertising for bid document distribution.
- c. Assist District with creating all possible contractor interest in bidding and performing this work.
- d. Prepare and distribute construction documents to bidders.
- e. Participate in pre-bid conferences with all bidders for each division of work.
- f. Assist in evaluating bids in each work category.
- g. Participate in post-bid interviews with apparent low bidders.
- h. Develop award recommendations to District.
- i. Review all trade contracts and associated documents.
- j. Advise District as to necessary building permits and other governmental agency approval applications.

### 4. Construction Phase Services

- a. ***Provide on-site observation and supervision of construction in satisfaction of the requirements of 1937 PA 306 and 1980 PA 299, including supervision and site visits as necessary during the entire construction period.***
- b. Continually monitor and update construction, construction draw, and occupancy schedules.

- c. Prepare change order requests, and receive District approvals.
- d. Review shop drawings and expedite the review process.
- e. Review payment and cost control procedures, including the following:
  - i. Contractors' Schedule of Values
  - ii. Contractors' Payment Application and Certification
  - iii. Contractors' Sworn Statements and Waivers of Lien, if applicable
  - iv. Purchase Order and disbursement Summaries
  - v. Change Order Listings
  - vi. Budget Cost Summary Reports
- f. Participate in progress meetings and provide progress reports of same.
  - i. As needed, meet with the building principal to discuss any activities which may affect operations.
  - ii. Weekly meeting with District representative and trade contractors.
  - iii. Monthly meetings for planning, coordination, and payments with District administrators which will include status reports on the Project, budget, change orders, and allowances for reimbursable expenses.
- g. Prepare as-built drawings and record and review operating and maintenance manuals, warranties, guarantees, and Project directories.
- h. Ensure that all construction is completed as specified by the construction documents and meets all codes and regulations of agencies having jurisdiction.
- i. Provide review and coordinate Project commissioning, including but not limited to mechanical and electrical systems.
- j. Prepare punch lists, coordinate final inspections, and recommend District acceptance and occupancy.

5. Post-Construction Phase Services

- a. Assist in facilitating/requiring training sessions for appropriate employees regarding the operation and maintenance of technical equipment.
- b. Provide follow-up and call-back services for the duration of the longest warranty period covered by a contractor on the Project.
- c. Conduct a post-occupancy walk-through appropriately timed to address Project issues prior to expiration of applicable warranties.
- d. When requested, advise and assist the District with special and/or additional services beyond the scope of basic services.

**N. Insurance Coverage**

Prior to beginning work, the selected firm will be required to provide a copy of insurance certificates for all required insurances, including general, professional, and umbrella liability coverages. Any consultants of the selected firm shall provide insurance coverages at least equal to that provided by the firm itself, and those consultants shall provide insurance certificates for general and professional liability coverages.

**O. Payment of Fees**

Professional fees and reimbursable expenses shall be itemized on the same invoice so that the District issues no more than one monthly payment to the architectural firm. The specific days of the month on which invoices are to be received and checks released, as well as the payment schedule, will be determined when the contract is finalized with the selected firm. The District will make payments to the Architect as determined during negotiations for a final Agreement with the selected firm. No payment for any professional services and/or expenses will be made before the District receives bond proceeds from a future bond issue. If the bonds are not issued, the District shall not be responsible for payment of fees and reimbursable expenses, and the District may terminate the Agreement. When the District receives bond proceeds from a future bond issue, the District shall be responsible for payment of the agreed upon fees and/or reimbursable expenses incurred by the Architect, which shall be described in the Agreement.

**P. Construction Manager**

The District's Construction Manager for the project is to be determined. The District reserves the right to utilize the services of any construction manager(s) of its selection.

**Mason Consolidated Schools**  
**REQUEST FOR PROPOSAL FOR**  
**ARCHITECTURAL SERVICES**  
**PART 2 -- PROPOSAL REVIEW AND SELECTION PROCESS**

**A. Time Frame for Architect Selection**

It is the intent of the District to select an Architect according to the following schedule:

March 1, 2024	.....	RFP is released.
March 15, 2024	.....	Pre-proposal review meeting with Owner at 10:00 am
March 29, 2024	.....	Proposals are due.
April 1-2, 2024	.....	Optional Bidder interviews
April 3, 2024	.....	Board of Education selects an Architect and authorizes the Superintendent to finalize a contract.
April 22, 2024	.....	Architect begins work.

The District reserves the right to adjust the above schedule and/or to add/remove steps as it deems necessary or desirable in its sole discretion, with or without notice to bidders or potential bidders.

**B. Review and Selection Process**

The District reserves the right to reject any or all proposals that are determined not to be in the best interests of the District. The District will not necessarily select the lowest cost proposal.

**C. Pre-Bid Walk of Facilities**

The District intends to conduct a pre-bid walk of the applicable facilities. The Proposer is required to attend any such walk-through. The Proposer may ask questions about the facilities and the RFP during such walk, answers to which may be given immediately or at a later date in accordance with the process described above. If a Proposer does not attend any such pre-bid walk-through, it shall provide along with its proposal an explanation why the District should be confident that Proposer understands the scope of work to be provided pursuant to this RFP.

The District reserves the right to reject the proposal of any Proposer failing to attend any such pre-bid walk and failing otherwise to explain in writing why the Proposer has at least equivalent knowledge of the District’s facilities and requirements as other Proposers who attended the walk-through.

**D. Architect Interviews**

It is expected that the District may invite firms to participate in interviews with the Board of Education (and/or, if applicable, any Selection Committee) and to answer any questions that may exist about their proposal.

**E. Evaluation Criteria**

The District will evaluate proposals considering all of the information provided in response to this Request for Proposal, including but not necessarily limited to the following:

*Adherence to RFP:* To merit evaluation, submittals must conform, in both content and presentation, to the parameters established in this request.



*Relevant Experience:* Relevant experience of the firm with construction and renovation of K-12 public school facilities, particularly those of comparable size and complexity.

*Qualifications:* Qualifications and experience of the key staff to be assigned to the project.

*Timeliness:* Ability of the firm to complete work tasks specified in this RFP in a timely fashion.

*Responsiveness:* The ability to meet quickly with District officials, contractors, etc. when necessary.

*Team Compatibility:* The ability of the firm to work with students, District employees, parents, community members, architectural firms, contractors, and governmental officials based on references and interviews.

*Fee Proposal:* The total fees for architectural services, including professional fees, allowances for reimbursable expenses, and allowances for additional on-site personnel costs (if any).

## **F. Awarding of the Contract**

All proposals received shall be subject to evaluation by District Administration and any selected consultants for the purpose of recommending to the Board of Education a firm or firms with whom to execute a contract. It is anticipated that the Board of Education will authorize a District administrator to finalize contract terms with the selected firm, which terms will be subject to the final approval of the Board of Education.

The form of Contract shall be based on the modified version of AIA Document B133 – 2019 Edition, attached hereto as Attachment “A.” The bidder shall be deemed to agree with the attached document in its entirety, ***except and to the extent the bidder specifically objects in writing to any provision therein and attaches the objection(s) as a separate document to its response to this RFP, along with a proposed alternative.*** The absence of any such written objection shall constitute an agreement to all proposed contract terms.

Notwithstanding anything herein to the contrary, the District shall have the ability, in its sole discretion, to negotiate any term of the Contract. The award of a Contract shall be contingent upon the successful negotiation of any such issues identified by the District. Without limiting the breadth of the foregoing, it is expressly acknowledged and agreed that the District has the right to require negotiation of an Owner/Architect Agreement for use with an "at risk" construction manager (or Construction Manager-Constructor).

**MASON CONSOLIDATED SCHOOLS**

**REQUEST FOR PROPOSAL FOR  
ARCHITECTURAL SERVICES  
PART 3 – PROPOSAL DETAILS**

NAME OF FIRM: \_\_\_\_\_ YEAR ESTABLISHED:  
\_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_ (Street) (City/State) (Zip Code)

TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER:  
\_\_\_\_\_

**A. Business Organization**

1. Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other  
\_\_\_\_\_

2. Years firm has provided K-12 Architectural Services:

3. List Principals and officers of the firm:

4. List the various professional and support staff positions and number of personnel in each position in your firm. Provide the hourly rates of all listed staff categories in this paragraph. Bidders should list all employees/staff categories and their hourly rates if the bidder proposes to utilize such staff for the Project.

Professional Staff Number Hourly Rate Support Staff Number Hourly Rate

5. Provide a brief history of your firm's experience with public school construction.

6. Describe the services your firm will provide during and after Project Closeout, Commissioning, Punch List process, and following up on claims, guarantees and warranties.

7. Recognizing the timing of the Owner's bond planning process, describe your firm's planned support of and commitment to the Owner's informational and interested voter campaigns related to a bond issue.

- a. Describe the processes and strategies you would use in assisting the district in developing the informational campaign strategies for a successful bond issue proposal. What specific impact can your firm bring to this effort?
- b. Describe the materials that your firm would provide such as graphic presentation of planned projects, brochures, postcards, displays, etc.
- c. Identify in detail any other commitments the firm would make in assisting the district in the bond election process.

8. PERSONNEL:

Provide an organization chart, including resumes of all key personnel your firm will commit for the duration of this Project if awarded the contract and the hourly rate for such personnel in the event they provide Additional Services, and provide documentation regarding their respective qualifications. For the project manager and project architects you identify to be assigned for the duration of our Project, provide the name and phone number of two superintendents, two business managers, and two building principals with whom the architect has worked on a school building project. Architect shall not change staff assigned to the Owner's Project without Owner's approval or Owner's request except in the event such individual dies, is disabled or leaves the employment of the Architect.

9. List professional consultants outside your firm you propose using to provide services not available in your firm.

<u>Firm Name</u>	<u>Location City/State</u>	<u>Specialty</u>	<u>Number of Times Affiliated With You</u>
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- 1.
- 2.
- 3.
- 4.

10. Provide the applicable schedule and prevailing wage and fringe benefit rates.

11. What is your firm's present workload?

	<b>Number of Projects</b>	<b>\$ Value</b>
Bond elections in the next 12 months		
Projects in pre-construction phase		
Projects in construction phase		

Provide a list of all scheduled construction projects and unscheduled construction projects currently being handled by your firm, including an indication of percentage of completion for each project.

12. What is your General Liability Insurance coverage:
  - a. Total amount of protection provided.
  - b. Amount of deductible, if any.
  - c. Name, address, phone #, and contact person of Insurance Company.
  - d. Are the costs of this coverage included in your Fee Proposal? If not, what is that additional cost?
13. What is your Professional Liability coverage:
  - a. Total amount of protection provided.
  - b. Amount of deductible, if any.
  - c. Name, address, phone #, and contact person of Insurance Company.
  - d. Are the costs of this coverage included in your Fee Proposal? If not, what is that additional cost?
14. Have you had litigation, arbitration or a claim filed against or settled with your firm by an educational client or have you filed or settled the same against an educational client? If yes, explain each in detail.
15. Have you had litigation, arbitration or a claim filed against or settled with your company by any client outside of the educational market or have you filed the same against any other client? If yes, explain each in detail.
16. Has your firm ever been terminated, for cause or for convenience, prior to completion of a project or has your firm ever terminated an architectural or design contract, for cause or for convenience, prior to completion of a project? If yes, explain each in detail.

**B. Approach to Architectural Services**

1. Describe in detail, the process you will follow from approval of the bond election to approval of the final design, to develop the drawings and specifications for our Project.
  
