



## Board of Education Agenda

**January 22, 2018**  
**7:00 pm Regular Meeting**  
 Owosso High School Media Center  
 765 E. North Street  
 Owosso, Michigan 48867

**1. Call to Order**

**2. Pledge of Allegiance**

**3. Election of Officers**

**4. Building Reports:**

- Celebrate Kids! – Bryant Elementary
- Recognition of Jordan Sowash – Academic All-State in Cross Country by the Michigan Interscholastic Track Coaches Association
- Recognition of Retiree Linda Cauthen
- School Board Member Recognition Month
- Andrew Pond and Dustin Taphouse – Board of Education Student Representative

**5. Board Correspondence: Curriculum Director's Report**

**6. Public Participation**

**7. For Action**

<b>Consent Agenda:</b>		
December 11, 2017 Minutes-----	Report 17-72	Page 1
Current Bills-----	Report 17-73	Page 8
Financials-----	Report 17-74	Page 16
Bylaws Resolution-----	Report 17-75	Page 19
Delegation of Election Duties-----	Report 17-76	Page 20
Retainer – School Attorneys-----	Report 17-77	Page 21
Authorization for Superintendent to Accept Resignations-----	Report 17-78	Page 22
Designation of Financial Institutions/Authorized Signers-----	Report 17-79	Page 23
SRES Designation of Representative-----	Report 17-80	Page 25
VE Great Lakes Trade Show, Rosemont, IL-----	Report 17-81	Page 26
Architectural and Engineering Services – Bond-----	Report 17-82	Page 27
Construction Management Services – Bond-----	Report 17-83	Page 112
Revision to Temporary Easement-----	Report 17-84	Page 140

**8. For Future Action**

OHS 2018 Choral Experience in Chicago, IL-----	Report 17-85	Page 142
Budget Revision General Fund-----	Report 17-86	Page 144
Budget Revision School Service Fund-----	Report 17-87	Page 145
Band Uniform Purchase-----	Report 17-88	Page 146

**9. For Information**

Personnel Update-----	Report 17-89	Page 148
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**10. Public Participation**

**11. Board Reports: Board Member Comments/Updates**

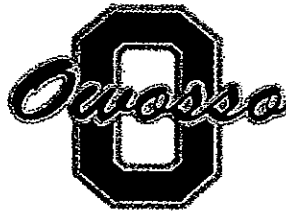
**12. Upcoming Board Meeting Dates:**

- February 12: Committee of the Whole, Washington Campus: 5- 7 pm
- February 26: Regular Board Meeting, 7:00 pm

**Important Upcoming Dates:**

- January 23: Second Semester Begins
- January 23: Exchange Student Luncheon (Italy), OHS Room 307, 11 am
- January 25: LHS Parent/Teacher Conferences, 5:30 – 7 pm
- January 26-27: Snowfest, Frankenmuth
- February 2: ABC Channel 12 Early Morning Pep Assembly at OHS, 5 am (rescheduled from December 15)
- February 2 & 3: OHS Drama Performance, 7 pm
- February 3: OHS Winter Formal, 7 pm
- February 16-19: No School: Winter Recess
- February 20: Exchange Student Luncheon, OHS Room 307, 11 am
- February 20: OMS Choir Concert, 7 pm
- February 21: OHS Band Concert, 7 pm
- February 22: 8<sup>th</sup> Grade Parent Night, OHS 6 pm
- February 23: LHS Community Breakfast, 7:45 am

**13. Adjournment:**



OWOSSO PUBLIC SCHOOLS

*Ready for the World*

## BOARD OF EDUCATION NORMS

- Open, Honest, and Timely Communication
- Prepared
- Committed
- Unified
- Disagree Without Conflict
- Punctual (notify if absent)
- Responsive (48 hour rule)
- Students First
- No Surprises

## BOARD GUARANTEE (Adopted May 2006)

We have been elected by the members of our community and choose to serve our fellow citizens to deliver the best possible programs and services to our children.

**Therefore, we guarantee that:**

We will serve with pride. We have been given the opportunity to make a difference in the lives of children and the quality of life in our community, and we are proud to accept that challenge.

We will treat students, parents, citizens, staff and fellow board members with dignity and respect.

We will be informed, knowledgeable and prepared before making decisions that affect the education of students. We will stay up-to-date so that our decisions will be based on the most recent information. We will model our belief that learning is a lifelong process.

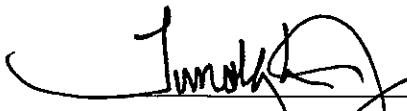
We will do our part to work as a team with administrators, teachers, support staff, parents, students and citizens so that the entire learning atmosphere of our school will be one of warmth and caring. We will do this by becoming a part of district committees such as cross-functional, professional governance council (PGC) and many more.

We will maintain the policy making role of the Board and represent this to the constituents of the district by informal communications and referral to the proper channels for consideration of concerns and suggestions.

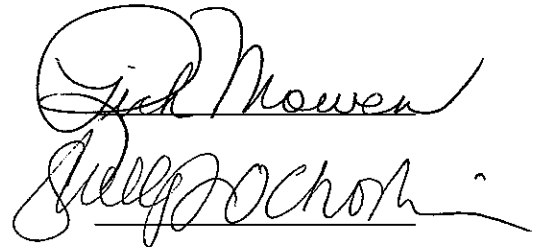
We will be enthusiastic and energetic in our support of the work in our schools by students, staff and volunteers. We will model this behavior by attending school sponsored events and working toward board certification through class work.

We will represent and reflect all segments of the community and base our decisions on sound policy and ethical principle that is in the best interest of all students. We will do this by basing our decisions on data and survey work on an annual basis. We will also take the time to have formal and informal conversations with our community.

Timothy Jenc  
President



Rick Mowen  
Vice-President



Cheryl Paez  
Treasurer



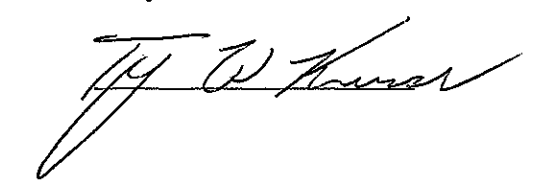
Shelly Ochodnicky  
Secretary



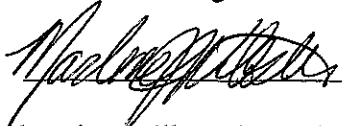
Sara Keyes  
Trustee



Ty Krauss  
Trustee



Marlene Webster  
Trustee



Board Guarantee check points will run in conjunction with the Superintendent dialogue sessions.



OWOSSO PUBLIC SCHOOLS

*Ready for the World*

## **Public Participation at Board Meetings**

The Board of Education is a public body and recognizes the value of public comment on educational issues. Time has been included in the meeting's agenda for public participation. Members of the audience are reminded that they should announce their name and group affiliation when applicable and to limit their participation time to three minutes or less. Comments should be directed to the Board and be relevant to the business of the Board of Education. This is not an opportunity for dialogue with the Board of Education. The rules of common courtesy should also be observed.



**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Minutes**  
**December 11, 2017**  
**Report 17-72**

President Jenc called the meeting of the Board of Education to order at 7:01 pm. The meeting was held in the media center located at Owosso High School, 765 E. North Street, Owosso, Michigan.

Present: Jenc, Keyes, Krauss, Mowen, Ochodnicky, Paez, Webster  
 Absent: No one

**Pledge of Allegiance**

President Jenc informed the Board of Education that the meeting's agenda has been amended to include the addition of a report for the recommendation of a New Hire-Administrative Staff and the Superintendent's Evaluation that should include contract extension.

**Building Reports**

As part of the Celebrate Kids! segment of the meeting, Superintendent Tuttle welcomed Owosso Middle School Principal Mr. Rich Collins. Mr. Collins commented that representatives from his building were in attendance to speak about the middle school's Peer 2 Peer program that was initiated during the 2016-2017 school year. Mr. Collins introduced Peer 2 Peer facilitators Rachel Knox, Social Worker and Guadalupe Bryan, Language Arts Teacher. Ms. Knox informed the Board that Peer 2 Peer is a state-wide program that gives students the opportunity to support their peers. Owosso Middle School students have the choice of participating in an academic or social section of the program. The academic section of Peer 2 Peer is a class that students can take and is taught by Ms. Bryan. Students in this class are paired with another student and practice positive role modeling, assist with classroom expectations, and help their peer stay focused. The Peer 2 Peer academic class has grown from three students in 2016-2017 to 15 students this year. In addition, 45 students are involved in the social piece of Peer to Peer and meet once a month during lunch for social inclusion activities and team building to help students feel connected. There is also an informal lunch group that has lunch with their peers throughout the month in the cafeteria. Ms. Bryan explained that students in her Peer to Peer class were assigned an IB lesson on Autism Awareness. Students were given a pretest to see what they knew about autism spectrum disorder (ASD), who is effected, and how it effects people differently. A student created video about Peer 2 Peer which provides information about the program and its benefits for people who have ASD/autism was presented. Ms. Bryan asked her students that were in attendance at the meeting to share what they like about Peer to Peer with the Board. Seventh grader Peyton Sink explained that one of his peers is Emma Reed and she helps him with his homework when he is having a rough day. His peers also help him with his social skills. Emma Reed stated that she likes the Peer to Peer class because students can be themselves and not worry about what others think of you. Peer Kendall Anderson is paired with Cameron Rowlison and she remarked that she likes the program because it helps other students feel better about themselves.

Mr. Collins commented that Peer to Peer is a great program. He praised Ms. Knox and Ms. Bryan for their hard work and sharing the various techniques from their trainings with middle school staff members. Peyton Sink's mother commented that she loves the program because it helps her son in his general education classes. Lori Young-Rowlison stated that she likes the program because her son always knows that his peer is his wingman.

Superintendent Tuttle stated that although Peer 2 Peer has been implemented statewide, she applauded Ms. Knox and Ms. Bryan for embracing the program and taking it to the degree that they have.

Athletic Director Dallas Lintner recognized the Owosso High School Girls' Varsity Volleyball team for being named Academic All-State by the Michigan Interscholastic Volleyball Coaches Association (MIVCA). The team had an outstanding aggregate grade point average of 3.67 during their season. Head Volleyball Coach Marley Apsey received the award on behalf of the team. In addition, OHS seniors Brooke Edington and Josephine Hufnagel were named Academic All-State by MIVCA. Mr. Linter commented that both girls are great athletes and in the top 20 of their graduating class.

Board of Education Student Representative Lucy Popovitch informed the Board that Andrew Pond and Dustin Taphouse were unable to attend the meeting. She reported that the high school is currently in the midst of the annual canned food drive. Students have been organizing fundraising events in support of the can drive. Spirit week will be held throughout the week of December 11 with a different theme every day. The ABC Channel 12 early morning pep assembly is scheduled for Friday, December 15<sup>th</sup> at 5 am in the high school gym. A variety of activities and raffles will be held during the assembly to encourage student participation. Members of the E-Board are representing grade levels at the high school and competing against each other to see which class can raise the most money for the food drive. Some members of Student Council are on the Can Court this year to increase student participation and involvement in high school activities.

### **Board Correspondence**

Superintendent Tuttle reported that the District conducted a very extensive interview process for the Curriculum Director position. The interview committee consisted of 24 people and included Board members, teacher leaders, and administrators. Five viable candidates were interviewed after it was determined that they met the qualifications of the position and provided a short video about themselves. After a very thorough process, the candidates were narrowed down to two, but only one candidate overwhelmingly stood out and will be presented during the meeting for approval by the Board.

Superintendent Tuttle explained that staff is continuing to work on their IB units in preparation for the Middle Years International Baccalaureate reauthorization visit.

Superintendent Tuttle stated that the District continues to actively seek additional funding sources through various grant opportunities. She announced that the District is in the running for a \$750,000 grant that would cover equipment needs in five qualifying CTE classes. She thanked Mr. Nick Krueger for writing the grant. The District was awarded the Title V-Rural Education grant in the amount of \$53,000 and will be used to support the on-going one-to-one technology initiative. The county collectively wrote an AgriScience grant and if awarded, each school district in the county will receive a \$100,000 tractor as agreed upon by the instructors. Central Elementary Principal Bridgit Spielman and CFO Julie Omer were praised by Superintendent Tuttle for their work on a Project Lead the Way (PLTW) grant, which will provide \$100,000 for materials, professional development in grades K-5, and integration into the middle school if awarded.

Superintendent Tuttle remarked that she is very proud of the students, staff, and parents of Owosso Public Schools for their ongoing generosity and giving to those in need. Emerson Elementary Principal Terry Sedlar challenged his students and staff to try and fill five boxes for the Toys for Tots program and 25 boxes for the Owosso Cares Food Drive.

The Board was invited to attend the ABC 12 School Spirit Cup challenge early morning pep assembly on December 15 to help combat hunger in Owosso. Superintendent Tuttle reiterated that Owosso does not send food to the Eastern Michigan Food Bank and all donations collected are given to Owosso food pantries. All monetary donations go to the Owosso Cares Food Backpack Program. Mrs. Jessica Thompson was recognized by Superintendent Tuttle for organizing the Owosso Cares Food Drive and Backpack program.

Superintendent Tuttle commented that during the November 27<sup>th</sup> Board meeting Kayla Manning and Megan Jodway presented information on their Big Box Out project to raise money and awareness about homelessness in the area with all donations going towards the Shiawassee Hope organization. Marlene Webster reported that the girls raised just over \$3,000 and a portion of these funds have already been utilized to assist a former Lincoln High School student and community members facing possible eviction from their homes. Superintendent Tuttle stated that she was overwhelmed with the support that Kayla Manning and Megan Jodway received with their fundraising efforts from Board members, OPS staff, local businesses, and community members.

Superintendent Tuttle reported that over 40 individuals participated in a Painting for Peer to Peer event for the high school's Peer to Peer program. Over \$400 was raised for students to attend a Lugnuts baseball game in the spring.

Superintendent Tuttle informed the Board that Bryant Elementary has 6,000 cans of food that have been donated for the Owosso Cares Food Drive.

Superintendent Tuttle reported that students in Mrs. Dame's class at Central Elementary School collected five carts full of vital supplies for the Shiawassee County Humane Society after hearing that they were facing a critical shortage of needed supplies. The students visited the Humane Society to deliver their donations of pet food, blankets, toys, and treats for the animals.

Superintendent Tuttle stated that sixth graders from Owosso Middle School held bake sales and hosted a movie night to raise funds for 25 middle school students that they adopted over the holidays. She praised the students of Owosso Public Schools for their character and ability to give to those in need.

Superintendent Tuttle announced that Bentley Bright Beginnings recently hosted a Holiday Bash for their students and families. Over 75 parents attended the bash and students participated in arts and crafts activities and were treated to a visit by Santa Claus.

Superintendent Tuttle reported that the middle school hosted PSAT testing on December 2. The testing is a requirement for acceptance into the Shiawassee Scholars program. Mr. Lance Little, teacher at OMS was recognized for his assistance in organizing the assessment.

Superintendent Tuttle explained that all of the CTE Advisory Boards have met. She thanked President Jenc for his participation on the Engineering Board as a business partner.

Superintendent Tuttle informed the Board that this is the second year of Lincoln High Schools participation in the Michigan College Access Network (MCAN), which is instrumental in getting students eligible for tuition incentive programs and completing college applications. Teachers at LHS also assist students in completing their Educational Development Plans (EDP). It was noted that the high school also participates in these programs.

Superintendent Tuttle praised the middle school and high school bands for their outstanding holiday concerts. Choral concerts are scheduled to be held at the middle school and high school during the week of December 11.

Superintendent Tuttle stated that the Senior Citizen Breakfast was held on December 8. She thanked Vice President Rick Mowen, Secretary Shelly Ochodnicki, and Trustee Sara Keyes for attending and welcoming the 350 participants. She also expressed her gratitude towards the staff and students that worked hard to make the event successful. The high school jazz band, symphonic band, and Madrigal singers were also praised for their impressive performances.