  
  
  
  
  
  
  
  
  
2. List what you consider to be the best school construction project you have designed:

Project Name:

School District:

Contact:

Phone Number

Total Cost

Square Footage

# of Change Orders

Date Completed

Project Architect

Cost per Square Foot

Cost of Change Orders

Why do you consider this school to be your firm's best work?

3. List the top five exceptional educational features of school construction projects designed by your firm.
4. Describe the method(s) of budget/cost control, quality control, and time schedule adherence you will use for the Project.
5. List the steps in your standard change order procedure, your criteria used to determine whether Additional Service fees will be charged and for change orders, and your fee schedule for change orders.
6. Explain your philosophy regarding change orders and identify on both a dollar and percentage basis the volume of change orders on each of your last five (5) K-12 school construction projects. For these projects, indicate the proportion of those changes that were owner-initiated and the identity of the owner.
7. Describe how your firm stays up-to-date on construction code and regulatory requirements applicable to school construction.
8. Some of the construction work may occur while school is in session. Describe how your firm will minimize any interruptions to our day-to-day operations.
9. Discuss the method of on-site observation you will use for our Project, and how you will ensure a same-day response should we need on-site advice.

10. Describe your philosophy regarding the establishment, use and purpose of contingency funds.
  
11. Identify all categories of anticipated reimbursable expenses the Architect would expect to charge to the District.
  
12. Describe in detail the typical school bond election informational campaign run by your firm, including the identification of the individual(s) you would assign to such a campaign to work with the District. Please also identify the number of school bond campaigns your firm has handled in the last 24 months in Michigan and identify all such successful campaigns. Include references from at least one unsuccessful and two successful campaigns.
  
13. Add any additional information about your design approach as envisioned for this Project.
  
14. List the three (3) most recent school construction projects for which your firm has acted as Architect.
  - a. Project Name:  
 School District:  
 Contact:  
 Phone Number  
 Total Cost  
 Square Footage  
 # of Change Orders  
 Date Completed  
 Project Architect  
  

Cost per Square Foot  
 Cost of Change Orders
  
  - b. Project Name:  
 School District:  
 Contact:  
 Phone Number  
 Total Cost  
 Square Footage  
 # of Change Orders  
 Date Completed  
 Project Architect  
  

Cost per Square Foot  
 Cost of Change Orders
  
  - c. Project Name:  
 School District:  
 Contact:

Phone Number	
Total Cost	
Square Footage	Cost per Square Foot
# of Change Orders	Cost of Change Orders
Date Completed	
Project Architect	

**C. Anticipated Project Schedule**

The District desires the selected firm to review the District’s existing facilities and assist the District in preparing a Project scope immediately after selection. If the bonds financing the project are qualified through the Michigan School Bond Qualification and Loan Program, the Architect must prepare an Application for Preliminary Qualification of Bonds and file it with the Michigan Department of Treasury. Thereafter, the District, the Construction Manager, and the Architect will collaborate on creating a detailed Project schedule upon a successful bond vote. Please identify any concerns or reservations your firm may have with these general parameters and describe any negative impacts on the Project foreseen as a result of such parameters. The District anticipates working with the selected Architect after bidding to consider Project Schedule adjustments necessary to maximize bidding opportunities.

**Mason Consolidated Schools**

**REQUEST FOR PROPOSAL FOR  
ARCHITECTURAL SERVICES  
PART 4 – PROPOSAL SUMMARY**

Because this RFP relates to the provision of services on a yet-to-be-determined project scope, the cost proposal shall be stated as a percentage of construction cost as set forth below. The total cost is to include professional fee and allowances for reimbursable expenses. A general description of the Project is identified in Attachment “D.” The District understands the difficulty in submitting a cost proposal for an undefined Project scope, so if you believe any other information or clarification may be helpful to the District in determining your cost for services (such as, but not limited to, a further breakdown of costs per cost or work category), please include that information in your proposal.

**Bond Size – Approximately \$11 Million**

		Fee as a % of Cost of the Work (hard construction cost)
1.	Pre-Design Phase	
2.	Design Phase	
3.	Construction Phase	
4.	Post-Construction Phase	
5.	Any Other Costs	
6.	Total Fee/Compensation	

**Explain Any Change in Proposed Fee Due to Higher or Lower Project Cost (if applicable):**

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This proposal has been prepared to provide the District with all the information requested in Part 3, Proposal Details, of the RFP regarding Architectural Services. The undersigned certifies that the proposal contained herein meets or exceeds the scope of services as outlined in this RFP, and that any items that have been deleted from and/or added to the requested scope of services (including, but not limited to, the proposed contract language) are clearly noted as follows:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

If a corporation, indicated State of incorporation and affix seal.

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Signature/Title

**ATTACHMENT “A”**

[Form of Agreement Follows]

Attachment "B"

**FAMILIAL DISCLOSURE STATEMENT**

AFFIDAVIT OF \_\_\_\_\_  
(insert name of affiant)

STATE OF MICHIGAN )  
 )ss  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ makes this Affidavit under oath and states as follows:  
(insert name of affiant)

1. I am a/the:

- President
- Vice-President
- Chief Executive Officer
- Member
- Partner
- Owner
- Other (please specify) \_\_\_\_\_

of [insert name of contractor], a bidder for architectural services for Kingsley Area Schools.

2. I have personal knowledge and/or I have personally verified that the following are all of the familial relationships existing between the owner(s) and the employee(s) of the aforementioned contractor and the school district's superintendent and/or board members:

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3. I have authority to bind the aforementioned contractor with the representations contained herein, and I am fully aware that the school district will rely on my representations in evaluating bids for architectural services.

4. I declare the above information to be true to the best of my knowledge, information and belief. I could completely and accurately testify regarding the information contained in this affidavit if requested to do so.

\_\_\_\_\_  
*(signature of affiant)*

Dated: \_\_\_\_\_

Subscribed and sworn before me in \_\_\_\_\_ County,  
Michigan, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed)

Notary public, State of Michigan, County of \_\_\_\_\_

My Commission expires on \_\_\_\_\_

Acting in the County of \_\_\_\_\_

Attachment "C"

**IRAN ECONOMIC SANCTIONS ACT CERTIFICATION**

I am the \_\_\_\_\_ (title) of \_\_\_\_\_ (bidder), or I am bidding in my individual capacity ("Bidder"), with authority to submit a binding bid for the provision of architectural services to Kingsley Area Schools. I have personal knowledge of the matters described in this Certification, and I am familiar with the Iran Economic Sanctions Act, MCL 129.311, et seq. ("Act"). I am fully aware that the school district will rely on my representations in evaluating bids.

I certify that Bidder is not an Iran-linked business, as that term is defined in the Act. I understand that submission of a false certification may result in contract termination, ineligibility to bid for three (3) years, and a civil penalty of \$250,000 or twice the bid amount, whichever is greater, plus related investigation and legal costs.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed)

\_\_\_\_\_  
(date)

Attachment "D"

**SUMMARY – SCOPE OF PROJECT**

The items below are not intended to be a complete description of the scope of work but rather a partial summary of the scope of work as projected at this time:

- Conduct facilities assessment
- Participate in pre-bond planning
- Assist with developing full project scope
- Upgrade infrastructure at all buildings, including but not limited to electrical and water system upgrades
- Safe and secure facilities
- Other improvements to be determined with the advice of the architect and construction manager

Project Budget for Bond Sizing Purposes: Approximately \$11 million

# DRAFT AIA® Document A201™ - 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

« Mason Consolidated Schools 2025 Bond Program, in accordance with the application for preliminary qualification of bonds, all in accordance with the Owner-approved plans and specifications, all applicable laws, the Owner's fixed budget, and as otherwise approved by the Owner »  
« »

### THE OWNER:

(Name, legal status and address)

« Mason Consolidated Schools  
2400 Mason Eagles Drive  
Erie, MI 48133 »  
« »  
« »

### THE ARCHITECT:

(Name, legal status and address)

« TBD »  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
»« »  
« »

### TABLE OF ARTICLES

- |    |  |
|----|--|
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| 4  | ARCHITECT  |
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| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
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| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |

### ADDITIONS AND DELETIONS:

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- 13 MISCELLANEOUS PROVISIONS
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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) 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 in the Agreement in writing, the Contract Documents ~~do not also~~ 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, accepted portions of the Contractor's bid or proposal, or and portions of Addenda relating to bidding or proposal requirements. The execution of the Contract shall constitute acceptance of all provisions of the Drawings, Addenda, and all Contract Documents.

#### § 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate the Contractor's performance of the Architect's 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. The Work may constitute the whole or a part of the Project.

#### § 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 the Owner and by Separate Contractors.

#### § 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.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions or interpretations, as applicable, on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith and without negligence.

§ 1.1.9 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.

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§ 1.1.10 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.”

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§ 1.1.11 Where materials, systems 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.

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§ 1.1.12 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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§ 1.1.13 The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

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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. If the Drawings and Specifications conflict with each other regarding to the quality or quantity of Work required, the better quality and/or the greater quantity shall govern, and shall be provided, unless instructions are otherwise furnished to the Contractor by the Architect in writing.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Contract.

§ 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, Drawing, or other information that 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 Contract Documents typically pertaining to another contractor or trade.

§ 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.

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

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- .1 Where requirements specifically set forth in the Agreement are in conflict with other Contract Documents, including, but not limited to, these General Conditions, the Agreement shall govern.
- .2 In all other instances, the conflict shall be resolved by complying with the provision that is most favorable to the Owner, as determined in the Owner’s sole discretion.
- .3 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 Contractor will decide which Subcontract(s) shall furnish the same.

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§ 1.2.5 It is the intent of the Contract Documents to accomplish a complete and first-class installation in which there shall be installed new products of the latest and best design and manufacture, and workmanship shall be thoroughly first class, executed by competent and experienced workmen.

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- .1 Details of preparation, construction, installation, and finishing encompassed by the Contract Documents shall conform to the best practices of the respective trades, and that workmanship and construction methods shall be of first class quality so as to accomplish a neat and first class finished job.

.2 Where specific recognized standards are mentioned in the Specifications, it shall be interpreted that such requirements shall be complied with.

**§ 1.2.6** The Contractor acknowledges that there may be items of the Work that the Contractor is responsible to provide under the Contract that are not drawn or specified in the design but are necessary for the proper execution and completion of the Work, and are consistent with, and reasonable inferable from, the Drawings and Specifications. All such items shall be provided as part of the Work without delay in its progress and without any increase in the Contract Sum.

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### **§ 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 unless otherwise indicated in the Contract Documents or the Owner/Architect Agreement, the Architect and the respective consultants will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Drawings, Specifications, and other documents and all data used in compiling any tests, surveys, or inspections at the Project Site and the results therefrom, as well as all photographs, drawings, specifications, schedules, data processing output, computer-aided design/drafting (CADD) 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 and required by the Owner, the Contractor, or a third party, belong to the Owner. The Contractor may retain one Contract record set. 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 Drawings, Specifications, or other 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 Drawings, Specifications, and other documents pertaining to the Project.