Superintendent Tuttle explained that coaches have been asked to periodically visit the elementary buildings and help students become more aware of athletic opportunities at the secondary level. She reported that Varsity Football Coach Devin Pringle has been visiting the elementary schools, reading books to the students, and demonstrating that academics comes first.

Superintendent Tuttle reminded the Board of the ABC Channel 12 early morning pep assembly on December 15. The Board was also invited to holiday breakfast that will be held in the Superintendent's office following the pep assembly from 7:30 – 9:30 am.

Superintendent Tuttle reported that each Board member and the Student Representatives have been presented with a variety of gifts that were produced by OPS students along with a tray of cookies from the Food Service Department as a small token of gratitude for their service to the District.

### **Public Participation**

President Jenc stated that the Board of Education is a public body and recognizes the value of public comment on educational issues. Time has been included in the meeting's agenda for public participation. Members of the audience were reminded that they should announce their name and group affiliation when applicable and to limit their participation time to three minutes or less. Comments should be directed to the Board and be relevant to the business of the Board of Education. This is not an opportunity for dialogue with the Board of Education. The rules of common courtesy should also be observed.

There were no comments from the public.

### **For Action**

- Moved by Ochodnicki, supported by Mowen to approve the November 27, 2017 regular meeting minutes, November 27, 2017 closed session minutes, current bills, and financials as presented. Motion carried unanimously.
- Moved by Mowen, supported by Ochodnicki to adopt as their second readings: New Policy 1421, Revised Policies 3121, 4121, 8142 – Criminal History Record Check: Administration, Professional, support Staff and Part time/Contractual arrangements. Motion carried unanimously.
- Moved by Mowen, supported by Keyes to adopt as their second readings: New Policy 1439, Revised Policies 3139 and 4139 – Discipline: Administration, Professional, and Support Staff. Motion carried unanimously.
- Moved by Mowen, supported by Ochodnicki to adopt as their second readings: New Policy 2410 – Prohibition of Referral or Assistance and Revised Policy 2414 – Reproductive Health and Family Planning. Motion carried unanimously.
- Moved by Mowen, supported by Keyes to adopt as their second reading: New Policy 2418 – Sex Education. Ayes: Jenc, Mowen, Ochodnicki, Webster, Keyes, and Krauss. Nays: Paez. Motion carried.
- Moved by Ochodnicki, supported by Keyes to adopt as their second readings: Revised Policies 7540.03 and 7540.04 – Acceptable Use and Safety: Students and Staff, Revised Policy 7540.05 and New Policy 7540.06 – District Issued Email Accounts: Staff and Students. Motion carried unanimously.
- Moved by Mowen, supported by Keyes to adopt as their second reading Revised Policy 8321 – Criminal Justice Information Security (Non-Criminal Justice Agency). Motion carried unanimously.
- Moved by Mowen, supported by Krauss to adopt the completed year-end evaluation and contract extension for Superintendent Dr. Andrea Tuttle. President Jenc reported that the Board of Education met on November 27, 2017 in closed session to complete the year-end consensus based evaluation for Superintendent Dr. Andrea Tuttle. The Board collectively completed the summative evaluation after reviewing Superintendent Dr. Tuttle's performance in seven domain areas. The areas evaluated were Governance & Board Relations, Community Relations, Staff Relations, Business and Finance, Instructional Leadership, Student Growth, and Progress Toward District-Wide Goals. Based on the

summative evaluation, Superintendent Tuttle earned a cumulative score of 93.25 points and received an overall highly effective evaluation. The Board of Education collectively agreed to extend Superintendent Tuttle's contract of employment through June 30, 2021. Motion carried unanimously.

- Moved by Keyes, supported by Krauss to approve the course listings as presented for the Middle School, High School and Lincoln High School for the 2017-2018 school year. Motion carried unanimously.
- Moved by Mowen, supported by Keyes to approve the hiring of Mr. Steve Brooks as the Curriculum Director. Superintendent Tuttle stated that as she indicated in her Superintendent's Report, a very thorough and extensive interview process was conducted for the Curriculum Director's position. She stated that with pure confidence and overwhelming support from the interview committee and without any reservations, she recommends Mr. Steve Brooks for the position. Mr. Brooks has proven himself as a professional and a community member. Secretary Ochodnick commented that she was involved in the hiring process for the Curriculum Director and it was a very rigorous process. She stated that the key points that kept coming up at the conclusion of the interviews were relationships and communication, which are strong characteristics of Mr. Brooks. Trustee Keyes remarked that she was also part of the interview committee and believes that several of the candidates would have done great, but the relationships that Mr. Brooks has already built in the District was to his advantage. Additionally, she has the upmost trust in Mr. Brooks and can't wait to see where he takes the District. Motion carried unanimously.

#### **For Future Action**

- The Board of Education will be asked to authorize the Superintendent to sign the agreement with Kingscott & Associates for Architectural and Engineering Services for the bond passed in November 2017. Superintendent Tuttle praised CFO Julie Omer for her extensive work on the architectural and construction services agreements. After a very thorough interview process in 2007, the Board of Education authorized the Superintendent at the time to proceed with a bond exploration process. Both Kingscott and Clark Construction have stood by and provided their services pro bono through the District's attempts to pass a bond and therefore it is recommended that the Board move forward with formalizing these relationships. Superintendent Tuttle explained that the documents presented are draft proposals. She encouraged the Board to review the proposals thoroughly and become immersed in the architectural and construction contracts. Superintendent Tuttle also drew the Board's attention to the Board Report on page 89 of the packet, specifically the second paragraph under the Facts & Statistics section of the report.
- The Board of Education will be asked to authorize the Superintendent to sign the agreement with Clark Construction for construction management services for the bond passed in November 2017.
- The Board of Education will be asked to authorize the Superintendent to sign off on the amended temporary easement to the property located by and inclusive of the south driveway alongside of the Owosso Middle School at 219 N. Water Street to the Kincaid Henry Building Group, Inc. and the Shiawassee Regional Chamber of Commerce.

#### **Public Participation**

There were no comments from the public.

#### **Board Member Comments/Updates**

President Tim Jenc thanked everyone for the Christmas gifts and expressed how much he enjoys receiving the gifts every year. He commented that his mother-in-law, Nancy Nickolas attended the Senior Citizen Breakfast and has for the past several years. On behalf of Mrs. Nickolas, Mr. Jenc stated that this is one of her favorite events and she wanted to thank everyone who contributes to making the breakfast a success.

Vice-President Rick Mowen commented on the greatness of Owosso Public Schools as demonstrated during the meeting by the Peer to Peer presentation, athletic achievements, and the annual Senior Citizen Breakfast. He acknowledged the Food Service Department and Culinary Arts students for making the breakfast an enjoyable event that people look forward to attending every year. Mr. Mowen offered a special thank you to the students of the District for their thoughtful handmade Christmas gifts to the Board. Mr. Mowen commented that he did not participate in the Curriculum Director interviews, but was very impressed to learn that Mr. Steve Brooks was chosen for approval by the Board based on his work and performance at Bryant Elementary. Mr. Mowen wished everyone a very Merry Christmas and a Happy New Year.

Secretary Shelly Ochodnicki remarked that she thinks that it's great when the District promotes from within. Mr. Steve Brooks is a dedicated employee who has been employed with Owosso Public Schools for 25 years and moved up the ranks from an elementary teacher to his new position. Mrs. Ochodnicki stated that Superintendent Tuttle could have appointed Mr. Brooks as Curriculum Director, but she honored the interview process and the overwhelming selection of the committee.

Treasurer Cheryl Paez stated that she had an opportunity to attend the high band concert. It was wonderful like always and a great way to start the holiday season. Mrs. Paez thanked everyone for the Christmas baskets and cookies and stated they it's always fun to open the gifts. She congratulated Mr. Brooks on his new position and remarked that he was her children's principal when they attended Emerson Elementary. Mrs. Paez wished everyone a Merry Christmas.

Trustee Marlene Webster thanked everyone for the Christmas gifts. She stated that she attended the Owosso Middle School band concert and observed how vigilant administrators were about watching people as they entered and existed the building and auditorium. She applauded the administrators for keeping students safe in today's environment without drawing attention to themselves. Mrs. Webster wished everyone a Merry Christmas and Happy Holidays.

Trustee Ty Krauss thanked everyone for the wonderful Christmas gifts. He congratulated Mr. Steve Brooks on his new position and wished him the best as he moves forward. Mr. Krauss commented that he is wrapping up his first year as a member of the Owosso Public Schools Board of Education and is very thankful for the opportunity to serve with the Board and the community. He stated that he has had a wonderful year and looks forward to making things happen with the bond. Mr. Krauss wished everyone a Merry Christmas and a Happy New Year and stated that he will see everyone in 2018.

Trustee Sara Keyes commented that she sincerely appreciates all of the giving that goes on in the District. She stated that she attended the second grade holiday program at Emerson and was impressed with the number of people that were bringing in items for Toys for Tots and the Owosso Cares Food Drive in spite of this being a low socio-economic community. Mrs. Keyes remarked that she is very excited for Mr. Brooks and his new position; however, the person that replaces him at Bryant Elementary will have some big shoes to fill. She stated that she is looking forward to 2018.

**Upcoming Board Meeting Dates:**

January 8: Board Subcommittee Meetings 5 and 6 pm  
January 22: Regular Board Meeting, 7 pm

**Important Upcoming Dates:**

December 12: Exchange Student Luncheon, OHS Room 306 at 11 am  
December 12: OMS Holiday Choir Concert at 7 pm  
December 13: OHS Choir Concert at 7 pm  
December 14: Second grade Holiday Program, Central Elementary at 7 pm  
December 15: ABC Channel 12 Early Morning Pep Assembly, OHS at 5 am  
December 15: 10<sup>th</sup> Annual Owosso Cares Food Drive Concludes

December 18: LHS ME Day  
December 19: LHS Community Breakfast at 7:45 am  
December 19: Emerson Elementary All School Sing-a-Long at 3 pm  
December 20-January 2: No School-Holiday Recess  
January 3: School Resumes  
January 15: No School-Martin Luther King, Jr. Day  
January 19: LHS Community Breakfast at 7:45 am  
January 19: Half Day for All Students, Teacher Workday, End of First Semester  
January 20: Snow Globe Classic at OHS, 9 am – 4 pm  
January 22: No School-Teacher Work Day

**Adjournment**

Moved by Mowen, supported by Ochodnicky to adjourn at 8:13 pm. Motion carried unanimously.

Minutes recorded by Clara Pitt

Respectfully submitted,

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Shelly Ochodnicky, Secretary

OWOSSO PUBLIC SCHOOLS  
EXPENDITURE REPORT  
DECEMBER 4, 2017 - JANUARY 14, 2018  
REPORT 17-73

**CHECK RUN ACTIVITY BY FUND**

GENERAL FUND	\$629,060.70
SERVICE FUND	\$72,969.77
SINKING FUND	

<b>CHECK RUN TOTAL</b>	<u>\$702,030.47</u>
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**CREDIT CARD ACTIVITY BY FUND (12/05/17-1/04/2018 - Posting date)**

GENERAL FUND (DECEMBER ACTIVITY)	\$ 13,631.18
SERVICE FUND (DECEMBER ACTIVITY)	\$ 276.32
ORGANIZATIONAL FUND (DECEMBER ACTIVITY)	\$ 1,707.73

<b>CREDIT CARD TOTAL</b>	<u>\$ 15,615.23</u>
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**GORDON FOOD SERVICE ACTIVITY (SERVICE FUND)**

PAYMENT 12/08/17	\$ 23,355.26
PAYMENT 12/20/17	\$ 17,248.05
PAYMENT 1/05/18	\$ 15,182.76

<b>DIRECT DRAW FROM BANK ACCOUNT</b>	<u>\$ 55,786.07</u>
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PAYROLL (#12) 12/08/2017	\$ 810,482.79
PAYROLL (#13) 12/22/2017	\$ 823,430.74
PAYROLL (#14) 1/05/2018	\$ 722,586.05
UAAL STABILIZATION PAYMENT-12/05/2017 - NOVEMBER	\$ 360,838.99
UAAL STABILIZATION PAYMENT-1/05/2018 - DECEMBER	\$ 180,419.50

<b>PAYROLL TOTAL</b>	<u>\$ 2,897,758.07</u>
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<b>GRAND TOTAL</b>	<u>\$ 3,671,189.84</u>
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01/16/2018 12:27 pm

Owosso Schools

Page: 1

## Check Register for Bank Account ID CHEM1

From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
097148	12/07/2017	1 Comp	Void	01/10/2018 000010 ABC SCHOOL SUPPLY, INC.	HS/MALLORY/DUGOUT SUPPLIES	1,161.16
097149	12/07/2017	1 Comp	Cleared	12/31/2017 000240 AMERICAN SPEEDY PRINTING CENTERS	MS/LITTLE/CERTIFICATES	39.00
097150	12/07/2017	1 Comp	Open	007417 BENTLEY BRIGHT BEGINNINGS	ADM/COCA-COLA REIMBURSEMENT	17.50
097151	12/07/2017	1 Comp	Cleared	12/31/2017 005935 BP CANADA ENERGY MARKETING GROUP	UTIL/NATURAL GAS PURCHASE	6,818.10
097152	12/07/2017	1 Comp	Open	101611 CHARLOTTE HIGH SCHOOL	ATH/SMITH/1-27 JV WRESTLIN	165.00
097153	12/07/2017	1 Comp	Cleared	12/31/2017 007465 CINTAS CORPORATION # 308	OPER/KLAPKO/UNIFORM RENT	209.54
097154	12/07/2017	1 Comp	Cleared	12/31/2017 001050 CITY OF OWOSSO	1/3 BILL CENTRAL PTO PROJE	692.35
097155	12/07/2017	1 Comp	Cleared	12/31/2017 001197 CLEVINGER, DEB	HS/D CLEVINGER/MILEAGE	37.45
097156	12/07/2017	1 Comp	Cleared	12/31/2017 003248 CRYSTAL CLEAN WATER	ADM/WATER	52.00
097157	12/07/2017	1 Comp	Cleared	12/31/2017 100199 DISCOUNT SCHOOL SUPPLY	BENT/HURLEY/PAPER/PAINT/GL	255.32
097158	12/07/2017	1 Comp	Cleared	12/31/2017 101867 FASTENAL COMPANY	OPER/KLAPKO/TRUBOLTS	2.32
097159	12/07/2017	1 Comp	Cleared	12/31/2017 102363 GRAHAM, TERESA	MS/GRAHAM/POSTAGE	119.23
097160	12/07/2017	1 Comp	Cleared	12/31/2017 000070 H. K. ALLEN PAPER COMPANY	OPER/KLAPKO/CUSTODIAL SUPP	898.75
097161	12/07/2017	1 Comp	Cleared	12/31/2017 100069 HEINEMANN	EM/GREKO/LLI RED SYSTEM	5,395.50
097162	12/07/2017	1 Comp	Cleared	12/31/2017 005929 IRELAN, STEVE	ALT/IRELAN/SUPPLIES	125.36
097163	12/07/2017	1 Comp	Cleared	12/31/2017 008220 J & H OIL CO.	TRANS/DELONG/FUEL	8,535.44
097164	12/07/2017	1 Comp	Cleared	12/31/2017 004227 KETCHUM, HEATHER	MS/KETCHUM/MOVIE LESSON	87.50
097165	12/07/2017	1 Comp	Cleared	12/31/2017 008359 KINNECT ENERGY INC.	MONTHLY ENERGY MANAGEMENT	315.00
097166	12/07/2017	1 Comp	Cleared	12/31/2017 102408 LANSING SANITARY SUPPLY INC.	OPER/KLAPKO/CUSTODIAL SUPP	346.80
097167	12/07/2017	1 Comp	Cleared	12/31/2017 003537 MCLAREN RENT IT INC.	OPER/KLAPKO/EXCAVATOR RENT	200.40
097168	12/07/2017	1 Comp	Cleared	12/31/2017 100107 MHSAA/CAP	ATH/MURRAY/CAP CLASS	80.00
097169	12/07/2017	1 Comp	Cleared	12/31/2017 006929 MICH. ASSN NON-PUBLIC SCHOOLS	PRIN. LAURA HEATWOLE REGIS	1,500.00
097170	12/07/2017	1 Comp	Cleared	12/31/2017 008122 OP AQUATICS-LANSING	OPER/KLAPKO/POOL CHEMICALS	1,009.04
097171	12/07/2017	1 Comp	Cleared	12/31/2017 007851 OREILLY AUTO PARTS	OPER/KLAPKO/VEHICLE MAINT	124.96
097172	12/07/2017	1 Comp	Cleared	12/31/2017 004750 PERMA-BOUND	OMS/LIEBERMAN/BOOKS	233.62
097173	12/07/2017	1 Comp	Open	002107 PETERSEN, SUSAN	EM/PETERSEN/NOTEBOOKS	26.25
097174	12/07/2017	1 Comp	Cleared	12/31/2017 008382 ROBERTS INSTALLATION & REPAIR IN	OPER/KLAPKO/BLEACHER REPAI	4,480.00
097175	12/07/2017	1 Comp	Cleared	12/31/2017 005420 SCHOOL SPECIALTY INC.	EM/J. ANDERSON/SUPPLIES	1,661.49
097176	12/07/2017	1 Comp	Cleared	12/31/2017 005520 SECURITY ALARM COMPANY INC.	OPER/KLAPKO/ALARM MONITORI	306.00
097177	12/07/2017	1 Comp	Cleared	12/31/2017 005625 SHIawassee RESD	OHS/PHILLIPS/LICENSES	600.00
097178	12/07/2017	1 Comp	Cleared	12/31/2017 101057 STATE OF MICHIGAN	OPER/KLAKO/POOL PERMIT	67.00
097179	12/07/2017	1 Comp	Cleared	12/31/2017 008301 STINSON, GUNNAR	ADM/STINSON/MILEAGE	42.72
097180	12/07/2017	1 Comp	Cleared	12/31/2017 002623 TASC-CLIENT INVOICES	1/1-1/31/2018 ADMIN FEE	366.18
097181	12/07/2017	1 Comp	Cleared	12/31/2017 004604 TUTTLE, ANDREA	ADM/TUTTLE/FEE	10.00
097182	12/07/2017	1 Comp	Cleared	12/31/2017 007457 US BANK EQUIPMENT FINANCE	LEASE PAYMENT DEC 2017	2,132.95
097183	12/07/2017	1 Comp	Cleared	12/31/2017 006510 VALLEY LUMBER COMPANY	OPER/KLAPKO/DUGOUT SUPPLIE	99.44
097184	12/07/2017	1 Comp	Cleared	12/31/2017 004669 VAN EPPS, KAREN	HS/VANEPPS/MILEAGE	136.68
097185	12/07/2017	1 Comp	Cleared	12/31/2017 006511 WASTE MANAGEMENT OF FLINT	UTIL/TRASH SVC/NOV 2017	2,054.53
097186	12/07/2017	1 Comp	Cleared	12/31/2017 007985 WATSON, JOE	ADM/WATSON/MILEAGE	84.75
097187	12/07/2017	1 Comp	Cleared	12/31/2017 006882 WHEELER, JEREMY	ADM/WHEELER/MILEAGE	84.66
097188	12/07/2017	1 Comp	Open	005194 WILLIAMSTON HIGH SCHOOL	ATH/SMITH/1-20 WRESTLING	250.00
097189	12/14/2017	1 Comp	Cleared	12/31/2017 000300 ARGUS-PRESS CO.	ADM/THOMPSON/ADVERTISING	1,850.00
097190	12/14/2017	1 Comp	Open	004111 BEN GRAHAM GROUP INC.	ADM/THOMPSON/SCHOOL OF CHO	531.25
097191	12/14/2017	1 Comp	Cleared	12/31/2017 006077 CHERYL LYNN BARTON	ADM/THOMPSON/DOG OBEDIENCE	634.00
097192	12/14/2017	1 Comp	Cleared	12/31/2017 008189 CONVERGENT TECHNOLOGY PARTNERS	TECH/MILLER/E-RATE CONSULT	332.50
097193	12/14/2017	1 Comp	Cleared	12/31/2017 001410 DALTON ELEVATOR	OPER/KLAPKO/WELDING SUPPLI	45.00
097194	12/14/2017	1 Comp	Cleared	12/31/2017 007216 GREGORY, MIKE	OHS/GREGORY/STUDENT COMPET	314.13
097195	12/14/2017	1 Comp	Cleared	12/31/2017 100327 HELLO DIRECT INC.	EM/NIDEFSKI/AUTO ANSWER	275.80
097196	12/14/2017	1 Comp	Cleared	12/31/2017 002810 HI-QUALITY GLASS	OPER/KLAPKO/BRYANT WINDOW	201.38
097197	12/14/2017	1 Comp	Cleared	12/31/2017 006696 I60 MEDIA	ADM/PIIT/NOTECARDS/OFF SUP	225.00
097198	12/14/2017	1 Comp	Cleared	12/31/2017 005929 IRELAN, STEVE	LINCOLN/IRELAN/REIMBURSE	92.85
097199	12/14/2017	1 Comp	Cleared	12/31/2017 004227 KETCHUM, HEATHER	OMS/SPEC ED/REIMBURSE SUPP	35.68
097200	12/14/2017	1 Comp	Cleared	12/31/2017 007091 LEARNING A TO Z	EM/C. ANDERSON/RAZ KIDS	284.85
097201	12/14/2017	1 Comp	Cleared	12/31/2017 001841 LINTNER, DALLAS	OHS/ATH/MILEAGE/NOVEMBER	268.89

01/16/2018 12:27 pm

Owosso Schools

Page: 2

## Check Register for Bank Account ID CHEM1

From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
097202	12/14/2017	1 Comp	Cleared 12/31/2017	003600 MARSHALL MUSIC COMPANY INC.	OHS/SCHLEGEL/REPAIRS	50.00
097203	12/14/2017	1 Comp	Cleared 12/31/2017	003660 MEDLER ELECTRIC COMPANY	OPER/KLAPKO/LIGHT BULBS	615.90
097204	12/14/2017	1 Comp	Open	008386 MELVINDALE HIGH SCHOOL	OHS/GREGORY/COMPET TRANSP	2,147.85
097205	12/14/2017	1 Comp	Cleared 12/31/2017	008387 MOSHER, CHAD	OMS/COLLINS/QUIZ BOWL FEES	200.00
097206	12/14/2017	1 Comp	Open	100984 MSBOA	OHS/SCHLEGEL/OHS REGISTRAT	201.00
097207	12/14/2017	1 Comp	Cleared 12/31/2017	005928 MURRAY, ANDREW	OHS/SMITH/MILEAGE STATE MT	119.64
097208	12/14/2017	1 Comp	Cleared 12/31/2017	100001 OFFICE DEPOT INC.	EM/NIDEFSKI/SUPPLIES	89.96
097209	12/14/2017	1 Comp	Cleared 12/31/2017	001018 OMER, JULIE	ADM/OMER/CONF REIMBURSEMEN	80.32
097210	12/14/2017	1 Comp	Open	004600 OPS FOOD SERVICE FUND	ALT ED/IRELAN/SPIRIT WEEK	314.24
097211	12/14/2017	1 Comp	Cleared 12/31/2017	001153 PEARSON EDUCATION INC.	CE/BINGER/DRA K-3 COMP PAC	347.71
097212	12/14/2017	1 Comp	Cleared 12/31/2017	004790 PITNEY BOWES	ADM/PITT/POSTAGE 42957191	500.00
097213	12/14/2017	1 Comp	Cleared 12/31/2017	004860 POSTMASTER	ADM/PITT/MAIL PERMIT #69	225.00
097214	12/14/2017	1 Comp	Cleared 12/31/2017	100135 QUILL CORPORATION	OPER/KLAPKO/FILTER	144.42
097215	12/14/2017	1 Comp	Open	000323 ROTARY CLUB OF OWOSSO	OHS/PHILLIPS/DUES/MEALS	52.50
097216	12/14/2017	1 Comp	Cleared 12/31/2017	005420 SCHOOL SPECIALTY INC.	EM/NIDEFSKI/SUPPLIES	317.44
097217	12/14/2017	1 Comp	Cleared 12/31/2017	005625 SHIAWASSEE RESD	SUBSTITUTE COST 11/5-11/19	13,027.20
097218	12/14/2017	1 Comp	Open	007689 THEODORES SUPERIOR COFFEE ROASTE	ADM/SMITH/COFFEE MEETINGS	90.00
097219	12/14/2017	1 Comp	Cleared 12/31/2017	006510 VALLEY LUMBER COMPANY	OHS/DIGNAN/CONSTRUCT TRADE	256.62
097220	12/14/2017	1 Comp	Open	006592 VIRTUAL ENTERPRISES, INC.	OHS/GREGORY/BOOTH 302	800.00
097221	12/20/2017	1 Comp	Cleared 12/31/2017	000300 ARGUS-PRESS CO.	ADM/SUBSCRIPTION	126.00
097222	12/20/2017	1 Comp	Cleared 12/31/2017	007730 BAUMDRAHER, JESSA	COMM ED LIFEGUARD PAYMENT	123.50
097223	12/20/2017	1 Comp	Cleared 12/31/2017	007465 CINTAS CORPORATION # 308	OPER/KLAPKO/UNIFORM RENT	60.90
097224	12/20/2017	1 Comp	Cleared 12/31/2017	004065 CONRAD, CHRIS	OPER/CONRAD/MILEAGE	63.34
097225	12/20/2017	1 Comp	Cleared 12/31/2017	001202 CONSUMERS ENERGY	UTIL/GAS&ELEC DEC 2017	36,413.56
097226	12/20/2017	1 Comp	Cleared 12/31/2017	100455 D & G EQUIPMENT INC.	OPER/KLAPKO/REPAIR PARTS	218.38
097227	12/20/2017	1 Comp	Cleared 12/31/2017	007515 DANIELLE LAB	COMM ED PAYMENT	343.05
097228	12/20/2017	1 Comp	Cleared 12/31/2017	100199 DISCOUNT SCHOOL SUPPLY	BENT/LORIGAN/GLUE/PAINT/CR	592.98
097229	12/20/2017	1 Comp	Cleared 12/31/2017	002390 GILBERT'S DO IT BEST HARDWARE	OPER/KLAPKO/SUPPLIES	820.97
097230	12/20/2017	1 Comp	Open	002294 GILLETT, AARON	HS/GILLETT/SUPPLIES	68.05
097231	12/20/2017	1 Comp	Open	004253 GOETZINGER, ALLAN	ATH/SMITH/TRAINER COVERAGE	400.00
097232	12/20/2017	1 Comp	Cleared 12/31/2017	005183 HASSELBRING CLARK	COPIER RENTAL	63.67
097233	12/20/2017	1 Comp	Cleared 12/31/2017	002959 INDEPENDENT AD-VISOR INC.	ADM/THOMPSON/ADVERTISING	433.00
097234	12/20/2017	1 Comp	Cleared 12/31/2017	005929 IRELAN, STEVE	ALT/IRELAN/SUPPLIES	144.80
097235	12/20/2017	1 Comp	Cleared 12/31/2017	008220 J & H OIL CO.	OPER/KLAPKO/FUEL	690.20
097236	12/20/2017	1 Comp	Open	005463 JOSTENS	HS/DIGNAN/DIPLOMA	13.46
097237	12/20/2017	1 Comp	Open	004227 KETCHUM, HEATHER	MS/KETCHUM/SUPPLIES	24.77
097238	12/20/2017	1 Comp	Cleared 12/31/2017	007104 KLAPKO, JOHN	OPER/KLAPKO/MILEAGE	114.60
097239	12/20/2017	1 Comp	Cleared 12/31/2017	102408 LANSING SANITARY SUPPLY INC.	OPER/KLAPKO/LAUNDRY SUPPL	325.11
097240	12/20/2017	1 Comp	Open	007823 LAVIGNE, PATTY	BE/LAVING/SUPPLIES	64.75
097241	12/20/2017	1 Comp	Open	102344 LINDEN HIGH SCHOOL	ATH/SMITH/8-26 VBALL ENTRY	175.00
097242	12/20/2017	1 Comp	Open	007397 MALLORY IRELAN	COMM ED LIFEGUARD PAYMENT	128.25
097243	12/20/2017	1 Comp	Cleared 12/31/2017	003660 MEDLER ELECTRIC COMPANY	OPER/KLAPKO/LIGHT BULBS	193.50
097244	12/20/2017	1 Comp	Open	003780 MESSA	JAN 2018 BILL/OESPA STAFF	52,954.47
097245	12/20/2017	1 Comp	Open	003780 MESSA	JAN 2018 BILL/TEACHERS	218,447.57
097246	12/20/2017	1 Comp	Open	003780 MESSA	JAN 2018 BILL/ADMIN STAFF	24,488.99
097247	12/20/2017	1 Comp	Open	003780 MESSA	JAN 2018 BILL/NON-UNION	16,729.63
097248	12/20/2017	1 Comp	Cleared 12/31/2017	003756 MICHIGAN COMPANY, INC.	OPER/KLAPKO/SUPPLIES	168.68
097249	12/20/2017	1 Comp	Open	004050 MORRIS MECHAN. CONTRACTING INC.	OPER/KLAPKO/BOILER REPAIR	835.00
097250	12/20/2017	1 Comp	Open	005928 MURRAY, ANDREW	MS/MURRAY/SUPPLIES	46.10
097251	12/20/2017	1 Comp	Open	004600 OPS FOOD SERVICE FUND	HS/DIGNAN/CULINARY SUPPLIE	154.17
097252	12/20/2017	1 Comp	Cleared 12/31/2017	004652 PCMI - WEST	OHS FALL ASSISTANT COACH	16,326.18
097253	12/20/2017	1 Comp	Open	004790 PITNEY BOWES	HS/DIGNAN/METER	297.00
097254	12/20/2017	1 Comp	Cleared 12/31/2017	008350 PUMFORD, ALEXANDRIA	COMM ED LIFEGUARD	47.50
097255	12/20/2017	1 Comp	Open	102443 SCHOLASTIC INC.	BR/COLLISON/NEWS	2,382.27