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### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated an appropriate representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by registered or certified mail, by courier, or by electronic transmission if an method for electronic transmission is set forth in the Agreement. acknowledgment of receipt is received from the recipient or proof of receipt is otherwise established.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to ~~the designated~~ an appropriate representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### § 1.7 Digital Data Use and Transmission

The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

#### § 1.8 Building Information Models Use and Reliance

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

### 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 subject to parameters of authority established by the Owner's Board of Education. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 NOT USED. 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.~~

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#### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish, as applicable, to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall immediately notify the Owner that the Work has stopped and state with specificity why any evidence provided (or not provided) by the Owner is insufficient. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, ~~the Owner shall not~~ materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as “confidential,” the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose such “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose such “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, 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.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located State of Michigan. 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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 Taking into account the Contractor’s experience and expertise, 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 not be entitled to additional compensation resulting from its failure to confirm the location of site utilities or existing structures prior to the opening of the Contractor’s bid.

§ 2.3.5 Upon specific written request of the Contractor, 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. Contracts with other Contractors alone shall not constitute sufficient Owner control for purposes of this Section.

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

### § 2.4 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. This right shall be in addition to and not in limitation of the Owner’s rights under any provision of the Contract Documents.

### § 2.5 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten ~~three~~ day period after receipt of notice from the Owner or the Owner’s designee (including, for this purpose, the Architect) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, including any claim against the Contractor’s Performance Bond, correct such default or neglect. In the event the Contractor’s default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately commence and continue correction; otherwise, the Owner may undertake the same actions as permitted in the prior sentence. 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 Architect's and/or other Contractor's additional services made necessary by such default, neglect, or failure. If the Contractor does not agree to a Change Order as described in the preceding sentence, the Owner may nevertheless withhold the reasonable cost of correcting such deficiencies and the expenses identified in the preceding sentence (including, but not limited to, all legal expenses incurred to effectuate and enforce this provision). Exercise of such rights shall in no way limit or jeopardize the Owner's right to any claim against the Performance Bond or Contractor. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the aforementioned Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. 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, the Owner may withhold any payments due Contractor to cover all costs for labor, material, and equipment plus that other entity's administrative, profit, and overhead costs. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### 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 Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 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 or the Subcontractor's Subcontractor or supplier, at any tier, causes any type of defective Work, injury, loss or damage to the Owner, direct or indirect, the Contractor shall be jointly and severally liable to the Owner for such injury 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 site, become generally familiar with local 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the 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 Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the 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.

§ 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, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require, with a copy of same to be forwarded to the Owner.

§ 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 submit 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, subject to Section 15.1.7, 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.

§ 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 could have been discovered by the exercise of reasonable diligence. Unless the Contractor establishes that such error, inconsistency 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.

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### § 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, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall immediately notify the Architect of delays of any other Contractors that could impact timely coordination and completion of the Work.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities 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 Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials and Utilities

§ 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 this Agreement.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect 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.

§ 3.4.4 The Contractor agrees that neither it nor its Subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this 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 this Contract.

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§ 3.4.5 Immediately after "award of the Contract," the Contractor shall provide the Architect a list showing the name of the manufacturer proposed to be used for each of the product(s) identified in the Specifications and, where applicable, the name of the installing Subcontractor.

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§ 3.4.6 The Architect will reply in writing to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data.

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§ 3.4.7 In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Contractor's responsibility to coordinate the Work with the owners of such utilities for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities. The Contractor shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate relocation of utilities as required by the Work. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of any utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity.

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#### § 3.4.8 Asbestos-Free Product Installation

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§ 3.4.8.1 It is hereby understood and agreed that no product and/or material containing asbestos, including chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any combination of these materials that have been chemically treated and/or altered shall be installed or introduced into the Work by the Contractor or its employees, agents, Subcontractors, 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 will be asbestos-free.

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§ 3.4.8.2 The Contractor also shall be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products to be asbestos-free in accordance with the requirements of Section 3.4.8.1.

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§ 3.4.8.3 The Contractor shall complete and submit to the Owner a certification evidencing asbestos-free product installation prior to issuance of the final Certificate for Payment in a form acceptable to the Owner.

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#### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner 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 to 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 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 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 purposes for which they are intended.
- 4 The Work and all materials and equipment incorporated into the Work will be merchantable.
- 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 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 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.

The Contractor shall, at the time of final completion of the Work and as a condition precedent to final payment to the Contractor, assign to the Owner all manufacturers' warranties related to the materials and labor used in the Work. The Contractor further agrees to perform the Work in such manner as to preserve any and all such manufacturers' warranties and deliver to the Architect the warranties, project manuals, operating procedures, and other materials related to each of the building systems and materials included in the Contractor's Work and as required by the Specifications.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

#### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. 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 same.

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 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, 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 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 and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Owner and Architect determines that they differ materially and cause an increase or decrease in the Contractor's

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cost of, or time required for, performance of any part of the Work, they will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner and Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party Contractor disputes the Architect's determination or recommendation, that party may the Contractor shall submit a Claim as provided in Article 15. The requirements of Section 2 of 1998 PA 57, as amended, are hereby incorporated into this document. The Contractor shall be 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 and Architect. 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.

§ 3.7.4.1 The Contractor bidding on the Work is responsible for visiting the site and determining all local conditions that may in any way affect its Work.

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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 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~~ shall be 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 the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the 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. 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.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner and/or the Architect may notify the Contractor, stating whether the Owner and/or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. ~~Failure of the Architect to provide notice 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 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 except with a superintendent who is satisfactory to the Owner.

**§ 3.10 Contractor's Construction and Submittal Schedules**

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current required under the Contract Documents or any scheduling updates issued by the Architect or Owner. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. 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.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's and Architect's approval. The Owner's and the Architect's approvals shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect for a reasonable amount of time to review submittals, and (3) shall provide for expeditious and practical execution of the Work. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved 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 perform the Work in general accordance with the most recent approved Project schedules and the most recent Work schedule submitted to the Owner and Architect consistent therewith.

§ 3.10.4 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.

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§ 3.10.5 Progress Meetings: Meetings of representatives of the various Contractors may be held for the purpose of coordination and furthering the progress of the Work. Contractor and Subcontractor attendance is mandatory. Meetings shall be held at regular intervals as provided in the General Requirements: special meetings may be held if deemed necessary by the Owner and/or Architect.

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§ 3.10.6 The Contractor shall proceed strictly (not substantially) in accordance with the critical path set forth in 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 delays or potential delays. If any progress report indicates any delays, the Architect shall 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 Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

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**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 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 for submittal to and review by the Architect 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 for submittal to and review by the Architect 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 for submittal to and review by the Architect 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 how 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 is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is 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 Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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.

§ 3.12.7 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 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 the 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 notified the Architect in 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.

§ 3.12.9 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 Architect on previous submittals. In the absence of such 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.

§ 3.12.10.1 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. Subject to its professional skill and

expertise. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 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, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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§ 3.13.2 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall detail (i) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon the Construction Schedule caused by such proposed temporary disruption. Unless otherwise approved by the Owner, all work shall be performed during the hours and on the days set forth in the Specifications. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of the Contract Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work for which appropriate notice was not furnished.

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§ 3.13.3 The Contractor will consult with the Owner and the Architect concerning any necessary operations at the Project site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting areas and any other construction impacts on the Owner's grounds.

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### § 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor and its Subcontractors, under the Contractor's direction, shall keep the premises and surrounding area free from accumulation of waste materials and 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.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement 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.

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§ 3.15.4 In addition to removal of rubbish, the Contractor and its Subcontractors, under the Contractor's direction, shall replace any broken glass, remove stains, spots, marks, and dirt from decorated work, clean hardware, and/or remove spots and smears from all surfaces which were affected by the Work.

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### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with 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 and Architect harmless from any and all cost, damages, or loss on account thereof, including, but not limited to, actual attorneys' fees, but shall not be responsible for 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 or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect. 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, Architect, 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. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, 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, or the failure to perform, the Work or the duties or obligations of the Contractor under the Owner/Contractor Agreement, these General Conditions, or the failure of the Contractor or the Work to conform with the Contract Documents, caused in whole or in part by the Contractor's breach of the Contract Documents or any negligent or wrongful acts or omissions of the Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts of any of them may be liable, to the fullest degree of Contractor's fault, on a comparative basis (or the fault of any others for whom the Contractor is responsible). The Contractor shall be responsible to the Owner, Architect, Architect's consultants, and agents and employees of any of them for all amounts such parties may be required to pay in attorney fees in order to pursue enforcement of this provision against the Contractor or otherwise obtain indemnification from the Contractor provided under the terms of this Section 3.18. Such obligation shall not be construed to negate, abridge or reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person set forth in this section. To the fullest extent permitted by law, the Contractor shall indemnify the Owner and hold the Owner harmless against all loss by fines, penalties or corrective measures resulting from acts of the Contractor or omissions by the Contractor, its Subcontractors, agents, employees or assigns, with respect to the violation of safety requirements of this Contract, including reasonable attorney fees.

§ 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 3.18.1 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. In addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for an shall indemnify, protect, and hold harmless the Owner and Architect from and against the payment of the following:~~

- ~~1 all contributions, taxes, or premiums (including interest and penalties thereof) 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 this Contract;~~
- ~~2 all sales, use, personal property and other taxes (including interest and penalties thereof) 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~~
- ~~3 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 this Contract.~~

~~The Contractor shall indemnify 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.~~

~~§ 3.18.3 In the event that any claim is made or asserted, or lawsuit filed for damages or injury arising out of or resulting from the performance of the Work, whether or not the Owner or Architect is named as a party, the Contractor shall immediately advise the Owner and Architect, in writing, of such claim or lawsuit and shall provide a full and complete copy of any documents or pleadings thereto, as well as a full and accurate report of the facts involved.~~

~~§ 3.18.4 The Contractor shall comply with, and ensure that its subcontractors comply with, the Michigan Prevailing Wage Act, MCL 408.1101, et seq. The Contractor shall indemnify and hold the Owner harmless from any claim, damage, loss, or expense incurred by the Owner, including but not limited to actual attorneys' fees, in any way related to failure of Contractor or its subcontractors to comply with the Michigan Prevailing Wage Act.~~

#### ARTICLE 4 ARCHITECT

##### § 4.1 General

~~§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The Term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.~~

~~§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~

##### § 4.2 Administration of the Contract

~~§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment and with the Owner's written concurrence during the correction period. The 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 more frequently as agreed with the Owner or required by 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. Except as otherwise set forth herein or in the Owner/Architect Agreement, the Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques,~~

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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.

§ 4.2.3 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, will guard the Owner against defects and deficiencies in the Work, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Except as required by the agreement between Owner and Architect or this document, the Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and except as provided in the agreement between Owner and Architect or this document, will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Architect shall provide all services and duties that may be performed by an "Architect" or "Engineer" in 1937 PA 306 and 1980 PA 299.

#### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to materially affecting the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such 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 or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The 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 Architect's review shall not constitute approval of safety precautions or 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 Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, the Architect 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine, with the Owner's concurrence, the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related

documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 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 site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness given the particular circumstances.

§ 4.2.12 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~~, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith and without negligence.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable 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 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 a Separate Contractor or the subcontractors of a Separate Contractor. The term "Subcontractor" shall also include Sub-subcontractors at any tier and 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 notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. All contractual agreements with additional persons or entities serving as a 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 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, ~~despite the Architect's or Owner's reasonable objection~~, 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution. ~~The Contractor shall notify the Owner and Architect of any proposed substitution a minimum of ten (10) days prior to such proposed change.~~

### § 5.3 Subcontractual Relations

By appropriate written agreement, 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 the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner 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.

### § 5.4 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

- .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~~ may be equitably adjusted ~~for increases in cost resulting from the suspension as negotiated by the parties.~~

§ 5.4.3 Upon 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.~~

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance ~~and waiver of subrogation.~~ The Contractor shall be responsible for coordinating the Work and 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 separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 ~~NOT USED. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

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#### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate 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 or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor 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 a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor 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, Separate 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 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, 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, Contractor, and Architect. A Construction Change Directive requires agreement may be issued by the Owner 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.

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

## § 7.2 Change Orders

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

- .1 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.

§ 7.2.2 Unless expressly stated otherwise in the Change Order, an agreement on any Change Order shall constitute the Contractor's final position on all matters relating to the change in the work that is subject to the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

## § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner 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 7.3.4.

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 the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine, with the Owner's approval, 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. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to a reasonable amount of the following that are actually incurred by the Contractor:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 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;

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- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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 7.3.7.

§ 7.3.7 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.

§ 7.3.8 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 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. For those undisputed portions, ~~the~~ Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of 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 Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments in writing, such agreement shall be effective immediately and the Architect will 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.

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#### § 7.4 Minor Changes in the Work

The Architect may order 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### 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 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 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 Architect 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 a Separate Contractor, the Owner, 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 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 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 seventy-two (72) hours of receiving notice from the Owner or Architect, 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 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 Separate Contractor, Subcontractor, supplier, or other entity on the Owner's behalf. The Owner may withhold such costs from the subsequent payments due the Contractor. To the extent such withholdings are insufficient to cover the costs, the Contractor shall pay the difference within ten (10) days of receiving an invoice for the same. 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.

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## § 8.3 Delays and Extensions of Time

§ 8.3.1 Provided the Contractor submits a written request for an extension not more than fourteen (14) 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending litigation, mediation, arbitration and/or binding dispute resolution, as applicable; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine and with which the Owner agrees. 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.

§ 8.3.3 This Section 8.3 ~~does not preclude~~ recovery of damages for delay by ~~either party~~ the Contractor under other provisions of the Contract Documents. Under no circumstances may the Contractor assert a Claim, cause of action, or other relief against the Owner for delay damages.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price,~~ The Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The schedule of values shall be prepared in such manner that the value associated for each major item of work and each subcontracted item of work is shown with materials and labor indicated separately on AIA Document G702A, Application and Certificate of Payment, Continuation Sheet, or otherwise.

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### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, ~~if required under Section 9.2,~~ for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application and Certificate for Payment shall be AIA Document G702, Application and Certification for Payment, supported by AIA Document G702A, Continuation Sheet, unless otherwise agreed by the Owner. Applications for Payment are due to the office of the Architect by the designated day of the month. Applications for Payment that are received after the specified date will not be processed until the following month.

§ 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 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 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 for which the Owner might in any way be responsible have been paid or otherwise satisfied, and (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialman, supplier and laborer for the Contractor addressing all previous Applications for Payment submitted for the Project.

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§ 9.3.1.4 The Contractor must provide copies of the insurance certificates, bonds, and the same for all of the Subcontractors prior to submitting the first Application for Payment.

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§ 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 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 site at a location agreed upon in writing. Payment for materials and equipment stored on or off the 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 site, for such materials and equipment stored off the site. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner for approval to include such material costs in the next progress payment. The Contractor's request shall include the following information:

1. A list of the fabricated materials consigned to the Project (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. Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
6. 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.

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§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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 minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect, in writing, together with the certification to which it pertains. However, the issuance of a Certificate for Payment will 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, unless otherwise required by the Agreement between the Owner and the Architect or applicable law, construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied, or the Contractor is in default on 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 suppliers 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;
- ~~.7 repeated failure to carry out the Work in accordance with the Contract Documents;~~
- .8 the Work not having progressed to the extent set forth in the Application for Payment;
- .9 representations of the Contractor are untrue;
- .10 failing to conform to Project Schedule;
- .11 default in the performance of any obligation to the Owner under another contract; or
- .12 failure to provide sufficiently skilled workers.

§ 9.5.2 When ~~either party~~ the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier 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 Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 If the Contractor disputes any determination by the Owner or Architect 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.

§ 9.5.6 Notwithstanding anything herein to the contrary, the Owner has no obligation to pay the Contractor absent receipt of a Certificate for Payment for the requested amount, and neither the Architect's failure to issue a Certificate for Payment nor the Architect's failure to notify the Contractor and/or Owner of a withheld Certificate for Payment creates an obligation on the Owner to pay the Contractor. The foregoing sentence shall not operate to limit the right of the Owner to dispute amounts requested by the Contractor or to withhold payments from the Contractor as provided in the Contract Documents.

**§ 9.6 Progress Payments**

§ 9.6.1 After the Architect has issued a 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 Architect.

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§ 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 Architect 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 Architect and Owner 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 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 and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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, suppliers, 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, suppliers, 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. In the event the Contractor disagrees with the amount proposed to be paid to one or more Subcontractors, suppliers, laborers or claimants, the Contractor shall provide a bond in the amount the Contractor believes the Owner will overpay, within ten (10) days of receipt of notice, or be barred from making any claim that the amount of the direct payment was incorrect. 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or 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 Provided the Owner has fulfilled its payment obligations under the Contract Documents, The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.9 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.

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## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if without justifiable basis under the Contract or these General Conditions the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the undisputed amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven days asserted by the Contractor in its Application for Payment or awarded by a court, then the Contractor may, upon twenty-one (21) additional days' written notice to the Owner and Architect, stop the Work until payment of the undisputed 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents. The Contractor acknowledges the Owner's right to dispute in good faith any amount requested by the Contractor, and, irrespective of the Architect's issuance of a Certificate for Payment, the Owner's right to withhold payments from the Contractor, including, without limitation, to correct Work that fails to conform with the Contract Documents or as an offset or recoupment to recover the cost of damages incurred by the Owner due to the Contractor's breach of the Contract or a wrongful or negligent act or omission of the Contractor.

## § 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 that 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 prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list 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 Contractor's list, the Architect 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 Contractor's list, which is not sufficiently complete in accordance with 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 to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 a comprehensive list of items to be completed or corrected (a "punch list"). The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Should the Contractor fail to make corrections in a timely fashion, but not later than fifteen (15) 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 any remaining payments due the Contractor shall be withheld by the Owner.

§ 9.8.7 The Contractor shall promptly notify the Architect, in writing, when the Work deficiencies and/or punch list items are completed. Upon the review of the Work by the Architect after such notification by the Contractor, if Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse the Owner its costs.

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including any Architect fees for re-inspection of the Work. Failure to pay such costs within ten (10) days of receipt of a demand regarding the same shall permit the Owner to 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 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 shall 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. The Contractor 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, 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.

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#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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 Architect's final 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 (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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents, (7) 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, (8) a general release executed by the Contractor on a form provided by the Architect, and (69) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, 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 the 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 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 not 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;
- ~~3~~ — terms of special warranties required by the Contract Documents; or
- ~~4~~ — audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of all claims by that payee of the Contractor except those previously made by the Contractor in writing and identified by that payee the Contractor as unsettled at the time of final Application for Payment and specifically referenced as being an exception to the waiver contained in this section.

## 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.

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall make good 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 adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the 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 responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety or 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.

§ 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 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. The plan shall be included in all bidding documents, and the requirements of the plan shall be applicable to all members of the Construction Team.

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**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take every 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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 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 on safety of persons or property or their protection from damage, injury, or loss. take all reasonable safety precautions with respect to its Work and work of others, shall comply with all standard industry safety measures and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority and all other requirements of the Contract Documents, including those applicable to the safety of persons or property. The Contractor shall be responsible for the safety of all of the Contractor's employees and the safety of all of the Contractor's Subcontractors, suppliers, and their employees. The Contractor shall report in writing to the Architect any injury to any of Contractor's or its Subcontractor's employees at the site within one (1) day after the occurrence of such injury.

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

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall be solely and fully responsible for any and all damage claims and for defense of all actions against the Owner relating to such explosives, hazardous materials and/or unusual methods.

**§ 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 and 10.2.1.3 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 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. 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 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.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party the Contractor suffers injury or damage to person or property because of an act or omission of the other party Owner, or of others for whose acts such party the Owner is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party Owner within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party Owner to investigate the matter. This provision shall be for investigative purposes only and shall not eliminate or reduce a party's obligation to pursue Claims. The Contractor's failure to do so shall be an irrevocable waiver of any Claim arising out of such injury or damage. Injury or damage to persons or property suffered by the Owner because of an act or omission of

the Contractor, or others for whose acts the Contractor is legally responsible, shall be subject to the limitation periods established by Michigan law.

§ 10.2.8.1 The Contractor causing damage to the Work of another shall be responsible for the repair and replacement of such damaged Work. Back charges shall be made against the Contract Sum of the damaging Contractor when corrections are not made promptly.

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§ 10.2.8.2 If the Contractor or any Subcontractor chooses to use any systems, equipment, facilities, or services which have been incorporated in the Project as a permanent part thereof by any other, the Contractor shall assume full responsibility for damages caused to said systems, equipment, facilities or services, and have damages repaired as required, so that in no case will the performance of the used systems, equipment, facilities or services be diminished from the specified criteria as a result of such use.

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§ 10.2.9 The Contractor acknowledges that the safety of the Owner's students, employees and guests is of the utmost importance. The Contractor will take no action which would jeopardize the safety of the Owner's students, employees and guests and, without the Owner's written approval, shall take no action which would interfere with the Owner's activities. Without limiting the foregoing sentence, the Contractor shall comply with all laws applicable to student and/or school safety.

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### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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, immediately stop Work in the affected area and notify the Owner and Architect in writing of the condition.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner, in its discretion, shall obtain the services of a licensed laboratory to verify the 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, as a courtesy, furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. ~~The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.~~ When the material or substance has been rendered harmless, Work in the affected area shall resume 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 by the amount of the Contractor's reasonable additional costs of to address~~ shutdown, delay, and start-up.

**§ 10.3.3** ~~**NOT USED.** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, 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 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.~~

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**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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. To the extent the Contract Documents require the removal, transport and disposal of hazardous materials, the Contractor agrees that it assumes responsibility for said tasks as part of the Contract.~~

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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.

~~§ 10.3.6 NOT USED. 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 reimburse the Contractor for all cost and expense thereby incurred.~~

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#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable 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. Nothing in this paragraph will be construed as relieving Contractor from the cost and responsibilities for emergencies covered hereby.

#### § 10.5 Notification of Utility Companies

~~§ 10.5.1 At least five (5) working days prior to the start of work in areas which may involve existing utility lines, the Contractor shall notify, by certified mail with return receipt requested, the Registered Utility Protection Service of the utility company possibly affected by the planned work and/or the MISS DIG notification system, as legally required.~~

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~~§ 10.5.2 The utility company should, upon receipt of notice, stake, mark or otherwise designate the location (and depth) of their lines, or temporarily move the line(s).~~

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~~§ 10.5.3 The Contractor shall immediately report to the respective utility company any break or leak in its lines, or any dent, gouge, groove or other damage to the utility line or to its coating or cathodic protection made or discovered in the course of the Work.~~

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~~§ 10.5.4 The Contractor shall immediately alert the Owner, Architect and occupants of nearby premises of any and all emergencies caused or discovered in the utility line(s) in the course of the Work.~~

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#### § 10.6 Security

~~§ 10.6.1 All construction participants, including the Contractor, Architect, Subcontractors, etc., 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. The Contractor shall be responsible to implement commercially reasonable data security protection measures to protect the Owner's networks and data when performing technology-related Work.~~

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#### § 10.7 Fire Protection

~~§ 10.7.1 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.~~

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~~§ 10.7.2 The Contractor shall at all times cooperate with the Owner and kept the municipal fire department informed of the means of entrance and changes to the roadways or fire aisles as needed to provide fire department access to or around the Project Site.~~

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~~§ 10.7.3 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 an adequate fire protection system, 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 time, the demands of adequate protection in all areas and~~

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shall not be reduced prior to the completion of the Work with the written approval of the Owner and/or the Architect.