01/16/2018 12:27 pm

Owosso Schools

Page: 3

## Check Register for Bank Account ID CHEM1

From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
097256	12/20/2017	1 Comp	Cleared 12/31/2017	005420 SCHOOL SPECIALTY INC.	OHS/TOLRUD/TISSUES	31.90
097257	12/20/2017	1 Comp	Cleared 12/31/2017	100017 SEG WORKERS COMPENSATION FUND	AUDITED PREMIUM STATEMENT	2,819.45
097258	12/20/2017	1 Comp	Open	100017 SET-SEG	ESTIMATE CHANGE FLOOR DAMA	9,092.50
097259	12/20/2017	1 Comp	Cleared 12/31/2017	100017 SET-SEG	JAN 2018 BILL/GF STAFF	5,368.67
097260	12/20/2017	1 Comp	Cleared 12/31/2017	100810 SHIA. COUNTY ROAD COMMISSION	OPER/KLAPKO/ROAD SALT	661.93
097261	12/20/2017	1 Comp	Open	005625 SHIAWASSEE RESD	11/19-12/2/17 EDUSTAFF	7,437.85
097262	12/20/2017	1 Comp	Cleared 12/31/2017	002948 THOMPSON, JESSICA	ADM/THOMPSON/MILEAGE	58.93
097263	12/20/2017	1 Comp	Cleared 12/31/2017	004604 TUTTLE, ANDREA	ADM/TUTTLE/MILEAGE	64.95
097264	12/20/2017	1 Comp	Open	100267 UNUM LIFE INSURANCE	JAN 2018 BILL/ADMIN	1,030.55
097265	12/20/2017	1 Comp	Open	100267 UNUM LIFE INSURANCE	JAN 2018 BILL/GF STAFF	1,308.92
097266	01/04/2018	1 Comp	Open	001020 CHREST SUPPLY COMPANY	OPER/KLAPKO/PLUMBING SUPP	1,130.86
097267	01/04/2018	1 Comp	Open	007131 CSH ELECTRIC MOTOR SUPPLY	OPER/KLAPKO/MOTOR	27.00
097268	01/04/2018	1 Comp	Open	100455 D & G EQUIPMENT INC.	OPER/KLAPKO/REPAIR PARTS	569.78
097269	01/04/2018	1 Comp	Open	007080 DREW TELECOM GROUP, INC.	ADM/MILLER/TOWER-PHONE REP	2,227.50
097270	01/04/2018	1 Comp	Open	006197 FRONTIER	UTIL/PHONE SVC DEC 17	1,956.63
097271	01/04/2018	1 Comp	Open	007064 GLOBAL EQUIPMENT CO.	OPER/KLAPKO/GATE	1,245.95
097272	01/04/2018	1 Comp	Open	000070 H. K. ALLEN PAPER COMPANY	OPER/KLAPKO/SUPPLIES	1,382.90
097273	01/04/2018	1 Comp	Open	005929 IRELAN, STEVE	ALT/IRELAN/SUPPLIES	105.19
097274	01/04/2018	1 Comp	Open	008220 J & H OIL CO.	OPER/KLAPKO/FUEL	242.58
097275	01/04/2018	1 Comp	Open	002241 KELLEY, ELIZABETH	ALT/KELLEY/ME DAY SUPPLIES	32.60
097276	01/04/2018	1 Comp	Open	008359 KINECT ENERGY INC.	JAN 2018 GAS MANAGEMENT	315.00
097277	01/04/2018	1 Comp	Open	102408 LANSING SANITARY SUPPLY INC.	OPER/KLAPKO/SUPPLIES	658.46
097278	01/04/2018	1 Comp	Open	001841 LINTNER, DALLAS	HS/LINTNER/MILEAGE	134.71
097279	01/04/2018	1 Comp	Open	003600 MARSHALL MUSIC COMPANY INC.	OMS/SUPPLIES/TOLRUD	3,510.25
097280	01/04/2018	1 Comp	Open	002224 MHSBCA	ATH/SMITH/CLINIC	80.00
097281	01/04/2018	1 Comp	Open	003756 MICHIGAN COMPANY, INC.	OPER/KLAPKO/SUPPLIES	108.80
097282	01/04/2018	1 Comp	Open	004068 MICHIGAN MUSIC CONFERENCE	MS/TOLRUD/MMC CONF REG	125.00
097283	01/04/2018	1 Comp	Open	007158 MOMAR, INCORPORATED	OPER/KLAPKO/BOILER PROTECT	295.00
097284	01/04/2018	1 Comp	Open	004974 MUZZALL GRAPHICS	ADM/AYMOR/W-2's	117.91
097285	01/04/2018	1 Comp	Open	100001 OFFICE DEPOT INC.	EM/NIDEFSKI/INK	365.41
097286	01/04/2018	1 Comp	Open	008122 OP AQUATICS-LANSING	OPER/KLAPKO/STRAINER	35.00
097287	01/04/2018	1 Comp	Open	007851 OREILLY AUTO PARTS	OPER/KLAPKO/REPAIR PARTS	85.02
097288	01/04/2018	1 Comp	Open	004553 OWOSSO HITCH & PLOW CENTER INC	OPER/KLAPKO/REPAIR PARTS	378.20
097289	01/04/2018	1 Comp	Open	004652 PCMI - WEST	BB STAFF PAYMENT	12,869.54
097290	01/04/2018	1 Comp	Open	004860 POSTMASTER	HS/PILON/BULK MAILING	80.33
097291	01/04/2018	1 Comp	Open	003434 PRESSTEK	ADM/CHECK FOLDER MAINT AGR	1,037.39
097292	01/04/2018	1 Comp	Open	008390 PURCHASE POWER	HS/DIGNAN/POSTAGE	89.97
097293	01/04/2018	1 Comp	Open	100135 QUILL CORPORATION	ADM/SMITH/PACKAGING TAPE	22.95
097294	01/04/2018	1 Comp	Open	005420 SCHOOL SPECIALTY INC.	OMS/GRAHAM/NAME PLATE	1,024.94
097295	01/04/2018	1 Comp	Open	000693 SEHI COMPUTER PRODUCTS	CE/KLAPKO/Front Row BAITER	101.00
097296	01/04/2018	1 Comp	Open	005600 SHERWIN-WILLIAMS COMPANY	OPER/KLAPKO/PAINT	11.17
097297	01/04/2018	1 Comp	Open	008301 STINSON, GUNNAR	ADM/STINSON/MILEAGE	66.62
097298	01/04/2018	1 Comp	Open	007985 WATSON, JOE	ADM/WATSON/MILEAGE	41.99
097299	01/04/2018	1 Comp	Open	006882 WHEELER, JEREMY	ADM/WHEELER/MILEAGE	207.14
097300	01/11/2018	1 Comp	Open	000278 APPLEBEE OIL COMPANY	TRANS/DELONG/FUEL	1,779.82
097301	01/11/2018	1 Comp	Open	000300 ARGUS-PRESS CO.	ADM/THOMPSON/ADVERTISING	925.00
097302	01/11/2018	1 Comp	Open	005935 BP CANADA ENERGY MARKETING GROUP	UTIL/GAS PURCHASE DEC 17	14,899.90
097303	01/11/2018	1 Comp	Open	001363 C & S MOTORS INC.	TRANS/DELONG/BUS REPAIR	5,660.41
097304	01/11/2018	1 Comp	Open	000827 CARSON-DELLOSA PUBLISHING CO.	BR/RAFFAELLI CUTOUTS & BOR	40.67
097305	01/11/2018	1 Comp	Open	008173 CHIRS AEBIG (MCTA TREASURER)	HS/MALLORY&KRANTZ/REGISTRA	500.00
097306	01/11/2018	1 Comp	Open	007465 CINTAS CORPORATION # 308	OPER/KLAPKO/UNIFORM RENT	182.70
097307	01/11/2018	1 Comp	Open	001050 CITY OF OWOSSO	POLICE LIASON OFFICERS	20,361.38
097308	01/11/2018	1 Comp	Open	001050 CITY OF OWOSSO	UTIL/SEPT-DEC 17 WATER/SEW	11,351.06
097309	01/11/2018	1 Comp	Open	001197 CLEVINGER, DEB	HS/D CLEVINGER/BODY FAT TE	150.00

Check Register for Bank Account ID CHEM1

From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
097310	01/11/2018	1	Comp Open	000124 CONTROL SOLUTIONS INC.	OPER/KLAPKO/BOILER REPAIR	230.00
097311	01/11/2018	1	Comp Open	001410 DALTON ELEVATOR	OPER/KLAPKO/WELDING SUPP	25.50
097312	01/11/2018	1	Comp Open	007052 DE LAGE LANDEN FINANCIAL SERV, I	DELONG/BUS LEASE/2 BUSES Y	30,305.28
097313	01/11/2018	1	Comp Open	100199 DISCOUNT SCHOOL SUPPLY	BENT/CORDS/SUPPLIES	182.01
097314	01/11/2018	1	Comp Open	002916 GCR TIRE CENTER	TRANS/DELONG/TIRES	2,464.00
097315	01/11/2018	1	Comp Open	000070 H. K. ALLEN PAPER COMPANY	OPER/KLAPKO/SUPPLIES	481.00
097316	01/11/2018	1	Comp Open	002959 INDEPENDENT AD-VISOR INC.	ADM/THOMPSON/ADVERTISING	433.00
097317	01/11/2018	1	Comp Open	101592 INTERNAL REVENUE SERVICE	4TH QUARTER SICK PAY	120.87
097318	01/11/2018	1	Comp Open	004863 JENC, TIMOTHY	BOARD STIPEND	100.00
097319	01/11/2018	1	Comp Open	003080 JOHNNY MAC'S SPORTING GOODS	MS/DWYER/SINGLETS	590.87
097320	01/11/2018	1	Comp Open	007127 JW MARRIOTT GRAND RAPIDS	HS/SCHAFERT/LODGING	383.68
097321	01/11/2018	1	Comp Open	008181 KEYES, SARA	BOARD STIPEND	100.00
097322	01/11/2018	1	Comp Open	007104 KLAPKO, JOHN	OPER/KLAPKO/MILEAGE	83.03
097323	01/11/2018	1	Comp Open	008195 KRAUSS, TY	BOARD STIPEND	100.00
097324	01/11/2018	1	Comp Open	004538 LIBRARY STORE	BR/RICHMOND/BOOK TAPE CARD	96.22
097325	01/11/2018	1	Comp Open	003600 MARSHALL MUSIC COMPANY INC.	OHS/SCHLEGEL/REPAIRS	62.00
097326	01/11/2018	1	Comp Open	003871 MICHIGAN ALT. ATHLETIC ASSOC.	ALT/PARSONS/VBALL TOURNA	150.00
097327	01/11/2018	1	Comp Open	003756 MICHIGAN COMPANY, INC.	OPER/KLAPKO/SUPPLIES	116.72
097328	01/11/2018	1	Comp Open	004068 MICHIGAN MUSIC CONFERENCE	HS/SCHAFERT/CONF REG	125.00
097329	01/11/2018	1	Comp Open	100274 MICHIGAN STATE UNIVERSITY	TUITION CATHY DWYER	2,000.00
097330	01/11/2018	1	Comp Open	008393 MICHIGAN TENNIS WORKSHOP	HS/RUGENSTEIN/CONF REG	120.00
097331	01/11/2018	1	Comp Open	001133 MILLER, RANDY	ADM/MILLER/MILEAGE	50.83
097332	01/11/2018	1	Comp Open	100925 MOUNT PLEASANT HIGH SCHOOL	ATH/SMITH/1-6-18 WRESTLING	150.00
097333	01/11/2018	1	Comp Open	003297 MOWEN, RICK	BOARD STIPEND	100.00
097334	01/11/2018	1	Comp Open	002093 NEOLA INC.	BOARD POLICY UPDATES	1,243.53
097335	01/11/2018	1	Comp Open	007540 OCHODNICKY, SHELLY	BOARD STIPEND	100.00
097336	01/11/2018	1	Comp Open	004600 OPS FOOD SERVICE FUND	HS/POYNER/CULINARY ARTS	162.25
097337	01/11/2018	1	Comp Open	007851 OREILLY AUTO PARTS	OPER/KLAPKO/OIL FILTER	53.31
097338	01/11/2018	1	Comp Open	007539 PAEZ, CHERYL	BOARD STIPEND	100.00
097339	01/11/2018	1	Comp Open	004652 PCMI - WEST	ATH/SMITH/COACHES	4,058.81
097340	01/11/2018	1	Comp Open	004750 PERMA-BOUND	OMS/LIEBERMAN/BOOKS	54.76
097341	01/11/2018	1	Comp Open	004860 POSTMASTER	MS/KNIGHT/POSTAGE	490.00
097342	01/11/2018	1	Comp Open	004860 POSTMASTER	HS/PILON/POSTAGE	50.00
097343	01/11/2018	1	Comp Open	100135 QUILL CORPORATION	CE/KLAPKO/FOLDERS, ENVELOP	86.86
097344	01/11/2018	1	Comp Open	008382 ROBERTS INSTALLATION & REPAIR IN	OPER/KLAPKO/BLEACHER INSPE	4,890.00
097345	01/11/2018	1	Comp Open	000323 ROTARY CLUB OF OWOSSO	HS/PHILLIPS/DEC 17 DUES	35.50
097346	01/11/2018	1	Comp Open	006641 ROWELL, AMANDA	BB/ROWELL/MILEAGE	156.51
097347	01/11/2018	1	Comp Open	005420 SCHOOL SPECIALTY INC.	ALT/PARSONS/FOLDERS	568.53
097348	01/11/2018	1	Comp Open	005520 SECURITY ALARM COMPANY INC.	OPER/KLAPKO/MONITORING	204.00
097349	01/11/2018	1	Comp Open	100017 SET-SEG	FEB 2018 BILL/GF STAFF	5,518.34
097350	01/11/2018	1	Comp Open	005625 SHIawassee RESD	12/3-12/16/2017 EDUSTAFF	11,463.33
097351	01/11/2018	1	Comp Open	007247 STECHSCHULTE, ALEX	PHOTOS FOR PRESS RELEASE	85.00
097352	01/11/2018	1	Comp Open	002623 TASC-CLIENT INVOICES	2/1-2/28/2018 ADMIN FEE	366.18
097353	01/11/2018	1	Comp Open	006230 THRUN LAW FIRM, P.C.	DEC LEGAL FEES	4,821.50
097354	01/11/2018	1	Comp Open	001119 UNITED PARCEL SERVICE	HS/POSTAGE	6.07
097355	01/11/2018	1	Comp Open	007457 US BANK EQUIPMENT FINANCE	LEASE PAYMENT JAN 2018	2,653.47
097356	01/11/2018	1	Comp Open	007541 WEBSTER, MARLENE	BOARD STIPEND	100.00
CHECK TOTAL						630,221.86
LESS VOIDS						1,161.16
GRAND TOTAL						629,060.70

Check Register for Bank Account ID CHEM1

From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
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Check Summary

Check Status	Count	Amount	Check Type	Count	Amount
Open	122	503,046.58	Computer	208	629,060.70
Cleared	86	126,014.12	Prepaid		
Void	1	1,161.16			
Scratch					
<b>TOTAL</b>	<b>209</b>	<b>630,221.86</b>	<b>TOTAL</b>	<b>208</b>	<b>629,060.70</b>

Check Register for Bank Account ID SERVIC




From 12/04/2017 to 01/14/2018

From Check First to Last

Check#	Date	Run Type	Status	Vendor Name	Invoice Description	Amount
007162	12/07/2017	1 Comp	Cleared	12/31/2017 004621 AUNT MILLIE'S BAKERIES	FS/PRINCE/FOOD PURCHASE	382.95
007163	12/07/2017	1 Comp	Cleared	12/31/2017 007480 BANANA BROTHERS PRODUCE	FS/PRINCE/FOOD PURCHASE	4,194.40
007164	12/07/2017	1 Comp	Cleared	12/31/2017 008220 J & H OIL CO.	FS/KLAPKO/FUEL	101.37
007165	12/07/2017	1 Comp	Cleared	12/31/2017 100001 OFFICE DEPOT INC.	FS/PRINCE/INK	338.16
007166	12/07/2017	1 Comp	Cleared	12/31/2017 003807 PRAIRIE FARMS DAIRY	FS/PRINCE/FOOD PURCHASE	6,525.97
007167	12/07/2017	1 Comp	Cleared	12/31/2017 006782 ROBINSON, KAREN	FS/ROBINSON/MILEAGE	50.56
007168	12/07/2017	1 Comp	Cleared	12/31/2017 100017 SEG WORKERS COMPENSATION FUND	FS WORKERS COMP FUND	7,459.00
007169	12/07/2017	1 Comp	Cleared	12/31/2017 004679 TOBEY, CHRISTINE	FS/TOBEY/MILEAGE	114.17
007170	12/14/2017	1 Comp	Cleared	12/31/2017 004621 AUNT MILLIE'S BAKERIES	FS/PRINCE/FOOD PURCHASE	387.55
007171	12/14/2017	1 Comp	Cleared	12/31/2017 007480 BANANA BROTHERS PRODUCE	FS/PRINCE/FOOD PURCHASE	12,836.10
007172	12/14/2017	1 Comp	Cleared	12/31/2017 005058 FD HAYES ELECTRIC CO.	FS/PRINCE/STEAMER REPAIR	528.85
007173	12/14/2017	1 Comp	Cleared	12/31/2017 007064 GLOBAL EQUIPMENT CO.	OHS/PRINCE/EQUIPMENT	2,318.40
007174	12/14/2017	1 Comp	Cleared	12/31/2017 007104 KLAPKO, JOHN	FS/KLAPKO/MILEAGE	114.60
007175	12/14/2017	1 Comp	Cleared	12/31/2017 008385 KRUPP, TRACY	FS/PRINCE/REFUND ACCT	31.90
007176	12/20/2017	1 Comp	Cleared	12/31/2017 004621 AUNT MILLIE'S BAKERIES	FS/PRINCE/FOOD PURCHASE	402.77
007177	12/20/2017	1 Comp	Open	007480 BANANA BROTHERS PRODUCE	FS/PRINCE/FOOD PURCHASE	6,741.50
007178	12/20/2017	1 Comp	Cleared	12/31/2017 008220 J & H OIL CO.	FS/KLAPKO/FUEL	88.89
007179	12/20/2017	1 Comp	Open	003780 MESSA	JAN 2018 BILL/FS STAFF	1,382.19
007180	12/20/2017	1 Comp	Open	007509 NIXON'S GROCERY	FS/PRINCE/FOOD PURCHASE	20.15
007181	12/20/2017	1 Comp	Cleared	12/31/2017 100017 SEG WORKERS COMPENSATION FUND	AUDITED PREMIUM STATEMENT	1,660.55
007182	12/20/2017	1 Comp	Cleared	12/31/2017 100017 SET-SEG	JAN 2018 BILL/FS STAFF	180.56
007183	12/20/2017	1 Comp	Open	007689 THEODORES SUPERIOR COFFEE ROASTE	FS/PRINCE/FOOD PURCHASE	85.00
007184	12/20/2017	1 Comp	Cleared	12/31/2017 100267 UNUM LIFE INSURANCE	JAN 2018 BILL/FS STAFF	51.00
007185	01/04/2018	1 Comp	Open	008220 J & H OIL CO.	FS/KLAPKO/FUEL	35.27
007186	01/04/2018	1 Comp	Open	003807 PRAIRIE FARMS DAIRY	FS/PRINCE/FOOD PURCHASE	9,916.53
007187	01/04/2018	1 Comp	Open	002509 PRINCE, MICHELE	FS/PRINCE/MILEAGE	53.39
007188	01/11/2018	1 Comp	Open	004621 AUNT MILLIE'S BAKERIES	FS/PRINCE/FOOD PURCHASE	715.45
007189	01/11/2018	1 Comp	Open	007480 BANANA BROTHERS PRODUCE	FS/PRINCE/FOOD PURCHASE	8,999.60
007190	01/11/2018	1 Comp	Open	003758 GREAT LAKES COCA-COLA LLC	FS/PRINCE/FOOD PURCHASE	6,530.93
007191	01/11/2018	1 Comp	Open	007104 KLAPKO, JOHN	FS/KLAPKO/MILEAGE	83.03
007192	01/11/2018	1 Comp	Open	007509 NIXON'S GROCERY	FS/PRINCE/FOOD PURCHASE	102.27
007193	01/11/2018	1 Comp	Open	100030 OWOSSO PUBLIC SCHOOLS	FS/PRINCE/POSTAGE	250.00
007194	01/11/2018	1 Comp	Open	100017 SET-SEG	FEB 2018 BILL/GF STAFF	286.71
CHECK TOTAL						72,969.77
LESS VOIDS						0.00
GRAND TOTAL						72,969.77

Check Summary

Check Status	Count	Amount	Check Type	Count	Amount
Open	14	35,202.02	Computer	33	72,969.77
Cleared	19	37,767.75	Prepaid		
Void					
Scratch					
<b>TOTAL</b>	<b>33</b>	<b>72,969.77</b>	<b>TOTAL</b>	<b>33</b>	<b>72,969.77</b>

Date Range: From:    
 To:    
 Date Type:  

Data available starting: 01/16/2015 Search

SEARCH RESULTS

Search Total: (1,237.65

Page 1 of 1

<u>Account Name</u>	<u>Account Number</u>	<u>Transaction Amount</u>	<u>Adjustment Amount</u>	<u>Total Transaction Amount</u>
EMERSON ELEMENTARY	XXXX-XXXX-0517-2354	500.15	0.00	500.1
MIKE GRAHAM	XXXX-XXXX-0530-1557	4,079.93	0.00	4,079.9
FRED LAB	XXXX-XXXX-0532-9202	139.55	0.00	139.5
ED VAN STRATE	XXXX-XXXX-0532-9277	617.73	0.00	617.7
LINCOLN HIGH SCHOOL	XXXX-XXXX-0593-9232	76.55	0.00	76.5
BRIGHT BEGINNINGS OFFICE	XXXX-XXXX-1097-9983	204.10	0.00	204.1
OWOSSO SCHOOLS	XXXX-XXXX-1253-3820	276.32	0.00	276.3
CTE CULINARY ARTS	XXXX-XXXX-1311-0891	1,007.98	0.00	1,007.9
CTE CONSTRUCTION TRADES	XXXX-XXXX-1311-0933	397.78	0.00	397.7
AL HUYCK	XXXX-XXXX-1323-6431	267.80	0.00	267.8
OWOSSO PUBLIC SCHOOLS	XXXX-XXXX-0002-6361	0.00	(16,852.88)	(16,852.88)
SWIM PROGRAM	XXXX-XXXX-0173-5686	109.83	0.00	109.8
BRYANT ELEMENTARY	XXXX-XXXX-0177-1509	543.82	0.00	543.8
DAN CLARK	XXXX-XXXX-0188-5846	466.92	0.00	466.9
BEN COBB	XXXX-XXXX-0188-5861	131.98	0.00	131.9
OWOSSO HIGH SCHOOL	XXXX-XXXX-0223-2881	240.22	0.00	240.2
TECHNOLOGY DEPT	XXXX-XXXX-0270-9854	43.65	0.00	43.6
JOHN QUICK	XXXX-XXXX-0274-4836	176.00	0.00	176.0
OWOSSO MIDDLE SCHOOL	XXXX-XXXX-0316-8175	191.85	0.00	191.8
OPERATIONS DEPT	XXXX-XXXX-0322-6353	386.82	0.00	386.8
CENTRAL ELEMENTARY	XXXX-XXXX-0358-7523	216.92	0.00	216.9
DISTRICT TRAVEL	XXXX-XXXX-0372-6121	468.87	0.00	468.8
BRIGHT BEGINNINGS	XXXX-XXXX-2811-1358	893.50	0.00	893.5
CENTRAL OFFICE	XXXX-XXXX-6279-7468	2,579.06	0.00	2,579.0
OWOSSO HIGH SCHOOL 2	XXXX-XXXX-6679-7711	1,597.90	0.00	1,597.9

Page 1 of 1

Search Total: (1,237.65

**OWOSSO PUBLIC SCHOOLS**  
**BOARD OF EDUCATION**  
**December 31, 2017**  
**Report 17-74**

**Statement of Deposits and Investments**  
**As of 12/31/2017**  
**Unaudited**

	General Fund	School Service	Building & Site	Total
<b>Summary of Deposits and Investments</b>				
Cash on hand	\$ 658,525	\$ 255,371	\$ 1,455,458	\$ 2,369,354
Investments	3,675,964		1,235,333	4,911,297
<b>Total Deposits and Investments</b>	<b>\$ 4,334,490</b>	<b>\$ 255,371</b>	<b>\$ 2,690,791</b>	<b>\$ 7,280,652</b>
 <b>Detail of Deposits and Investments</b>				
Cash on hand	\$ 658,525	\$ 254,651	\$ 1,455,458	\$ 2,368,634
Petty Cash on hand	-	720	-	
<b>Total Cash on hand</b>	<b>\$ 658,525</b>	<b>\$ 255,371</b>	<b>\$ 1,455,458</b>	<b>\$ 2,369,354</b>
Chemical Bank Savings Account	\$ 39,595	-	\$ 111,767	\$ 151,362
Mich Class Investment	3,636,370	-	1,123,566	4,759,935
<b>Total Investments</b>	<b>\$ 3,675,964</b>	<b>\$ -</b>	<b>\$ 1,235,333</b>	<b>\$ 4,911,297</b>
<b>Total Deposits and Investments</b>	<b>\$ 4,334,490</b>	<b>\$ 255,371</b>	<b>\$ 2,690,791</b>	<b>\$ 7,280,652</b>



OWOSSO PUBLIC SCHOOLS  
BOARD OF EDUCATION  
December 31, 2017  
Report 17-74

Combined Statement of Revenue, Expenditures, and Fund Balance  
General, School Service, and Capital Projects Funds  
As of 12/31/2017  
Unaudited

	General Fund			School Service Fund			Capital Projects Fund					
	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used
<b>REVENUE</b>												
Local sources	3,378,011	325,249	(3,052,762)	10%	294,399	143,056	(151,343)	49%	1,646,053	10,252	(1,635,801)	1%
State sources	24,595,201	7,151,515	(17,443,686)	29%	62,647	18,995	(43,552)	30%	-	-	-	-
Federal sources	1,314,607	177,710	(1,137,197)	14%	1,593,439	627,809	(1,065,630)	33%	-	-	-	-
Interdistrict sources-RESD	573,371	12,093	(561,278)	2%	-	-	-	-	-	-	-	-
Interdistrict transfers in and other sources	94,962	(94,962)	0%	0%	-	-	-	-	-	-	-	-
Total revenue and other sources	\$ 29,956,452	\$ 7,666,567	\$ (22,289,885)	26%	\$ 1,950,385	\$ 689,860	\$ (1,260,525)	35%	\$ 1,646,053	\$ 10,252	\$ (1,635,801)	1%
<b>EXPENDITURES</b>												
<b>INSTRUCTION</b>												
<b>BASIC PROGRAMS:</b>												
BASIC PROGRAMS:	\$ 7,005,926	\$ 2,508,030	(4,497,896)	36%								
ELEMENTARY	3,485,026	1,229,750	(2,255,276)	35%								
MIDDLE SCHOOL	4,138,759	1,435,551	(2,703,208)	35%								
HIGH SCHOOL	687,335	248,327	(438,008)	36%								
ALTERNATIVE EDUCATION	127,668	45,240	(82,428)	35%								
PRESCHOOL	176,818	68,491	(108,327)	39%								
PRESCHOOL (MICHIGAN READINESS) GRANT	15,621,532	5,536,389	(10,085,143)	35%								
TOTAL BASIC PROGRAMS	\$ 15,621,532	\$ 5,536,389	\$ (10,085,143)	35%								
<b>ADDED NEEDS:</b>												
SPECIAL EDUCATION	3,192,199	1,199,973	(1,992,226)	38%								
CHILD CARE PROGRAM	291,553	103,246	(188,307)	35%								
TITLE I GRANT	1,071,912	309,008	(762,904)	31%								
VOCATIONAL EDUCATION	585,397	217,206	(368,191)	37%								
AT RISK GRANT	1,186,026	412,611	(773,415)	35%								
ROBOTICS/CTE COUNSELOR/ADULT ED/TESTING GRANTS	6,943	37,555	30,612	541%								
EARLY LITERACY GRANT		19,537	19,537									
TOTAL ADDED NEEDS	\$ 6,214,030	\$ 2,299,136	\$ (3,914,894)	37%								
<b>CONTINUING EDUCATION:</b>												
COMMUNITY EDUCATION	142,179	71,678	(70,501)	50%								
TOTAL CONTINUING EDUCATION	\$ 142,179	\$ 71,678	\$ (70,501)	50%								
<b>TOTAL INSTRUCTION</b>	\$ 22,037,741	\$ 7,907,203	\$ (14,130,538)	36%								
<b>SUPPORTING SERVICES:</b>												
PUPIL SERVICES:												
GUIDANCE SERVICES	451,385	180,611	(270,774)	40%								
TOTAL PUPIL SERVICES	\$ 451,385	\$ 180,611	\$ (270,774)	40%								
<b>INSTRUCTIONAL STAFF:</b>												
TITLE II, PART A/RURAL EDUCATION GRANT	267,545	77,513	(190,032)	29%								
IMPROVEMENT OF INSTRUCTION	240,639	33,890	(206,749)	14%								
MEDIA SERVICES	281,181	111,922	(169,259)	40%								
TOTAL INSTRUCTIONAL STAFF	\$ 789,265	\$ 223,325	\$ (565,940)	28%								
<b>GENERAL ADMINISTRATION:</b>												
BOARD OF EDUCATION	100,149	33,660	(66,489)	34%								
EXECUTIVE ADMINISTRATION	349,441	167,078	(182,363)	48%								
HUMAN RESOURCES	212,516	92,340	(120,176)	43%								
TOTAL GENERAL ADMINISTRATION	\$ 662,106	\$ 293,078	\$ (369,028)	44%								
<b>SCHOOL ADMINISTRATION:</b>												
SCHOOL ADMINISTRATION	2,443,932	1,136,122	(1,307,810)	46%								
TOTAL SCHOOL ADMINISTRATION	\$ 2,443,932	\$ 1,136,122	\$ (1,307,810)	46%								

OWOSSO PUBLIC SCHOOLS  
 BOARD OF EDUCATION  
 December 31, 2017  
 Report 17-74

Combined Statement of Revenue, Expenditures, and Fund Balance  
 General, School Service, and Capital Projects Funds  
 As of 12/31/2017  
 Unaudited

	General Fund			School Service Fund			Capital Projects Fund					
	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used	ORIGINAL BUDGET	YTD Actual	Over (Under) Budget	% Rec'd/Used
<b>BUSINESS SERVICES:</b>												
FISCAL SERVICES	\$ 333,134	\$ 188,372	\$ (164,762)	51%								
TECHNOLOGY MANAGEMENT	\$ 392,996	\$ 126,656	\$ (266,340)	32%								
<b>TOTAL BUSINESS SERVICES</b>	\$ 726,130	\$ 295,028	\$ (431,102)	41%								
<b>OPERATIONS AND MAINTENANCE:</b>												
OPERATIONS AND MAINTENANCE	\$ 2,790,218	\$ 1,189,220	\$ (1,600,998)	43%								
<b>TOTAL OPERATIONS AND MAINTENANCE</b>	\$ 2,790,218	\$ 1,189,220	\$ (1,600,998)	43%								
<b>PUPIL TRANSPORTATION SERVICES:</b>												
PUPIL TRANSPORTATION SERVICES	\$ 1,046,348	\$ 388,715	\$ (657,633)	37%								
<b>TOTAL PUPIL TRANSPORTATION</b>	\$ 1,046,348	\$ 388,715	\$ (657,633)	37%								
<b>OTHER SERVICES:</b>												
PAC	\$ -	\$ 769	\$ 769									
COMMUNICATION SERVICES	\$ 62,632	\$ 25,309	\$ (37,323)	40%								
ATHLETICS	\$ 444,779	\$ 213,575	\$ (231,204)	48%								
PRINTING AND OTHER SUPPORT SERVICES	\$ 79,492	\$ 37,520	\$ (41,972)	47%								
<b>TOTAL OTHER SERVICES</b>	\$ 566,903	\$ 277,163	\$ (289,740)	47%								
<b>TOTAL SUPPORTING SERVICES</b>	\$ 9,486,287	\$ 3,983,282	\$ (5,503,025)	42%								
<b>OUTGOING TRANSFERS/FUND MODIFICATIONS:</b>												
OTHER	\$ 71,331	\$ 3,481	\$ (67,850)	5%								
<b>TOTAL OUTGOING TRANSFERS/FUND MODIFICATIONS</b>	\$ 71,331	\$ 3,481	\$ (67,850)	5%								
<b>FOOD SERVICE EXPENDITURES</b>												
CAPITAL PROJECT EXPENDITURES	\$ 31,605,359	\$ 11,893,946	\$ (19,711,413)	38%								
<b>REVENUE OVER or (UNDER) EXPENDITURES</b>	\$ (1,648,907)	\$ (4,227,379)	\$ (2,578,472)		\$ 2,086,027	\$ 888,103	\$ (1,199,924)	43%	\$ 1,532,576	\$ 450,938	\$ (1,081,638)	29%
<b>AUDITED FUND BALANCE, JULY 1, 2017</b>	3,911,651	3,911,651	-		2,086,027	888,103	(1,199,924)	43%	1,532,576	450,938	(1,081,638)	29%
<b>PROJECTED FUND BALANCES - June 30, 2018</b>	2,282,744				241,082	241,082	(60,801)		3,131,478	3,131,478	(564,163)	
					103,440				3,244,956			

**For Action**

**OWOSSO PUBLIC SCHOOLS  
Board of Education Meeting  
January 22, 2018  
Report 17-75**

**FOR ACTION**

Subject:

Bylaws Resolution

Recommendation:

Resolve that the Owosso Board of Education Adopt the Bylaws for Owosso Public Schools as presented in this resolution.