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as required by law and as otherwise described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies rated A- or better by A.M. Best Company and lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. For the entire Project, the Contractor will purchase and maintain, in a company or companies 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 11.1.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor shall be responsible for protecting all product until the Date of Substantial Completion is established by the Architect. The Contractor shall replace any Work if damaged before Substantial Completion. The Contractor may assume the risk itself or obtain insurance in amounts it deems sufficient.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Owner hereby requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each in the penal sum of 100% of the Contract Sum and in accordance with applicable law, on the date of execution of the Contract. The Owner may also require, through the Contract Documents or otherwise, that any contract valued at \$50,000 or less shall also include payment and performance bonds each in the penal sum of up to 100% of the Contract Sum. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The Contractor shall obtain and provide to the Owner copies of any and all bonds required by the Contract prior to Contractor beginning performance pursuant to the Contract. 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.

§ 11.1.2.1 The Contractor's liability insurance shall be not less than the following:

<b>1</b>	<b>General Requirements</b>		
	a. Worker's Compensation	-	Statutory
	b. Employer's Liability	-	Established by Owner
<b>2</b>	<b>Comprehensive General Liability</b>		
	a. Bodily Injury	-	\$1,000,000 Each Occurrence
		-	\$2,000,000 Aggregate
	b. Personal Injury	-	\$1,000,000 Each Occurrence
		-	\$2,000,000 Aggregate
<b>3</b>	<b>Automobile Liability</b>		
	a. Bodily Injury	-	\$1,000,000 Each Person
		-	\$1,000,000 Each Occurrence
	b. Property Damage	-	\$1,000,000 Each Occurrence
<b>4</b>	<b>Independent Contractors</b>	-	\$1,000,000 Each Occurrence
<b>5</b>	<b>Products and Complete Operations</b>	-	\$1,000,000 for one (1) year, commencing with issuance of final Certificate for Payment
<b>6</b>	<b>Contractual Liability</b>	-	\$1,000,000 Each Occurrence
<b>7</b>	<b>Umbrella Coverage</b>	-	\$2,000,000 Each Occurrence
		-	\$4,000,000 Aggregate

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§ 11.1.3 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.

§ 11.1.4 On all insurance contracts under which the Contractor is obligated to have its insurance company name the Owner, Architect and Architect's consultants as additional insured, the Contractor shall require such insurance company to add to the policy the following clause: "The insurance afforded to the Additional Insured is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the insurance company's liability under this policy shall not be reduced by the existence of such other insurance." Should the Contractor's insurance costs increase due to adding the Architect and/or Architect's Consultants as additional insureds, and should such costs be passed on to the Owner, the Architect and Architect's Consultants, as applicable, shall reimburse the Owner for such additional costs.

§ 11.1.45 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date immediately after the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, but in no event less than the sooner of three (3) days after becoming aware or the coverage actually lapsing, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration, including the Contractor's plan to immediately procure replacement insurance as required by the Contract Documents to avoid any lapse in coverage. Contractor's failure to do so is a material breach of this Agreement, shall entitle the Owner to purchase replacement insurance at Contractor's sole cost, and shall subject the Contractor to any and all damages related to its failure to comply with its required insurance obligations. Further, upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right, but not the obligation, to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner will pay any deductibles on Owner-required insurance, but the Owner may recover such costs from the party causing the loss. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work and the parties shall negotiate an adjustment to. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; and (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled, negotiated. If the Contractor purchases replacement coverage, the

cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### § 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from ~~the Architect, Architect's consultants,~~ Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies without increasing insurance costs to the Owner, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. Unless the Contractor or Architect, as applicable, is responsible for causing the loss, the Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### §11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. The Owner shall use its best efforts, with consultation of the Architect, to reach a quick and fair settlement for all interested parties, with the insurance companies after a loss.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## 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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request with the Owner's consent to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable negotiated adjustment to the Contract Sum and Contract Time as may be appropriate. At the time Owner's consent is sought as described herein, the Architect 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, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

It is understood that the correction of work, either before or after Substantial Completion, shall occur without extension of the Contract Time, without increase in the Contract Sum, and without use of any contingency.

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#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including work of other Contractors and Subcontractors, compensation of consultants, any delay or related damages, attorneys' fees incurred by the Owner, additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. The Owner shall have the right to charge the Contractor for any such costs and expenses and to deduct such amounts from any future payments due the Contractor.

#### § 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 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 any 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 correct it promptly after receipt of 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 2.5.

§ 12.2.2.2 The one-year period for correction of Work 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.

§ 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 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.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, 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 or other provisions of the Contract Documents establishing a “correction warranty” or other similar concept shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents, including, without limitation, Section 3.5. Establishment of the one-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 The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Failure to correct Work deficiencies and/or punch list items in a timely fashion shall be a substantial breach, and the Owner may terminate the Contract immediately. The Owner’s right of termination in this Section 12.2.6 is separate and distinct from the right of termination in Section 14.2. Whether or not the Contract is terminated, if the Contractor fails to make corrections in a timely fashion, such Work may be corrected by the Owner, in its sole discretion, at the Contractor’s expense and the Contract Sum may be adjusted by back charge and/or withholding future payments due the Contractor accordingly. The Contractor shall promptly notify the Architect in writing when Work deficiencies and/or punch list items are completed. If upon review of the Work by the Architect, after such notification by the Contractor, Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse the Owner for any costs incurred by the Owner as well as any Architect’s fees for reinspections of the Work.

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**§ 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, 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. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order signed by the Owner’s authorized representative. Acceptance of nonconforming Work may only occur pursuant to such written Change Order.

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. 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 in all respects, except that Claims and causes of action brought by the Owner shall not be deemed untimely if filed within six (6) years of Substantial Completion of the entire Project.

**§ 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 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 the assignment.

**§ 13.3 Rights and Remedies**

**§ 13.3.1** 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.

**§ 13.3.2** No action or failure to act by the Owner, 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 upon in writing.

**§ 13.4 Tests and Inspections**

**§ 13.4.1** 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. 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 Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents or applicable law, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** 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 Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

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**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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on an undisputed 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 reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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 additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 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 to the point of negatively impacting the Project and/or the related schedule;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 ~~repeatedly~~ 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; or
- .5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of the Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seventythree (3) days'~~ three (3) days' notice, terminate ~~employment of the Contractor and may, subject to any prior rights of the surety, 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.

The three (3) day notice period identified in this Section does not give rise to an opportunity for the Contractor to cure the cause for termination. Further, the Owner's failure to properly following the termination procedure shall not be a substantial or material breach of the Contract or the Owner's obligations.

§ 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 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 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 be certified by the Initial Decision Maker, upon application, 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 Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under 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 the 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 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 Owner shall pay the Contractor for Work properly executed; and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

**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, a change in the Contract Time, or other relief with respect to the terms of the 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. The Contractor shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31 USC 3729, et seq.) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim by the Contractor, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Michigan and executed by an authorized representative of the Contractor, which states that, "The Claim which is submitted herewith complies with subparagraph 15.1.1 of the General Conditions, as amended, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent claim." Claims of the Owner shall be governed by the relevant Michigan statutory limitations period.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2. The Owner shall commence all claims and causes of action in accordance with Section 13.1, regardless of any other time frames identified in the Contract Documents. The Contractor shall commence all Claims and causes of action in accordance with Section 15.1.2 and Section 15.1.3, other provisions of the Contract, and in accordance with Michigan law.

§ 15.1.2.1 Regardless of any provisions to the contrary, the limitations period with respect to any Claim by the Owner with respect to defective or nonconforming Work shall not commence until the discovery of such defective or nonconforming Work by the Owner. See also Section 13.1.

**§ 15.1.2.2 Surety Notice and Prior Approval**

Except where otherwise expressly required by the terms of the Agreement 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 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.

**§ 15.1.3 Notice of Claims**

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. The Contractor's failure to timely and properly initiate a Claim shall be an absolute and irrevocable waiver of such Claim. Claims by the Owner shall be governed by the applicable statute of limitations period, except when a provision of the Contract Documents provides a longer period.

§ 15.1.3.2 NOT USED. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

§ 15.1.4.1 Pending final resolution of a Claim, including mediation, arbitration and/or litigation, as applicable, 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 undisputed payments in accordance with the Contract Documents.

§ 15.1.4.2 NOT USED. The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. 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 10.4. A Project delay shall not be a basis for a Claim for additional cost by the Contractor.

**§ 15.1.6 Claims for Additional Time**

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 shall be given. Failure to give such notice shall be an absolute and irrevocable waiver of a Claim for additional time. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work due to the increase in Contract Time sought. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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### § 15.1.7 Waiver of Claims for Consequential Damages

To the extent permitted by law, ~~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 (~~other than rental expenses incurred because Substantial Completion has not occurred on time~~), 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial ~~decision~~interpretation. The Architect will serve as the Initial Decision Maker, ~~unless otherwise indicated in the Agreement~~. Except for those Claims excluded by this Section 15.2.1, an initial ~~decision~~interpretation shall be required as a condition precedent to mediation, ~~arbitration and/or litigation~~ of any Claim brought by the Contractor against the Owner. If an initial ~~decision~~interpretation has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without an ~~decision~~interpretation 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~~interpret the Claim. Within ten (10) days of a written request, the Contractor shall make available to the Owner or its representative all of its books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its Subcontractors, regardless of tier, and suppliers to do the same.

§ 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 an ~~decision~~interpretation. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 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 the 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, based on its interpretation, either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial ~~decision~~interpretation approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial ~~decision~~interpretation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. If the Claim is timely and properly asserted, the initial decision interpretation 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 the parties' agreed-upon dispute resolution process.

~~§ 15.2.6 NOT USED. Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

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~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, 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, Architect or Initial Decision Maker 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, Architect or Initial Decision Maker 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

§ 15.3.1 Except as stated in this Agreement or otherwise agreed in writing by the parties, 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, ~~and 9.10.5, and 15.1.7,~~ shall be subject to mediation as a condition precedent to ~~binding dispute resolution~~ the parties' agreed-upon dispute resolution process.

§ 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~~ commencement of the parties-agreed-upon dispute resolution proceedings but, in such event, mediation shall proceed in advance of ~~binding dispute resolution~~ such 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. All limitations periods shall be tolled during the mediation process.~~

~~§ 15.3.3 NOT USED. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.3.4 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 those of the Owner and Contractor under this Agreement. The Contractor further agrees to include similar dispute resolution provisions in all agreements with the Subcontractors, suppliers, and independent contractors and consultants retained for the Project and to require them to include a similar dispute resolution provision in all agreements with Subcontractors, all subconsultants, suppliers or fabricators so retained, thereby providing for a consistent method of dispute resolution between the parties to those agreements. Subject to the other limitations periods identified in these General Conditions which are understood to govern over this sentence, no demand for mediation or arbitration shall be made after the date when the applicable statutes of limitation would bar legal or equitable proceedings. During the pendency of any mediation or arbitration, all applicable limitations periods shall be tolled until the conclusion of that process.