**WHEREAS**, the Revised School Code changes the classification of the Owosso School District from a district of the third class to a general powers district under the code, and

**WHEREAS**, the Revised School Code requires that a general powers school district shall adopt bylaws to establish or change Board procedures, and

**WHEREAS**, under the Revised School Code current board procedures, bylaws, and policies in effect on January 1, 2018, shall continue in effect until changed by an action of the Board.

**THEREFORE BE IT RESOLVED**, that the Owosso Board of Education shall continue to operate under existing policies and procedures.

Motion  
Seconded  
Vote – Ayes                      Nays                      Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**17-76**

**FOR ACTION**

Subject:

Delegation of Election Duties

Recommendation:

Resolve that the Owosso Board of Education authorize the Superintendent of Schools or his/her designee to conduct and manage any school elections for the calendar year 2018.

Facts:

The Board secretary is responsible for the management of the school election – customarily, the Board of Education authorizes the Superintendent or his/her designee to manage school election activity. This allows for an easier flow of election procedures. However, the Board still must adopt any resolution authorizing any elections that may take place throughout the year.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS  
Board of Education Meeting  
January 22, 2018**

**Report 17-77**

**FOR ACTION**

Subject:

Retainer – School Attorneys

Recommendation:

Resolve that the Owosso Board of Education retain Thrun Law Firm, P.C. as the District's attorneys.

Facts:

Owosso Public Schools have a long-standing association with this law firm. The majority of school districts in Michigan retain the Thrun Law Firm. Thrun has proven to be a valuable resource to the Board and the Administration over the course of the relationship.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS  
Board of Education Meeting  
January 22, 2018**

**Report 17-78**

**FOR ACTION**

Subject:

Resignations of Professional Staff

Recommendation:

Resolve that the Board of Education authorize the superintendent or a Board designee to accept professional staff resignations on behalf of the Board.

Rationale:

The Board is the only body to hire, discharge or release professional staff. Because resignations are a formality and for the efficiency of the organization, the superintendent accepts professional staff resignations. The Board is notified of such resignations through an informational report.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-79**

**FOR ACTION**

Subject:

Designated Financial Institution Accounts and Authorized Signers for the calendar year 2018

Recommendation:

Resolve that the depository and withdrawal authorized signers for the Owosso Public Schools' financial and banking transactions for the 2018 calendar year be approved as presented including authorization for necessary ACH transactions and/or bank transfers.

Rationale:

Every fiscal year it is necessary for the Board to approve the authorized individuals to transact banking business for the various accounts held in the name of the District.

Facts and Statistics:

- The only changes to the list has been to include each building organization account as part of the authorization process. These accounts have been in existence for a number of years but have not formally been included on the list for authorization. Due to the fact that these accounts were originally opened utilizing the tax i.d. of the District, it was deemed prudent to include them in the annual process. It should be noted that these accounts are subject to the same review and audit process as the other accounts that are routinely utilized for District business.
- Positions, rather than actual names, have been presented for authorization to expedite any needed changes that may occur in staffing throughout the fiscal year.
- This is a routine business item that appears before the Board on an annual basis.

Motion

Seconded

Vote – Ayes

Nays

Motion



**Owosso Public School**

**Financial Institution Accounts and Authorized Individuals to transact  
banking on behalf of the District for the specified accounts  
Calendar Year 2018**

**CHEMICAL BANK:**

ACCOUNT	AUTHORIZED SIGNERS/INITIATORS
General Account	Chief Financial Officer Board Treasurer
Payroll Account	Chief Financial Officer Board Treasurer
Sinking Fund	Chief Financial Officer Board Treasurer
Capital Projects Fund	Chief Financial Officer Board Treasurer
School Service Fund	Chief Financial Officer Board Treasurer
Durant Fund	Chief Financial Officer Board Treasurer
High School Organization	Chief Financial Officer Board Treasurer
Middle School Organization	Chief Financial Officer Board Treasurer
Lincoln Organization account	Chief Financial Officer Board Treasurer Principal/Building Executive Secretary
Bryant Organization account	Chief Financial Officer Board Treasurer Principal/Building Executive Secretary
Central Organization account	Chief Financial Officer Board Treasurer Principal/Building Executive Secretary
Emerson Organization account	Chief Financial Officer Board Treasurer Principal/Building Executive Secretary
Athletic Officials	Chief Financial Officer Board Treasurer Athletic Secretary Athletic Director
Community Education Account	Chief Financial Officer Board Treasurer

**CHEMICAL BANK SAVINGS ACCOUNTS:**

ACCOUNT	AUTHORIZED SIGNERS/ INITIATORS
General Account	Chief Financial Officer Board Treasurer
Capital Projects Fund	Chief Financial Officer Board Treasurer
Durant	Chief Financial Officer Board Treasurer
Sinking Fund	Chief Financial Officer Board Treasurer

**MICHIGAN CLASS ACCOUNTS:**

ACCOUNT	AUTHORIZED SIGNERS/INITIATORS
General Account	Chief Financial Officer Board Treasurer
Sinking Fund	Chief Financial Officer Board Treasurer

**OWOSSO PUBLIC SCHOOLS  
Board of Education Meeting**

**January 22, 2018  
Report 17-80**

**FOR ACTION**

Subject:

SRES D Designation of Representative Resolution

Recommendation:

Resolve that the Board of Education appoint one member of their board as a representative of the Shiawassee County School Board Executive Board and at the SRES D Budget Review and Election.

Rationale:

According to Public Act 234 of 2004, it is required that a meeting be held to submit a proposed general operating fund budget of the Shiawassee Regional Education Service District (SRES D) to the constituent boards of education.

Facts:

Also pursuant to Public Act 234 of 2004, constituent Boards are required to adopt a resolution in support for or disapproval of the proposed budget, which will be presented on Monday, May 7, 2018. If the budget is not approved the district shall submit to Shiawassee RES D any specific objections and proposed changes the constituent district board has to the budget.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-81**

**FOR ACTION**

Subject:

VE Great Lakes Regional Conference & Exhibition – Out-of-State Student Travel

Recommendation:

Resolve that the Board of Education approve the out-of-state travel by Owosso High School students to attend and compete in the VE Great Lakes Regional Conference and Exhibition to be held in Rosemont, IL, January 31-February 2, 2018.

Rationale:

Second-year entrepreneurship students are enrolled in our Entrepreneurship and Innovation class, in which the students form, plan and manage a virtual business. Owosso High School was the first high school in Michigan to join the Virtual Enterprises, International program through which students transact virtual business with thousands of students both in the United States and 17 foreign countries. The VE program includes on-line curriculum where students work in various departments completing all the functions necessary to successfully operate a profitable business.

This trade show brings together more than 800 students in a real world trade show setting, where each virtual company sets up their own booth and makes sales presentations to all visitors. In addition to the actual trade show where salesmanship and booth design are evaluated by industry professionals, students will also compete in other business-related events such as salesmanship, video commercial production, newsletter production, website design, impact marketing (billboard design) and interview skills.

Statement of Purpose:

These trade shows provide the real world opportunity for our students to openly compete for business. The entire experience will provide multiple opportunities for competition, networking, problem-solving, sales promotion and public speaking for each individual involved. Teamwork, personal responsibility and goal-setting will also be required. By virtue of these activities, each student will gain valuable experience that should foster a growth in self-confidence and poise under pressure. The networking with students from Michigan, Illinois and California will also provide a real world study of different cultures and racial diversity.

Facts/Statistics:

The cost of the trip will be covered by each individual student, along with funds earned by the VEI classes through fund raisers. Income from our school store, The Trojan Horse, along with these fund raisers will be employed to keep the cost per student under \$300.00 for travel, 2 nights lodging and meals. Eleven students have expressed interest and made deposits toward the trip. Students will be expected to pay for their own lunches and any shopping costs. We will be traveling with students from Davison High School, Fenton High School and St. Charles High School in a tour bus.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-82**

**FOR ACTION**

**Subject:**

Architectural and Engineering Services – Bond

**Recommendation:**

Recommend that the Board authorize the Superintendent to sign the agreement with Kingscott & Associates for Architectural and Engineering Services for the bond passed in November of 2017

**Rationale:**

The formalization of the relationship with Kingscott for architectural and engineering services needs to occur to facilitate the planning phase of the bond to continue

**Statement of Purpose/Issue:**

To formally retain architectural and engineering services in order to proceed with bond project planning.

**Facts/Statistics:**

Selection of bond partners was done back in 2007 when the Board authorized the Superintendent at the time to proceed with a bond exploration process. A typical question that may be asked is “Why wouldn’t the Board have gone through this process again during the intervening time period”. The answer would be that “These partners, during an exploration process, invest a lot of time and money on behalf of the District without compensation to give the necessary professional assistance to guide the District in the bond process. This results in the District honoring these relationships when a bond is passed **unless** the partners have proved themselves to be unreliable or not a good fit”. This has not been the case with the partners selected back in 2007 and therefore it is being recommended that the Board move forward with formalizing these relationships, the architects and engineers being one of them. (Note: All of the minutes from interviews and actions by the Board are contained and available for review).

For the architects and engineers, in December of 2006, a comprehensive request for proposal (RFP) was sent out to six architectural firms (SHW, Fanning Howey, GMB, Kingscott, TMP, French). The responses were reviewed by an internal team and TMP, Kingscott, and SHW were selected to be interviewed by the Board at the January 22, 2007 meeting in order to select the District’s architectural partner. Through that process, SHW was selected with Lee Andrea being the lead on the bond process with the District. However, in the intervening years, due to changes in company structure at SHW and SHW moving away from K-12 work, Mr. Andrea, ultimately landed with Kingscott. Throughout that time, Mr. Andrea has invested countless hours, without compensation, to assist the District in its bond efforts and because of his passion for Owosso Public Schools, he specifically requested permission from Stantec (formerly SHW) to retain his relationship with the District which was granted by Stantec.

The resulting proposed contract has been submitted to Thrun for review with the recommended changes presented to all parties. This is still considered in “draft” format for the December 11<sup>th</sup> meeting as all comments from both parties have not been formalized. The draft contract has been included with this board report and the accompanying letter from the attorneys provided “at place” that outlines substantive changes to the standard AIA document. All changes will be incorporated for formal approval by the Board at the January 22<sup>nd</sup> meeting.

Motion

Seconded

Vote – Ayes

Nays

Motion



# AIA® Document A232™ – 2009

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

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

Owosso Public Schools – work described in Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05, successfully voted on November 7, 2017, all in accordance with applicable law, the approved plans and specifications, the Owner's fixed budget, and as otherwise approved by the Owner.

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

Clark Construction Company  
3535 Moores River Drive  
Lansing, Michigan 48911

**THE OWNER:**  
(Name, legal status and address)

Owosso Public Schools  
645 Alger Avenue  
P.O. Box 340  
Owosso, Michigan 48867

**THE ARCHITECT:**  
(Name, legal status and address)

Kingscott Associates, Inc.  
259 E. Michigan Avenue, Suite 208  
Kalamazoo, Michigan 49007

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

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

Init.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT AND CONSTRUCTION MANAGER
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

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User Notes: (1415070799)

**INDEX**

(Topics and numbers in bold are section headings.)

**Acceptance of Nonconforming Work**9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3****Access to Work****3.16**, 6.2.1, **12.1**

Accident Prevention

**10**

Acts and Omissions

3.2.1, 3.2.2, 3.3.2, 3.12.8, 3.18, 8.3.1, 9.5.1, 10.1, 10.2.5, 13.4.2, **13.7**

Addenda

1.1.1, 3.11, 4.2.14

Additional Costs, Claims for

3.2.4, 3.7.4, 3.7.5, 6.1.1, 7.3, 9.10.3, 9.10.4, 10.3, 10.4, 15.1.4

Additional Inspections and Testing

4.2.8, 12.2.1, **13.5**

Additional Insured

**11.1.4**

Additional Time, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3, 8.3, **10.3****Administration of the Contract**3.10, **4.2**

Advertisement or Invitation to Bid

**1.1.1**

Aesthetic Effect

4.2.19

**Allowances****3.8**, **7.3.8**

All-risk Insurance

11.3.1, 11.3.1.1

**Applications for Payment**4.2.7, 4.2.15, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.7, 9.8.3, 9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4

Approvals

2.1.1, 2.2.2, 2.4, 3.1.4, 3.10.1, 3.10.2, 3.12.4 through 3.12.10, 3.13.2, 3.15.2, 4.2.9, 9.3.2, 13.4.2, **13.5****Arbitration**8.3.1, 11.3.10, 13.1, 15.3.2, **15.4****ARCHITECT****4**

Architect, Certificates for Payment

**9.4**

Architect, Definition of

4.1.1

Architect, Extent of Authority

5.2, 7.1.2, 7.3.7, 7.4, 9.3.1, 9.4, 9.5, 9.8.3, 9.8.4, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.8, 4.2.1, 4.2.2, 4.2.8, 4.2.13, 5.2.1, 9.6.4, **15.2**

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 12.2.4, 13.5.2

Architect's Administration of the Contract

4.2, 9.4, 9.5, 15.2

Architect's Approvals

3.12.8

Architect's Authority to Reject Work

4.2.8, 12.1.2, 12.2.1

Architect's Copyright

**1.5**

Architect's Decisions

4.2.8, 7.3.9, 7.4, 8.1.3, 8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.9.2, 13.5.2, 14.2.2, 14.2.4, 15.2

Architect's Inspections

3.7.4, 4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 7.4, 9.4

Architect's Interpretations

4.2.8, 4.2.17, 4.2.18

Architect's On-Site Observations

4.2.2, 9.4, 9.5.1, 9.10.1, 12.1.1, 12.1.2, **13.5**

Architect's Project Representative

4.2.16

Architect's Relationship with Contractor

1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.9.2, 3.9.3, 3.10, 3.11, 3.12.8, 3.16, 3.18, 4.2, 5.2, 6.2.2, 8.2, 11.3.7, 12.1, **13.5**

Architect's Relationship with Construction Manager

1.1.2, 9.3 through 9.10, 10.3, 13.5.1, 10.3, 11.3.7, 13.4.2, 13.5.4

Architect's Relationship with Subcontractors

1.1.2, 4.2.8, 5.3, 9.6.3, 9.6.4

Architect's Representations

9.4, 9.5, 9.10.1

Architect's Site Visits

4.2.2, 9.4, 9.5.1, 9.8.3, 9.9.2, 9.10.1, **13.5**

Asbestos

**10.3.1**

Attorneys' Fees

3.18.1, 9.10.2, **10.3.3**

Award of Other Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for Portions of the Work****5.2****Basic Definitions****1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

**Boiler and Machinery Insurance****11.3.2****BONDS, INSURANCE AND****11**

## Bonds, Lien

7.3.7.4, 9.10.3

## Bonds, Performance and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4

## Building Permit

2.2.2, 3.7.1

**Capitalization****1.3**

## Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.2, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3,

15.1.3

## Certificates of Inspection, Testing or Approval

13.5.4

## Certificates of Insurance

9.3.2, 9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2, 3.11, 3.12.8, 4.2.12,