With the exception of matters solely dealing with the Contract, the Owner reserves the right in its discretion to require consolidation or joinder of any mediation or arbitration arising out of or relating to this Agreement with another mediation or arbitration involving a person or entity not a party to this Agreement in any event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort. With the exception of matters solely dealing with the Contract, in the event the Owner is involved in a dispute which is not subject to mediation or arbitration involving a person or entity not a party to this Agreement, the mediation and arbitration provisions of this article shall be deemed to be void and nonexistent in the event Owner, in its discretion, determines the Contractor should become a party to that dispute by joinder or otherwise. Any mediation or arbitration hearing shall be held in the general location where the Project is located, unless another location is mutually agreed upon.

# DRAFT AIA® Document B133™ - 2019

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the  day of  in the year

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address, and other information)

Mason Consolidated Schools  
2400 Mason Eagles Drive  
Erie, MI 48133

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

TBD

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

Mason Consolidated Schools 2025 Bond Program, in accordance with the application for preliminary qualification of bonds, all in accordance with the Owner-approved plans and specifications, all applicable laws, the Owner's fixed budget, and as otherwise approved by the Owner.

The Construction Manager (if known):  
(Name, legal status, address, and other information)

TBD

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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 A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 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.  
*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:  
*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

« The Architect shall assist the Owner in developing the program in accordance with Section 3.3. »

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

« To be determined »

§ 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.)*

« A fixed sum established by the Owner »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

« To be determined »

- .2 Construction commencement date:

« To be determined »

3 Substantial Completion date or dates:

« To be determined »

4 Other milestone dates:

« »

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
(Indicate agreement type.)

[  ] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[  ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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

«Not Applicable »

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« Not Applicable »

~~§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234<sup>TM</sup> 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234 2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~ NOT USED

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:  
(List name, address, and other contact information.)

[Kelli Tuller, 734-848-9304 »](#)  
[« Mason Consolidated Schools](#)  
[« 2400 Mason Eagles Drive»](#)  
[« Erie, Michigan 48133»](#)

[«—»](#)  
[The Owner may change the representative and the representative’s authority in its sole discretion. The Owner will notify the Construction Manager of any such changes «—»](#)

[«—»](#)  
[«—»](#)  
[«—»](#)  
[«—»](#)

§ 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 contact information.)

« As the Board of Education directs, the State of Michigan, the appropriate parties having jurisdiction, and any others required by law. »

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact 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. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

« To be determined »

- .2 Land Surveyor:

« To be determined, if any » « »

« »  
« »  
« »  
« »

- .3 Geotechnical Engineer:

« To be determined, if any » « »

« »  
« »  
« »  
« »

- .4 Civil Engineer:

« To be determined, if any » « »

« »  
« »  
« »  
« »

- .5 Other consultants and contractors:  
(List any other consultants and contractors retained by the Owner.)

« To be determined, if any »

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

« To be determined »

« »  
« »  
« »  
« »  
« »

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be determined << >><< >>  
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.2 Mechanical Engineer:

To be determined >><< >>  
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.3 Electrical Engineer:

To be determined- >><< >>  
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§ 1.1.12.2 Consultants retained under Supplemental Services:

<< To be determined >>

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

<< To be determined >>

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 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 and familiar with the school



construction industry. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 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 Insurance. The Architect shall maintain the following insurance until termination of this Agreement in the amounts identified below, in an Architect-provided certificate of insurance, or as required by law, whichever is greater. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

Commented [MB1]: Verify insurance amounts with insurance carrier.

§ 2.6.1 Commercial General Liability with policy limits of not less than «Two Million Dollars» (\$ «2,000,000» ) for each occurrence and «Four Million Dollars» (\$ «4,000,000» ) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «One Million Dollars» (\$ «1,000,000» ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The Architect shall provide umbrella coverage with a policy limit of not less than Four Million Dollars (\$ 4,000,000).

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than «Five Hundred Thousand Dollars» (\$ «500,000» ) each accident, «Five Hundred Thousand Dollars» (\$ «500,000» ) each employee, and «Five Hundred Thousand Dollars» (\$ «500,000» ) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «Two Million Dollars» (\$ «2,000,000» ) per claim and «Two Million Dollars» (\$ «2,000,000» ) in the aggregate.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. 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.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6 at the time of execution of this Agreement.

§ 2.6.9 Prior to the commencement of any Project, the Architect shall notify the Owner in writing of its proposed insurance coverages and amounts, even if they are the same as identified in this Section 2.6, which

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User Notes:

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coverages and amounts shall be subject to the Owner's reasonable approval, and such coverages will not be terminated, non-renewed, or reduced without at least 30 days' prior written notice to the Owner.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services ~~consist of those described in this Article 3 and~~ include usual and customary structural, mechanical, civil, interior design, landscape design, food service, theater, acoustical, and electrical engineering services and other architectural and engineering services required to complete the Project, all provided by those qualified and experienced in their respective fields, as needed, to address the requirements of the Project. ~~Services not set forth in this Article 3 are identified in this Agreement, the General Conditions, and any other Contract Document shall be Basic Services unless expressly identified therein as Supplemental or Additional Services.~~

§ 3.1.1 The Architect shall manage the Architect's services, administer the Project, 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.

§ 3.1.2 The Architect shall coordinate its services and those of its consultants with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants, subject to the Architect's professional judgment, experience, and expertise. 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.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Owner's and Construction Manager's review and the Owner's approval, a schedule for the performance 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 phase milestone dates, as well as the anticipated dates when cost estimates or design reviews may occur, for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required (1) for the Owner's review and provision of information, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, (5) for a master design schedule for planning, schematics, design development, and construction documents phases, and (6) for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause and with mutual written agreement of the parties, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 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.~~ The Architect shall review and approve, or take other appropriate action upon, ~~the portion of the Project schedule relating to the performance of the Architect's services~~ Project as a whole.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval. The Architect shall advise the Owner before the Owner orders a directive or substitution or accepts non-conforming work.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. The Architect shall have the primary responsibility to complete any required documents requiring governmental approval and ensure that they are properly filed on behalf of the Owner. This responsibility includes the preparation of the preliminary qualification application for the bond issue financing the project, if the project is financed with a bond issue qualified by the School Bond Qualification and Loan Program.

§ 3.1.7 The Architect shall assist and advise 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 and relating to construction design and performance when not covered by Section 3.1.6. The Architect shall assist the Owner in applying for those permits and approvals normally required by law for projects similar to the one for which the Architect's services are being engaged. The assistance shall consist of completing and submitting forms to the

appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the Architect in conjunction therewith.

**§ 3.1.8** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations. The Architect acknowledges that the services to be provided by the Architect under this Agreement shall include providing all services that may or must be performed by an architect in Public Act No. 306 of 1937, MCL 388.851, *et seq.* (the "School Building Construction Act") and Public Act 299 of 1980, MCL 339.2011 (the "Occupational Code"). The Construction Manager Constructor is to construct the Project pursuant to Contract Documents, is responsible for the construction means, methods, techniques employed in the performance of the Work, and further that code compliance inspections will be performed by the appropriate State entities.

**§ 3.1.9** Upon request of the Owner, the Architect shall make a presentation or presentations to explain the design of the Project to representatives of the Owner.

**§ 3.1.10** The Architect shall submit design documents to the Owner at intervals appropriate of the design process for purposes of evaluation and approval by the Owner.

**§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or ~~approval~~ rejection, a Guaranteed Maximum Price proposal or ~~Control Estimate~~. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or ~~estimate, including assisting the Owner with compliance with the Owner's obligations under the Michigan Prevailing Wage Act, MCL 401.1101, et seq.~~ The Architect's review is not for the purpose of ~~shall be for all purposes, including~~ discovering errors, omissions, or inconsistencies; ~~for the assumption of but the Architect shall not assume~~ any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.2** Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or ~~Control Estimate~~.

**§ 3.3 Schematic Design Phase Services**

**§ 3.3.1** ~~The Architect shall review 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. The Architect shall assist the Owner and the Construction Manager in development of the program, schedule and construction budget for final approval by the Owner, consult with the Owner regarding the same, and shall review and comply with, all laws, codes, and regulations applicable to the Architect's services and the Project.~~

**§ 3.3.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. 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.

**§ 3.3.3** 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. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.3.4** 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

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the scale and relationship of the Project components. [Approval by the Owner will 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.](#)

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. 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 representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program, [budget](#), 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 more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider 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 program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 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, 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.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect ~~shall be entitled to rely on~~ [receive and review](#) the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner [and shall prepare such estimates of Construction Cost as the Architect deems necessary to perform Basic Services and to satisfy MCL 339.2011.](#)

#### § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's 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, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. [The Owner's approval shall be for general design concept purposes only and shall not be an approval of technical or design details.](#) The Design Development Documents shall ~~be based upon~~ [take into consideration](#) 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, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. [Approval by the Owner will 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.

### § 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner’s 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 Construction Documents for the Construction Manager’s review and the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the ~~quality levels and performance criteria of~~ materials and systems, their quality levels, and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, ~~which the Architect shall review in accordance with Section 3.6.4.~~

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, ~~if requested by the Owner,~~ the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions), as modified by the Owner, and (2) a project manual that includes the Conditions of the Contract for Construction, as modified by the Owner, and Specifications, and may include sample forms. All such documents shall have been provided in a format that conforms with the terms of this Agreement and the drawings/specifications, including but not limited to dispute resolution provisions, and shall comply with all public bidding, and contracting laws applicable to Michigan public school districts and this Project.

§ 3.5.3.1 Documents referenced in Section 3.5.3 shall consist of the unabridged AIA contract forms modified as necessary to be consistent with this Agreement. The Architect shall include in bid specifications and in any of the relevant document provisions indicating that modified version(s) of the standard AIA General Conditions A201 -2017 will be utilized. The Architect shall include a form of the General Conditions of the Contract for Construction provided by the Owner’s legal counsel and include that document in bid specifications and the project manual. The Architect is responsible for verifying that such document is included in the bid specifications and the project manual and shall contact the Owner and the Owner’s legal counsel to verify that that the documents, as they appear in the bid specifications and project manual, are correct.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 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, and request the Owner’s approval of the Construction Documents.

### § 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 Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. ~~If the Owner and Construction Manager modify AIA Document A201 -2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement. The term “Contractor” as used in A201-2017 shall mean the Construction Manager. If there is a conflict or inconsistency between the terms of that Agreement and the General Conditions for the Contract for Construction, the terms of this Agreement shall govern.~~

§ 3.6.1.2 Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or, the Owner’s approval of the Construction Manager’s Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval of the Owner’s first award of a competitively bid subcontract, whichever occurs earlier. Subject to Section 4.2, and except as provided in Section 3.6.6.5, Unless otherwise provided in this Agreement, the Architect’s

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responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the services described in this Agreement ~~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~~ except as provided in this Agreement, the Architect shall not be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect'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 Construction Manager or of any other persons or entities performing portions of the Work. Nothing in this Section 3.6.1.3 shall be construed to limit the Architect's responsibilities under MCL 339.2011 or Public Act 306 of 1937, both as may be amended from time to time.