4.2.13, 4.2.14, 5.2.3, 7.1.1, 7.1.2, 7.2, 7.3.2, 7.3.4,

7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2,

11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

## Change Orders, Definition of

7.2

## Changes

7.1

**CHANGES IN THE WORK**

2.2.1, 3.4.2, 3.11, 3.12.8, 4.2.13, 4.2.14, 7, 8.3.1,

9.3.1.1

## Claims, Definition of

15.1.1

**CLAIMS AND DISPUTES**

1.1.8, 3.2.4, 3.7.5, 6.1.1, 7.3.9, 8.3.2, 9.3.3, 9.10.3,

9.10.4, 10.3.3, 15, 15.4

**Claims for Additional Cost**

3.2.4, 3.7.5, 6.1.1, 7.3.9, 9.10.3, 9.10.4, 10.3.2, 10.4,

15.1.4

**Claims for Additional Time**

3.2.4, 3.7.5, 7, 8.3.2, 10.4, 15.1.5

## Concealed or Unknown Conditions, Claims for

3.7

## Claims for Damages

3.2.4, 3.18, 6.1.1, 6.2.5, 8.3.2, 9.3.3, 9.5.1.2, 9.10.2,

9.10.5, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 15.1.6

**Cleaning Up**

3.15, 6.3

## Commencement of Statutory Limitation Period

13.7

## Commencement of the Work, Definition of

8.1.2

## Communications, Owner to Architect

2.2.6

## Communications, Owner to Construction Manager

2.2.6

## Communications, Owner to Contractor

2.2.6

**Communications Facilitating Contract****Administration**

3.9.1, 4.2.6

**COMPLETION, PAYMENTS AND****9****Completion, Substantial**

4.2.15, 8.1.1, 8.1.3, 8.2.3, 9.4.3.3, 9.8, 9.9.1, 9.10.3,

12.2.1, 12.2.2, 13.7

**Concealed or Unknown Conditions**

3.7.4, 4.2.8, 8.3.1, 10.3

## Conditions of the Contract

1.1.1

**Consolidation or Joinder**

15.4.4

**CONSTRUCTION BY OWNER OR BY OTHER****CONTRACTORS**

1.1.4, 6

## Construction Change Directive, Definition of

7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.12, 4.2.13, 7.1.1, 7.1.2, 7.1.3,

7.3, 9.3.1.1

## Construction Manager, Building Permits

2.2.2

## Construction Manager, Communications through

4.2.6

## Construction Manager, Construction Schedule

3.10.1, 3.10.3

**CONSTRUCTION MANAGER**

4

## Construction Manager, Definition of

4.1.2

## Construction Manager, Documents and Samples at the Site

3.11

## Construction Manager, Extent of Authority

3.12.7, 3.12.8, 4.1.3, 4.2.1, 4.2.4, 4.2.5, 4.2.9, 7.1.2,

7.2, 7.3.1, 8.3, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 9.8.2, 9.8.3,

9.8.4, 9.9.1, 12.1, 12.2.1, 14.2.2, 14.2.4

## Construction Manager, Limitations of Authority and

Responsibility

4.2.5, 4.2.8, 13.4.2

## Construction Manager, Submittals

4.2.9

## Construction Manager's Additional Services and

Expenses

12.2.1

## Construction Manager's Administration of the

Contract

4.2, 9.4, 9.5

## Construction Manager's Approval

2.4, 3.10.1, 3.10.2

Init.



Construction Manager's Authority to Reject Work  
4.2.8, 12.2.1

Construction Manager's Decisions  
7.3.7, 7.3.9, 9.4.1, 9.5.1

Construction Manager's Inspections  
4.2.8, 9.8.3, 9.9.2

Construction Manager's On-Site Observations  
9.5.1

Construction Manager's Relationship with Architect  
1.1.2, 4.2.1, 4.2.7, 4.2.8, 4.2.9, 4.2.13, 4.2.15, 4.2.16,  
4.2.20, 9.2.1, 9.4.2, 9.5, 9.6.1, 9.6.3, 9.8.2, 9.8.3,  
9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 11.1.3, 12.2.4,  
13.5.1, 13.5.2, 13.5.4, 14.2.2, 14.2.4

Construction Manager's Relationship with Contractor  
3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3, 3.11,  
3.12.5, 3.12.6, 3.12.7, 3.12.8, 3.12.9, 3.12.10, 3.13.2,  
3.14.2, 3.15.2, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 4.2.6,  
4.2.9, 4.2.14, 4.2.17, 4.2.20, 5.2, 6.2.1, 6.2.2, 7.1.2,  
7.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1, 9.4.1, 9.4.2,  
9.7, 9.8.2, 9.8.3, 9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3,  
10.1, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3, 13.5.4

Construction Manager's Relationship with Owner  
2.2.2, 4.2.1, 10.3.2

Construction Manager's Relationship with Other  
Contractors and Owner's Own Forces  
4.2.4

Construction Manager's Relationship with  
Subcontractors  
4.2.8, 5.3, 9.6.3, 9.6.4

Construction Manager's Site Visits  
9.5.1

Construction Schedules, Contractor's  
3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2

**Contingent Assignment of Subcontracts**  
5.4, 14.2.2.2

**Continuing Contract Performance**  
15.1.3

**Contract, Definition of**  
1.1.2

**CONTRACT, TERMINATION OR  
SUSPENSION OF THE**  
5.4.1.1, 11.3.9, 14

Contract Administration  
3.1.3, 4.2, 9.4, 9.5

Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**  
1.1.1

Contract Performance During Arbitration  
15.1.3

**Contract Sum**  
3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.2,  
9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1.1, 12.3, 14.2.4,  
14.3.2, 15.1.4, 15.2.5

Contract Time  
3.7.4, 3.7.5, 4, 3.10.2, 5.2.3, 7.2.3, 7.3.1, 7.3.5, 7.3.10,  
7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1,  
14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of  
8.1.1

**CONTRACTOR**  
3

Contractor, Definition of  
3.1.1

**Contractor's Construction Schedules**  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,  
11.1.1, 11.3.7, 14.1, 14.2.1.1

**Contractor's Liability Insurance**  
11.1

Contractor's Relationship with Other Contractors and  
Owner's Own Forces  
3.12.5, 3.14.2, 4.2.6, 6, 11.3, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 3.3.2, 3.18, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2,  
11.3.7, 11.3.8, 14.2.1.2

Contractor's Relationship with the Architect  
1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.4.2, 3.5, 3.7.4, 3.10.1,  
3.11, 3.12, 3.16, 3.18, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4,  
9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2,  
15.2.1

Contractor's Relationship with the Construction  
Manager  
1.1.2, 3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3,  
3.11, 3.12.5, 3.12.7, 3.12.9, 3.12.10, 3.13.2, 3.14.2,  
3.15.1, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 5.2, 6.2.1,  
6.2.2, 7.1.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1,  
9.4.1, 9.4.2, 9.8.2, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 10.1,  
10.2.6, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3,  
13.5.4

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the  
Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10.2, 3.11, 3.12, 4.2.9, 9.2, 9.3, 9.8.2, 9.9.1, 9.10.2,  
9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction  
Procedures  
1.2.2, 3.3, 3.4, 4.2.5, 4.2.7, 6.1, 6.2.4, 7.1.3, 7.3.5,  
7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance  
11.1.1.8, 11.2, 11.3.1.5

Coordination and Correlation  
1.2, 3.2, 3.3.1, 3.10, 3.12.6, 6.1.2, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.2.5, 3.11

Copyrights  
1.5, 3.17

**Correction of Work**  
2.3, 2.4, 9.4.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

**Correlation and Intent of the Contract Documents**  
1.2

Costs  
2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 7.3.9, 11.3.1.2, 11.3.1.3,  
11.3.4, 11.3.9, 12.1, 12.2.1, 13.5, 14

**Cutting and Patching**  
3.14, 6.2.5

Damage to Construction of Owner or Other  
Contractors  
3.14.2, 6.2.4, 9.5.1.5, 10.2.1.2, 10.2.5, 10.4, 11.1.1,  
11.3, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.2, 10.3.3, 11.1.1, 11.3.5, 11.3.7,  
14.2.4, 15.1.6

Damages for Delay  
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 15.1.5

Date of Commencement of the Work, Definition of  
8.1.2

Date of Substantial Completion, Definition of  
8.1.3

Day, Definition of  
8.1.4

Decisions of the Architect  
3.7.4, 4.2.7, 4.2.8, 4.2.10, 4.2.11, 4.2.13, 4.2.15,  
4.2.16, 4.2.17, 4.2.18, 4.2.19, 4.2.20, 7.3.9, 8.1.3,  
8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.8.4, 9.9.1, 10.1.2, 13.5.2,  
14.2.2, 14.2.4, 15.1, 15.2

Decisions of the Construction Manager  
7.3.7, 7.3.8, 7.3.9, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of  
2.3, 2.4, 3.5, 4.2.8, 6.2.5, 9.5.1, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1, 12.2.2

Definitions  
1.1, 2.1.1, 3.1.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.1.2,  
7.2, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**  
3.2, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3.2, 15.1.5, 15.2.5

Disputes  
7.3.8, 7.3.9, 9.3, 15.1, 15.2

**DISPUTES, CLAIMS AND**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 15, 15.4

**Documents and Samples at the Site**  
3.11

**Drawings, Definition of**  
1.1.5

**Drawings and Specifications, Ownership and Use**  
1.1.1, 1.5, 2.2.5, 3.11, 5.3

Duty to Review Contract Documents and Field  
Conditions  
3.2

Effective Date of Insurance  
8.2.2, 11.1.2

**Emergencies**  
10.4, 14.1.1.2, 15.1.4

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.1, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials and or  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2, 3.12.3,  
3.13.1, 3.15.1, 4.2.8, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2,  
9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,  
3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.3, 7.4, 8.3, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.5, 15.2.5

**Failure of Payment**  
9.5.1.3, 9.7, 13.6, 14.1.1.3, 14.1.3, 14.2.1.2, 15.1.4

Faulty Work (See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.15, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1,  
11.3.5, 12.3, 15.2.1

Financial Arrangements, Owner's  
2.2.1

**GENERAL PROVISIONS**  
1

**Governing Law**  
13.1

Guarantees (See Warranty and Warranties)

**Hazardous Materials**  
10.2.4, 10.3

Identification of Contract Documents  
1.2.1

Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

**Information and Services Required of the Owner**  
2.1.2, 2.2, 4.2.6, 6.1.2, 6.2.5, 9.6.1, 9.6.4, 9.8, 9.9.1,  
9.10.3, 10.3.2, 10.3.3, 11.2, 11.3.4, 13.5.1, 13.5.2,  
14.1.1.4, 14.1.3, 15.1.2

**Initial Decision**  
15.2

**Initial Decision Maker, Definition of****1.1.8**

## Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**3.18.1, 10.2.1, 10.2.2, **10.2.8**, 10.3, 10.3.3, 10.4,

11.1.1

## Inspections

3.1.3, 3.7.1, 4.2.2, 9.8.2, 9.9.2, 9.10.1, 13.5

## Instructions to Bidders

1.1.1

## Instructions to the Contractor

3.1.4, 3.3.3, 3.7.1, 4.2.4, 5.2.1, 7, 8.2.2, 12.1, 13.5.2

**Instruments of Service, Definition of**

1.1.7, 1.5, 1.6

**Insurance**

6.1.1, 7.3.7, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

11

**Insurance, Boiler and Machinery****11.3.2****Insurance, Contractor's Liability****11.1**

## Insurance, Effective Date of

8.2.2, 11.1.2

**Insurance, Loss of Use****11.3.3****Insurance, Owner's Liability****11.2****Insurance, Property**10.2.5, **11.3**

## Insurance, Stored Materials

9.3.2, 11.3.1

**INSURANCE AND BONDS****11**

## Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.3.1.5

## Insurance Companies, Settlement with

11.3.10

## Intent of the Contract Documents

1.2, 4.2.18, 4.2.19, 7.4

**Interest**9.7, **13.6****Interpretation**

1.4, 4.2.8, 4.2.17, 4.2.18

## Interpretations, Written

4.2.17, 4.2.18, 4.2.20

## Joinder and Consolidation of Claims Required

15.4.4

## Judgment on Final Award

15.4.2

**Labor and Materials, Equipment**

1.1.3, 1.1.6, 3.4, 3.8.2, 3.8.3, 3.12.2, 3.12.3, 3.12.6,

3.12.10, 3.13.1, 3.15.1, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,

9.5.1.3, 9.6, 9.10.2, 10.2.1.2, 11.3.1, 14.2.1, 14.2.2

## Labor Disputes

8.3.1

## Laws and Regulations

3.2.3, 3.2.4, 3.7, 3.13.1, 10.2.2, 10.2.3, 13.5.1, 14.2.1

## Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

## Limitation on Consolidation or Joinder

15.4.4

## Limitations, Statutes of

15.4.1

## Limitations of Authority

3.12.4, 4.1.3, 4.2.16

## Limitations of Liability

9.6.7, 11.1.1, 12.2

## Limitations of Time

3.10.1, 4.2.17, 4.2.20, 8.2.1, 9.3.3, 9.6.1, 9.8.4, 9.10.2,

10.2, 11.1.3, 12.1.1, 12.2.2.2, 12.2.5, 13.7, 14.1.1,

15.2.6.1

**Loss of Use Insurance****11.3.3**

## Material Suppliers

1.5.1, 1.5.2, 3.12, 4.2.6, 4.2.8, 9.3.1, 9.3.1.2, 9.3.3,

9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.5, 11.3.1

**Materials, Hazardous****10.2.4, 10.3**

## Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 1.5.2, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2,

3.12.3, 3.12.6, 3.12.10, 3.13.1, 5.2.1, 6.2.1, 9.3.1,

9.3.2, 9.3.3, 9.5.1, 9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.2,

9.10.5, 10.2.1, 10.2.4, 10.3

## Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.5, 4.2.11

## Mechanic's Lien

2.1.2, 15.2.8

**Mediation**8.3.1, 10.3.5, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1**Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.13, 7.1, 7.4

**MISCELLANEOUS PROVISIONS****13**

## Modifications, Definition of

1.1.1

## Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.3, 4.2.14, 5.2.3, 7, 11.3.1

**Mutual Responsibility****6.2****Nonconforming Work, Acceptance of**9.4.3, 9.8.3, **12.3**

## Nonconforming Work, Rejection and Correction of

2.3, 2.4, 3.2.3, 3.7.3, 9.4.3.3, 9.8.2, 9.8.3, 9.9.1,

11.1.1, 12.2.2.1, 12.2.3, 12.2.4, 12.2.5

## Notice

1.5, 2.1.2, 2.2.1, 2.4, 3.2.4, 3.3.1, 3.7.1, 3.7.2, 3.7.5,

3.9.2, 3.12.9, 5.2.1, 6.3, 9.4.1, 9.7, 9.10.1, 9.10.2,

10.2.2, 10.2.6, 10.2.8, 10.3.2, 11.3.6, 12.2.2.1, 13.3,

13.5.1, 13.5.2, 14.1.2, 14.2.2, 14.4.2, 15.1.2, 15.1.4,

15.1.5.1, 15.2, 15.4.1

Init.