### § 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 4.2.3~~, to become generally familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies, 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, subject to Sections 3.1.8, 3.6.1.3, and 3.6.2.6, 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, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the 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 Construction Manager, Subcontractors, 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 ~~either the Owner or 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 the~~ Construction Manager, ~~shall not show partiality to either~~, and shall not be liable for results of interpretations ~~or decisions~~ rendered in good faith ~~and without negligence~~. The Architect's ~~decisions-interpretations~~ on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial ~~decisions-interpretations in writing~~ on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 Notwithstanding anything contained in this Agreement, particularly Sections 3.6.1.3 and 3.6.2.1, nothing contained in this Agreement shall be construed to limit in any way the Architect's duties and responsibilities under law, including those duties and responsibilities under 1937 PA 306 and 1980 PA 299. It is understood that the Owner has retained a Construction Manager on this Project. The Agreement between Construction Manager and the Owner shall impose upon the Construction Manager the responsibility for the workmanlike performance of all construction performed on the project and completion of all work required under the subcontract.

The Construction Manager Agreement shall require that the Construction Manager inspect the work of the subcontractors as it is being performed to assure that the work performed and the materials furnished are in accordance with the Construction Documents and provide all supervision, services, utilities, etc., which are

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necessary for the completion of the Project which are not provided through the subcontracts, or by the Owner, or as a reimbursable item.

The Architect shall visit the site as necessary to observe Project quality.

### § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect in writing and accompanying the relevant certification. It is acknowledged that the Architect's certifications shall take into consideration information provided by the Construction Manager, but the Architect shall remain responsible for any certification issued.

§ 3.6.3.2 The issuance of a 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 suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.~~

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment, certified copies of which shall be sent to the Owner.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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. Review 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 Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's review and 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 Construction Manager 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Subject to its professional experience and expertise, ~~the~~ Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, ~~the~~ Architect shall timely review and respond to requests for information about the Contract Documents. The Architect 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 the requests for information. The Architect shall maintain a log of requests for information and the responses thereto.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect and Construction Manager shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's and Construction Manager's inspections under Section 3.6.6.1.1 Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected. The Architect and Construction Manager shall be solely responsible for the inspections, and the Owner shall be solely an observer.

§ 3.6.6.3 When Substantial Completion has been achieved as determined by the Architect, then the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 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 for the purpose of identifying potential warranty issues and to verify adequacy of the facility operations and performance.

### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

#### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental 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. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The Services listed below, other than those identified as Basic Services, may be provided by the Architect as an Additional Service if: (a) required for the Project, (b) the Owner authorizes the performance of same in writing prior to the Architect's provision of any such service, and (c) the Architect provides a good faith estimate of the cost of the same prior to the Owner's authorization. The Owner shall not be obligated to pay for any Additional Service in the absence of the foregoing. For proper Additional Services, the Owner shall compensate the Architect as provided in Section 11.2.

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(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	<u>Architect Basic Service</u>
§ 4.1.1.2 Programming	<u>Architect Basic Service</u>
§ 4.1.1.3 Multiple Preliminary Designs	<u>Architect Basic Service</u>
§ 4.1.1.4 Measured drawings	<u>Architect Basic Service, except as identified in Section 4.2 below</u>
§ 4.1.1.5 Existing facilities surveys	<u>Architect Basic Service</u>
§ 4.1.1.6 Site evaluation and planning	<u>Architect Basic Service</u>
§ 4.1.1.7 Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.8 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9 Civil engineering	<u>Architect Basic Service</u>
§ 4.1.1.10 Landscape design	<u>Architect Basic Service</u>
§ 4.1.1.11 Architectural interior design	<u>Architect Basic Service</u>
§ 4.1.1.12 Value analysis	<u>Architect Basic Service</u>
§ 4.1.1.13 Cost estimating	<u>Architect Basic Service to the extent required by MCL 339.2011</u>
§ 4.1.1.14 On-site project representation	<u>Architect Basic Service</u>
§ 4.1.1.15 Conformed documents for construction	<u>Architect Basic Service</u>
§ 4.1.1.16 As-designed record drawings	<u>Architect Basic Service</u>
§ 4.1.1.17 As-constructed record drawings	<u>Architect Basic Service</u>
§ 4.1.1.18 Post-occupancy evaluation	<u>Architect Basic Service</u>
§ 4.1.1.19 Facility support services	<u>N/A</u>
§ 4.1.1.20 Tenant-related services	<u>N/A</u>
§ 4.1.1.21 Architect's coordination of the Owner's consultants	<u>N/A</u>
§ 4.1.1.22 Telecommunications/data design	<u>Owner</u>
§ 4.1.1.23 Security evaluation and planning	<u>Owner</u>
§ 4.1.1.24 Commissioning	<u>N/A</u>
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	<u>N/A</u>
§ 4.1.1.26 Historic preservation	<u>N/A</u>
§ 4.1.1.27 Furniture, furnishings, and equipment design	<u>Architect Basic Service</u>
§ 4.1.1.28 Other services provided by specialty Consultants	<u>N/A</u>
§ 4.1.1.29 Other Supplemental Services	<u>N/A</u>
§ 4.1.1.30 Statutory Cost Estimates	<u>Architect Basic Service</u>
§ 4.1.1.31 Bond Campaign Support	<u>Architect Basic Service</u>

**§ 4.1.2 Description of Supplemental Services**

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« N/A »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.  
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« N/A »

§ 4.1.3 ~~If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 4.2. NOT USED~~

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services in accordance with Section 4.1 after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and, if necessary, an appropriate adjustment in the Architect's schedule.

§ 4.2.1 ~~The following Additional Services shall be provided if there has been compliance with Section 4. 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 Additional Services until the Architect receives the Owner's written authorization:~~

- ~~1. Subject to Section 6.6, s~~Services necessitated by a change in the Initial Information, 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 size, quality, complexity, the Owner's schedule or budget for Cost of the Work, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- ~~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, Guaranteed Maximum Price proposal, or Control Estimate 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 enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
4. Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that occur after the preparation of such Instruments of Service (The Architect is expected to and shall provide its services in compliance with the most-recent codes, laws, regulations and interpretations) and that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
5. Services necessitated by decisions of the Owner ~~or Construction Manager~~ not rendered in a timely manner, acknowledging the Owner's obligations under the Open Meetings Act, or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
6. Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
7. Preparation of 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;~~
9. Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto or at which the services of the Architect are challenged;
10. Consultation concerning replacement of Work resulting from fire or other cause during construction; or
11. Assistance to the Initial Decision Maker, if other than the Architect;
- ~~12. Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;~~
- ~~13. Services necessitated by the Owner's delay in engaging the Construction Manager;~~

- ~~.14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and~~
- ~~.15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.~~

~~§ 4.2.2 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 promptly comply with Section 4.1 for the following Additional Services. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall have no further obligation to compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice not accepted in writing by the Owner:~~

- ~~.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect; NOT USED~~
- ~~.2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Construction Manager prepared coordination drawings, or prior Project correspondence or documentation; NOT USED~~
- ~~.3 Preparing Change Orders, and Construction Change Directives approved by the Owner that exceed the scope of the Work and Project cost and that require substantial that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or~~
- ~~.5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.~~

~~§ 4.2.3 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; NOT USED~~

- ~~.1 « » reviews of each Shop-Drawing, Product Data item, sample and similar submittals of the Construction Manager~~
- ~~.2 « » visits to the site by the Architect during construction~~
- ~~.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 « » inspections for any portion of the Work to determine final completion~~

~~§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services; NOT USED~~

~~§ 4.2.5 If the services covered by this Agreement have not been completed within « » months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services; NOT USED~~

## ARTICLE 5 OWNER'S RESPONSIBILITIES

~~§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information 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. The Architect will assist the Owner to provide such information.~~

~~§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.~~

~~§ 5.3 The Owner shall establish 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 update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner~~

shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 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 Construction Manager 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.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project, subject to the parameters of authority set by the Owner's Board of Education. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services, subject to the Owner's status as a public body, including being subject to the Open Meetings Act.

§ 5.5 Where required by the circumstances of the Project and requested by the Architect in writing, The the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. 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 other 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. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services. The Owner will pay for such services as applicable.

§ 5.6 Where required by the circumstances of the Project and requested by the Architect in writing, The the Owner shall furnish services of geotechnical engineers, which may include 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. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services. The Owner will pay for such services as applicable.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1. NOT USED

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. NOT USED

§ 5.9 The ~~Owner-Architect~~ shall coordinate the services of its own consultants with those services provided by the ~~Architect~~Owner's consultants. 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 as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service in accordance with Article 4, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner and Architect shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 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. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services.

§ 5.11 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.

§ 5.12 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, ~~but the Owner's failure to do so does not relieve the Architect of its responsibilities, and the Owner assumes no duty of observation, inspection, or investigation pursuant to this Section or otherwise.~~ The Architect shall give the Owner prompt written notice if it becomes aware of any fault or defect in the Project or the Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager ~~about the Contract Documents~~ that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any ~~direct material~~ communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The ~~Owner-Architect~~ shall ~~coordinate-assist~~ the ~~Architect's-Owner with coordination of the Architect's~~ duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

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

§ 5.16 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 evaluate, give notice of, or enforce lien rights.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of ~~cost estimating or tracking under~~ 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 Construction Manager's ~~compensation, including~~ general conditions costs, overhead, and profit. ~~For purposes of calculating fees or other costs determined on a percentage of the Cost of the Work, the Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work~~ does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or ~~unused~~ contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, ~~which the Architect acknowledges is fixed. A fixed limit of construction cost shall be established by the Owner as a condition of this Agreement and shall may~~ be adjusted throughout the Project as required under Sections 5.3 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-permit~~ 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-~~ ~~prepare its own estimates of the Cost of the Work as necessary for~~ 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 or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. 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 cost estimating services ~~as a Supplemental 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 together to reconcile the cost estimates.

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

§ 6.5 If ~~at any time~~ the Construction Manager's estimate of the Cost of the Work ~~at the conclusion of the Design Development 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 terminate in accordance with Section 9.5;
- .3 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
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's fixed 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 revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.~~

§ 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 the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceeds 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. The Architect's revised drawings and/or specifications shall be performed as a Basic Service.~~

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 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.

§ 7.3 ~~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 under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. 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 Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, 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. The Architect grants to the Owner a nonexclusive, irrevocable license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, completing, using, maintaining, altering and/or adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all undisputed 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, and/or Subcontractors to reproduce applicable portions of the Instruments of Service for use in performing services required for the Project.

§ 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. NOT USED~~

§ 7.4 Except for the licenses granted or referenced in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. ~~Except as permitted under this Agreement, t~~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 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by ~~Michigan law applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. No claim by the Owner shall be barred as untimely if filed within six (6) years of Substantial Completion of the Project.~~ The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

~~§ 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 A201-2017, General Conditions of the Contract for Construction. 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. The parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in this Agreement or any other Contract Document is contrary to this provision, such term is void and unenforceable.~~

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses, ~~expenses (including reasonable attorneys' fees and legal expenses) and judgments to the extent the foregoing damages, losses, expenses, 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 or the Architect's breach of this Agreement.~~ The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. ~~The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by 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. NOT USED~~

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to ~~non-binding 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 litigation.~~

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by ~~non-binding~~ 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 this Agreement ~~except that either party may, if in good faith, declare a mediation impasse and proceed with litigation after one full day of mediation.~~ A request for mediation shall be made in writing, delivered to the other party to this 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

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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. During the pendency of this alternative dispute resolution process, the parties agree that applicable limitations periods shall be tolled.

§ 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.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

« »

If the Owner and Architect do not select a method of binding dispute resolution, 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.

### § 8.3 Arbitration NOT USED

~~§ 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 this 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 NOT USED**

~~§ 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 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.~~

~~§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.~~

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make undisputed 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 days' written notice to the Owner before suspending services for this reason. In the event of 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 Owner shall pay the Architect all sums due prior to suspension and any 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~~negotiated by the parties~~.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, 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~~negotiated by the parties~~.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative-consecutive 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 may terminate this Agreement upon not less than seven 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.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

~~§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:  
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.) NOT USED~~

~~1 Termination Fee:~~

~~←→~~

~~2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

~~←→~~

~~§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion. NOT USED.~~

~~§ 9.9 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 9.7 shall continue and shall not be terminated or diminished in any manner.~~

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

~~§ 10.1 This Agreement shall be governed by the law of the State of Michigan place where the Project is located, excluding that jurisdiction's choice-of-law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 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, including any payments due to the Architect by the Owner prior to the assignment.

§ 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 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 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.

§ 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.

§ 10.7 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 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. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4. The Architect shall obtain the Owner's Approval prior to disclosures of

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information for purposes of verifying that such disclosures contain no confidential information (including, for example, information protected by FERPA).

§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 The Architect agrees to retain permanent records relating to the services performed for a period of at least six (6) years following submission of the Construction Documents, during which period the records will be made available to the Owner upon request.

#### ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum  
(Insert amount)  
« »
- .2 Percentage Basis  
(Insert percentage value)  
« » (« ») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other  
(Describe the method of compensation)  
« »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, 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.)

« As described in Section 4.1 based on the Architect's hourly rates to be negotiated prior to performance. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

«See Section 11.2 »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect ~~at cost without mark-up plus <> percent (<> %); or as follows:~~  
*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

<>

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	<>	percent (	<>	%)
Design Development Phase	<>	percent (	<>	%)
Construction Documents Phase	<>	percent (	<>	%)
Construction Phase	<>	percent (	<>	%)
<del>Bidding Phase</del>	<>	<>	<>	%)
<del>Construction Phase</del>	<>	<>	<>	%)
Total Basic Compensation	one hundred	percent (	100	%)

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~~The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, 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 identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work. NOT USED~~

§ 11.6.1 When compensation is on a percentage basis 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. The Architect shall be entitled to compensation in accordance with this Agreement for all services properly and actually 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 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 Section 11.2 >

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect'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 Permitting and other fees required by authorities having jurisdiction over the Project;
- 4 Printing, reproductions, plots, and 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 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- 8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of

additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

- .9 All taxes levied on ~~professional services and on~~ reimbursable expenses; in light of the Owner's tax-exempt status, the parties shall discuss major reimbursable items prior to purchase;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus  $\ll \gg$  percent ( $\ll \gg$  %) of the expenses incurred. Reimbursable expenses shall not exceed  $\ll \gg$  without the express written approval of the Owner.

§ 11.9 Architect's Insurance. ~~If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~  
~~(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.) NOT USED~~

$\ll \gg$

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 ~~An initial payment of  $\ll \gg$  (\$  $\ll \gg$ ) 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. NOT USED~~

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of  $\ll \gg$  (\$  $\ll \gg$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

##### § 11.10.2 Progress Payments

§ 11.10.2.1 ~~Unless otherwise agreed, payments~~ Payments for undisputed services shall be made monthly in proportion to services performed. ~~Undisputed p~~Payments are due and payable ~~upon presentation within thirty (30) days of the Owner's receipt of the Architect's invoice.~~ Amounts unpaid  $\ll$ thirty  $\gg$  ( $\ll$ 30  $\gg$ ) days after the ~~invoice due~~ 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.)*

$\ll$  5  $\gg$  %  $\ll$ See MCL 438.31  $\gg$

§ 11.10.2.2 The Owner shall not withhold amounts 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 for which the Architect is responsible.~~

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

*(Include other terms and conditions applicable to this Agreement.)*

$\ll$  § 12.1 The Architect shall perform its responsibilities and services in a manner consistent with the professional standards of the Architectural profession in the State of Michigan.

§ 12.2 The Architect shall not be entitled to additional compensation in the event it is necessary to extend the

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contract completion date because the Project is delayed due to conditions beyond the control of the Owner.

§ 12.3 Basic Services include assisting the Owner in developing the program requirements of the Project.

§ 12.4 Basic Services include investigations of existing conditions or facilities.

§ 12.5 As part of Basic Services, the Architect will review, evaluate and accept or reject any substitution proposed by the Contractor prior to receipt of bids. Requests for substitutions following receipt of bids will be reviewed by the Architect as an additional service.

§ 12.6 Basic Services include the preparation and delivery of reproducible record drawings showing significant changes in the work made during construction based on marked up prints, drawings and other data furnished by the Construction Manager to the Architect.

§ 12.7 The Architect shall not be entitled to additional compensation in the event it is necessary to extend the contract completion date because the Project is delayed due to conditions beyond the control of the Owner such as strikes, weather, materials shortages, etc.

§ 12.8 The Architect and Construction Manager shall provide the Owner the necessary bidding information. The referenced bid specifications shall consist of the unabridged AIA contract forms which the Architect shall modify as necessary to be consistent with this Agreement and the laws of the State of Michigan, including, but not limited to dispute resolution procedures. The Architect shall include in bid specifications, and in any of the relevant document provisions indicating that modified version(s) of standard AIA Owner/Contractor Agreement(s) and modified General Conditions will be utilized; such documents shall be subject to the Owner's approval. The Architect shall have the responsibility of amending AIA Document A201 – 2017 to remove all reference to arbitration and to incorporate AIA Document A201 – 2017, as modified, into the project manual. The items listed in this Section 12.8 shall be a joint effort of the Architect and Construction Manager.

§ 12.9 The Architect hereby agrees that it will be the Architect who is responsible for the construction/remodeling of the school building(s) described in this Agreement pursuant to the provisions to Section 763.99(a) of Part III of the regulation of the Environmental Protection Agency also known as 40 CFR 763.99(a)(7) as published in Federal Register. The Architect shall certify in compliance with said Section that no ACBM (asbestos containing building material) was specified as a building material in any construction document for the building(s); the Architect shall submit a copy of the certification to the Environmental Protection Agency Regional Office and to the Owner, which shall include the certification in its management plan.

§ 12.10 The Architect shall specify in each contract that no ACBM shall be used in the construction of the school building(s).

The Architect also agrees that it will coordinate with the Owner's personnel or the consultant, above referenced, in order to appropriately integrate the replacement of non-hazardous materials, as required under the general contracts, with the asbestos removal and treatment process for the entire construction Project(s). The Owner agrees that it shall place sole reliance upon its personnel and/or the qualified asbestos consultant, and its contractors or subcontractors, as to the means of accomplishing the asbestos removal or treatment process.

Except as expressly provided herein, the Architect shall have no responsibility whatsoever with regard to the identification, analysis, or removal of hazardous materials. The Architect shall require that, upon issuance of the final certificate for payment, each contractor certify to the Owner that to the best of the contractor's knowledge, no ACBM was used in the construction work.

The Architect shall immediately notify the Owner, in writing, of the presence at the Project site of any hazardous substances, construction materials or components of which the Architect is aware.

§ 12.11 (a) If errors and omissions in the Project are detected in the plans and specifications before the Work has been 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.

(b) If errors and omissions in the Project are detected in the plans and specifications after the Work has been bid, and if revision, removal or replacement of a portion of the Work is required, the Architect shall pay the cost of redesign and, if the Architect's error or omission was due to professional negligence, then the Architect shall pay for the cost of the revision, removal, and the reconstruction required to incorporate the omission or to correct the error, and the Owner shall be responsible only for the costs it would have incurred had the error or omission not occurred.

(c) The Architect and Owner acknowledge that no set of Construction Documents will be free of errors and that some errors and/or omissions may be within the standard of care of the industry. As such, the Owner will set aside a reasonable contingency based on Architect's past performance to accommodate the potential for additional costs arising out of errors and/or omissions that are within the standard of care of the industry.

§ 12.12 The Owner reserves the right in its discretion to require consolidation or joinder of mediation arising out of or relating to this Agreement with another mediation involving a person or entity not a party to this Agreement, in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense, or effort.

§ 12.13 In the event of mediation arising out of or relating to this Agreement, Owner reserves the right to require that the mediation hearing be conducted in the general area where the Owner's principal place of business is located

§ 12.14. The Architect shall provide the following within its Basic Services:

Services necessitated by recommendations given by the Owner or Construction Manager (as authorized) Making revisions to drawings because the estimate of the cost of the work exceeds the Owner's budget. Preparing designs and documentation for alternate bids solely for the purposes of managing the Owner's budget  
Preparing for, and attending, public presentations, meetings or hearings. Preparing for, and attending, a dispute resolution proceeding or legal proceeding. Evaluating the qualifications of bidders.  
Reviewing a contractor's submittal out of sequence from the initial submittal schedule Responding to all contractor requests for information.  
Evaluating all claims as the Initial Decision Maker.

§ 12.15 The Architect, without additional cost to the Owner, shall maintain in force professional liability insurance providing coverage for the Architect for any negligent act in the Architect's rendering of or failure to render Professional services and protecting the Owner for damages arising from results of such errors and omissions. Any "claims made" insurance shall be maintained in force during the life of the Project and for a period of no less than six (6) years following the date of substantial completion. Any "occurrence based" insurance shall be maintained in force during the life of the Project and for a period of no less than twelve (12) months after the date of substantial completion. The Architect shall notify the Owner thirty (30) days in advance if this coverage becomes unavailable or if the coverage amount is substantially changed. The Architect shall provide the Owner with certificates of insurance evidencing the insurance coverage of the Architect, which certificates shall be attached to this Agreement. The Owner shall be listed as "additional insured" on all coverages to the extent reasonably permitted by the carrier.

§ 12.16 The Architect shall produce original drawings and specifications, as well as all construction bulletin drawings and specifications in pdf format acceptable to the Owner as a part of Basic Services. Additionally, the Architect shall assemble and deliver all field drawings used for the Project as a part of Basic Services.

§ 12.17 The Architect shall not utilize photographs of this Project for any advertising or promotional purpose that include the image of any student of the Owner without the express written permission of the parent or guardian of that student if that student is a minor. If the student is of the age of majority or is an emancipated minor, the Architect must obtain express written permission from that student. Such express written permission shall acknowledge the Architect's intent for use of those images. The Owner, in its discretion, may assist the Architect in securing such permission.

§ 12.18 The Architect agrees to provide assistance up to one (1) year beyond the date of substantial completion as a part of Basic Services, as well as a post-occupancy evaluation of the building thirty (30) days prior to the expiration of the last Contractor warranty period. This review shall include architectural, plumbing, mechanical, electrical, civil and structural review of the Project, to determine whether the Project components are performing as specified prior to the expiration of the relevant warranty.

§ 12.19 The Architect shall be accessible to the Owner, either on-site or via communication media, as is necessary to address issues that arise during the Project.

§ 12.20 The Architect will not discriminate against any employee or applicant for employment, to be employed in the performance of this 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 this Agreement. »

**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 the Owner and Architect.

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

- 1 AIA Document B133™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- 2 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:~~  
~~(Insert the date of the E203-2013 incorporated into this agreement.)~~

« »

- 3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.  
(Insert the date of the E234-2019 incorporated into this agreement.)

« »

Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« »

- 4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

**MASON CONSOLIDATED SCHOOLS**

OWNER (Signature)

«Kelli Tuller »«Superintendent »

(Printed name and title)

ARCHITECT (Signature)

« »« »

(Printed name, title, and license number, if required)