**Notice of Claims**

3.7.2, 10.2.8, 15.1.2, 15.4.1

Notice of Testing and Inspections

13.5.1, 13.5.2

Notices, Permits, Fees and

3.7, 7.3.7, 10.2.2

Observations, On-Site

3.2.1, 9.5.1, 12.1.1

Occupancy

2.2.2, 9.6.6, 9.9, 11.3.1.5

On-Site Inspections

4.2.2, 9.10.1, 9.4.4, 9.5.1

Orders, Written

4.2.7, 4.2.18, 4.2.20

Other Contracts and Contractors

1.1.4, 3.14.2, 4.2.9, 6, 11.3.7, 12.1.2

**OWNER****2**

Owner, Definition of

2.1.1

**Owner, Information and Services Required of the**2.1.2, 2.2, 4.2, 6.1.2, 6.1.3, 6.2.5, 9.3.2, 9.6.1, 9.6.4,  
9.9.2, 9.10.2, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1,  
14.1.3, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.12.10, 3.14.2, 4.1.2, 4.1.3,  
4.2.8, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2, 7.3.1,  
8.2.2, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2,  
11.3.3, 11.3.10, 12.2.2.1, 12.3, 13.5.2, 14.2, 14.3.1,  
14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1

**Owner's Liability Insurance****11.2**

Owner's Relationship with Subcontractors

1.1.2, 5.2.1, 5.3, 5.4.1, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

2.4, 12.2.4, 14.2.2

**Owner's Right to Clean Up****6.3****Owner's Right to Perform Construction with Own  
Forces and to Award Other Contracts****6.1****Owner's Right to Stop the Work****2.3**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

**Ownership and Use of Drawings, Specifications  
and Other Instruments of Service**1.1.1, 1.1.5, 1.5, 1.6, 3.11, 3.12.10, 3.17, 4.2.14,  
4.2.18, 4.2.20**Partial Occupancy or Use**

9.9, 11.3.1.5

**Patching, Cutting and**

3.14, 6.2.5

Patents and Copyrights, Royalties

**3.17****Payment, Applications for**4.2.1, 4.2.7, 4.2.15, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.7, 9.10.1,  
9.10.3, 9.10.5, 11.1.3**Payment, Certificates for**4.2.15, 7.3.9, 9.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 15.1.3**Payment, Failure of**

9.4.1, 9.5, 9.7, 14.1.1.3

Payment, Final

4.2.1, 9.8.2, 9.10, 11.1.2, 11.3.1, 11.3.5, 12.3, 15.2.1

**Payment Bond, Performance Bond and**

5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, 11.4

**Payments, Progress**

9.3.1, 9.4.2, 9.6

**PAYMENTS AND COMPLETION****9, 14**

Payments to Subcontractors

5.4.2, 9.3, 9.5.1.3, 9.5.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7,  
9.10.5, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, 11.4

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, 3.7, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF  
10**

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

**Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.9, 4.2.10, 4.2.14

**Progress and Completion**

8.2, 9.3.1, 9.4.2, 9.6, 9.8, 9.10, 14.2.4, 15.1.6

**Progress Payments**

9.3.1, 9.4.2, 9.6

**Project, Definition of****1.1.4**

Project Representatives

4.2.16

**Property Insurance**

10.2.5, 11.3

Project Schedule

3.10.1, 3.10.3, 3.10.4, 4.2.2, 4.2.3, 4.2.4

**PROTECTION OF PERSONS AND PROPERTY  
10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,  
14.1.1, 14.2.1, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.8, 12.2.1

Releases of and Waivers and of Liens

9.10.2

Init.

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**Representations**

1.3, 2.2.1, 3.5, 3.12, 6.2.2, 8.2.1, 9.3.3, 9.4.3, 9.5.1, 9.8.2, 9.10.1

**Representatives**

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

**Requests for Information**

4.2.20

**Resolution of Claims and Disputes**

15

**Responsibility for Those Performing the Work**

3.3.2, 3.7.3, 3.12.8, 3.18, 4.2.2, 4.2.5, 4.2.8, 5.3, 6.1.2, 6.2, 6.3, 9.5.1, 9.8.2, 10

**Retainage**

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field****Conditions by Contractor**

1.2.2, 3.2, 3.7.3, 3.12.7

**Review of Contractor's Submittals by Owner,****Construction Manager and Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 5.2, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and Samples by Contractor**

3.12.5

**Rights and Remedies**

1.1.2, 2.3, 2.4, 3.7.4, 3.15.2, 4.2.8, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights**

3.17

**Rules and Notices for Arbitration**

15.4

**Safety of Persons and Property**

10.2, 10.3, 10.4

**Safety Precautions and Programs**

3.3.1, 3.12, 4.2.5, 5.3, 10.1, 10.2, 10.3, 10.4

**Samples, Definition of**

3.12.3

**Samples, Shop Drawings, Product Data and**

3.11, 3.12, 4.2.9, 4.2.10

**Samples at the Site, Documents and**

3.11

**Schedule of Values**

9.2, 9.3.1

**Schedules, Construction**

3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2

**Separate Contracts and Contractors**

1.1.4, 3.12.5, 3.14.2, 4.2.6, 4.2.11, 6, 8.3.1, 12.1.2

**Shop Drawings, Definition of**

3.12.1

**Shop Drawings, Product Data and Samples**

3.11, 3.12, 4.2.9, 4.2.10, 4.2.14

**Site, Use of**

3.13, 6.1.1, 6.2.1

**Site Inspections**

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2.2, 4.2.3, 4.2.15, 9.4.3.3, 9.8.3, 9.9.2, 9.10.1, 13.5

**Site Visits, Architect's**

3.7.4, 4.2.2, 4.2.15, 9.8.3, 9.9.2, 9.10.1, 13.5

**Special Inspections and Testing**

4.2.8, 12.2.1, 13.5

**Specifications, Definition of**

1.1.6

**Specifications**

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

**Staffing Plan**

4.2.3

**Statute of Limitations**

12.2.5, 13.7, 15.4.1.1

**Stopping the Work**

2.3, 9.7, 10.3, 14.1

**Stored Materials**

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor, Definition of**

5.1.1

**SUBCONTRACTORS**

5

**Subcontractors, Work by**

1.2.2, 3.3.2, 3.12.1, 4.2.5, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**

5.3, 5.4, 9.3.1.2, 9.6.2, 9.6.3, 9.10, 10.2.1, 14.1, 14.2

**Submittals**

3.2.3, 3.10, 3.11, 3.12, 4.2.9, 4.2.10, 4.2.11, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

**Submittal Schedule**

3.10.2, 3.12.5, 4.2.9, 4.2.10

**Subrogation, Waivers of**

6.1.1, 11.3.7

**Substantial Completion**

8.1.1, 8.1.3, 8.2.3, 9.4.3.3, 9.8, 9.9.1, 9.10.3, 12.2.1, 12.2.2, 13.7

**Substantial Completion, Definition of**

9.8.1

**Substitution of Subcontractors**

5.2.3, 5.2.4

**Substitution of Architect**

4.1.4

**Substitution of Construction Manager**

4.1.4

**Substitutions of Materials**

3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of**

5.1.2

**Subsurface Conditions**

3.7.4

**Successors and Assigns**

13.2

**Superintendent**

3.9, 10.2.6

**Supervision and Construction Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.3, 4.2.5, 4.2.8, 4.2.9, 4.2.10, 4.2.11, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.3.3, 10, 12, 14, 15.1.3

Surety  
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of  
9.10.2, 9.10.3

Surveys  
1.1.7, 2.2.3

**Suspension by the Owner for Convenience**  
**14.3**

Suspension of the Work  
5.4.2, 14.3

Suspension or Termination of the Contract  
5.4.1.1, 14

**Taxes**  
3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor**  
14.1, 15.1.6

**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.6

**Termination by the Owner for Convenience**  
**14.4**

Termination of the Contractor  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**  
**14**

**Tests and Inspections**  
3.1.4, 3.3.3, 4.2.2, 4.2.6, 4.2.8, 9.4.3.3, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.5

**TIME**  
**8**

**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, 8.3, 9.5.1, 10.3.2, 14.3.2, 15.1.5, 15.2.5

Time Limits  
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.1, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.4.2, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4, 12.2, 13.5, 13.7, 14, 15

**Time Limits on Claims**  
3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work  
9.3.2, 9.3.3

**Transmission of Data in Digital Form**  
**1.6**

**UNCOVERING AND CORRECTION OF WORK**  
**12**

**Uncovering of Work**  
**12.1**

Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3

Unit Prices  
7.3.3.2, 7.3.4

Use of Documents  
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site**  
3.13, 6.1.1, 6.2.1

**Values, Schedule of**  
9.2, 9.3.1

Waiver of Claims by the Architect  
13.4.2

Waiver of Claims by the Construction Manager  
13.4.2

Waiver of Claims by the Contractor  
9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages  
14.2.4, 15.1.6

Waiver of Liens  
9.10.2, 9.10.4

**Waivers of Subrogation**  
6.1.1, 11.3.7

**Warranty**  
3.5, 4.2.15, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2

Weather Delays  
15.1.5.2

**Work, Definition of**  
**1.1.3**

Written Consent  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.3, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 10.3.2, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations  
4.2.17, 4.2.18

**Written Notice**  
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4, 9.5.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 13.5.2, 14, 15.4.1

Written Orders  
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

## 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, as to contractors, 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, Owner-accepted portions of the Contractor's bid or proposal, or and portions of addenda relating to bidding requirements) requirements) but do not include sample forms. The Contractor's execution of the Owner/Contractor Agreement, the Architect's execution of the Owner/Architect Agreement, and the Construction Manager's execution of the Owner/Construction Manager Agreement shall each constitute their acceptance of all terms herein related to the respective parties.

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

§ 1.1.3 **The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and that the Contract Documents include work (whether or not shown or described) which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and customary standards of the construction industry.

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

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

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

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

§ 1.1.8 **Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

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§ 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.

§ 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."

§ 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. Unless specifically limited in the Contract Documents, 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.

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

## **§ 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.

**§ 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 specification or drawing which establishes the responsibility. Thus, the Contractor shall be responsible for all Work required of it, even though that responsibility may be shown only in that portion of the documents typically pertaining to another contractor or trade.

**§ 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 then the following order of interpretation shall apply:

- .1 Where requirements specifically set forth in the applicable 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.
- .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 Owner, with the assistance of the Architect and Construction Manager, will decide which Subcontractor(s) shall furnish the same.

## **§ 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-Unless otherwise indicated in the Contract Documents or the Owner/Architect Agreement, 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

Init.



other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect, or Architect's consultants' reserved rights.

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

#### § 1.6 Transmission of Data in Digital Form

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

### 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~~ authorization subject to parameters of authority established by Owner's board of education. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Taking into account the Contractor's experience and expertise, and exercise of professional caution, 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 the site utilities or existing structures prior to bid opening or start of work.~~

§ 2.2.4 ~~The 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.

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

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

### § 2.3 Owner's Right to Stop the Work

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

### § 2.4 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-day~~ three-day period after receipt of written notice from the Owner or the Owner's designee (or immediately in the case of a threat to the safety of persons or property) 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 deficiencies. In such case ~~an appropriate Change Order shall be issued deducting the Owner~~ the Owner may deduct from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses, including any and all legal expenses incurred to effectuate and enforce this provision and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, ~~after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~

In the event the Owner directs another entity to perform the Contractor's Work pursuant to this section, that other entity shall charge the Contractor all costs for labor, material, and equipment plus administrative costs, profit, and overhead. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

If the Architect, Construction Manager, Owner, or other contractors or consultants are required to provide additional services due to defects or deficiencies in the Contractor's work or by failure of the Contractor to perform under its agreement, the Contractor shall be responsible for all such costs and fees (including attorney fees), which shall promptly be paid to the Owner. The Owner, Contractor, Architect, and Construction Manager acknowledge that the Owner's receipt of such payment from the Contractor is a condition precedent to the Owner's obligation to make payment to those adversely affected.

This Section 2.4 allows the Owner to withhold payments from a non-performing Contractor irrespective of the termination procedure identified in Section 14.2, and the Owner may pursue either remedy, or both.

## 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

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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.

§ 3.1.1.1 Possession, sale, or consumption of alcoholic beverages on the construction site is strictly prohibited. The unlawful manufacture, distribution, dispensation, possession or use of drugs is prohibited on the construction site.

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

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

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

### § 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 2.2.3, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 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 Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 It will be presumed that the Contractor's bid and the Contract sum include the cost of correcting any 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.

### § 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, unless the Contract Documents give

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other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. The Contractor shall immediately notify the Construction Manager of delays of 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 performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

#### § 3.4 Labor and Materials

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor, Construction Manager, and Architect each respectively agree that neither they nor their 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.

#### § 3.4.5 Asbestos-Free Product Installation

§ 3.4.5.1 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 his employees, agents, subcontractors, or other individuals or entities over whom the Contractor has control. If applicable, the Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the work all be asbestos-free.

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

§ 3.4.5.3 The Contractor shall complete and submit to the Owner a certification evidencing asbestos-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

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.

In addition to any other warranties, guarantees or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

1. The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be of good quality and new;
2. The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
3. The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;
4. The Work and all materials and equipment incorporated into the Work will be merchantable; and
5. The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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 Owner 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.

### § 3.6 Taxes

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

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

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

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

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§ 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Owner and the Architect, in consultation with the Construction Manager, ~~determines~~ determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, they will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner and the Architect, in consultation with the Construction Manager, ~~determines~~ determine 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, Construction Manager, and Contractor in writing, stating the reasons. If the ~~Owner or Contractor~~ Contractor disputes the Architect's determination or recommendation, ~~either party may the Contractor shall~~ proceed 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.

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

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personnel from the Project whose performance is not satisfactory to the Owner and to replace such superintendent with another who is satisfactory to the Owner.

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

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

### § 3.10 Contractor's Construction Schedules

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

The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

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

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

§ 3.10.4 The Contractor shall perform the Work in ~~general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and~~ accordance with the most recent approved project schedule and the most recent work schedule incorporated into the approved Project schedule.

§ 3.10.5 The Contractor shall cooperate with the Construction Manager in scheduling and performing its Work to avoid conflict or interference with the Work of others, and the Contractor shall be responsible for any conflict or interferences that it causes. The Construction Manager and the Contractor acknowledge and understand that the work schedule will be modified from time-to-time with the Owner's approval to coordinate with the work of others and that such schedule changes do not give rise to a claim for damages or additional compensation by the Contractor for delay or otherwise. The Contractor shall be required to conform to the most recent Owner-approved schedule and acknowledges that fact was taken into account when it agreed to the Contract Sum and entered into this Contract.

§ 3.10.6 The Contractor shall cooperate with the Construction Manager in working out and following the proper sequence of operations between the Work of the Contractor and that of other trades on the site.

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**§ 3.10.7** The Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever the Work (or a part thereof) becomes available, or at such other time as the Owner and/or Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of the Construction Manager or any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the work up to the proper schedule. In the event that the Contractor does not take such action necessary to bring its part of the work up to schedule, as determined by the Construction Manager, then the Owner may supplement the Contractor's forces or take other action permitted under Section 2.4. The Contractor shall be responsible for any and all costs of performing or completing the Work and shall pay any such sums within ten (10) days of an invoice. If not paid within ten (10) days, the amount will be withheld from the Contractor's next payment and paid to the relevant parties. If the amounts withheld from payments then or thereafter due Contractor are insufficient to cover such costs, the Owner may bill these costs to the Contractor, and the Contractor shall pay any such sums within ten (10) days of an invoice. 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.

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

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

**§ 3.12 Shop Drawings, Product Data and Samples**

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

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor 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 that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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

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



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

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

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

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

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

### **§ 3.13 Use of Site**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

**§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor and its Subcontractors shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, 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, whether within the limits of the construction site or the adjacent areas leading to it, shall be maintained in a clean and safe condition and open to travel. Failure by the Contractor to maintain said areas will result in the Owner's cleaning of same, at the expense of the Contractor.

**§ 3.16 Access to Work**

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

**§ 3.17 Royalties, Patents and Copyrights**

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

**§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent in any way related to performance of the Work, or the duties or obligations of this Agreement or the failure of the Contractor or the Work to conform with the Contract Documents, caused in whole or in part by any acts or omissions of the Contractor, a Subcontractor, or 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, of any of them may be liable. The Contractor's indemnification responsibility shall be to the fullest degree of Contractor's fault, on a comparative basis (or the fault of any others for whom the Contractor is responsible), and the Contractor shall not be obligated to indemnify a party for that party's own negligence. The Contractor shall be responsible to the Owner, Construction Manager, Architect, Architect's consultants and agents and employees of any of them from and against 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 Article 3.18.

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Such obligation shall not be construed to negate, abridge or reduce any other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18, 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 save the Owner harmless against all loss by fines, penalties or corrective measures resulting from negligent or wrongful acts 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 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts, addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify and save harmless the Owner, Construction Manager and Architect from and against the payment of the following:

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

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

Payment of prevailing wage rates on the Project and all requirements of the Prevailing Wage Act, Public Act No. 166 of 1965. If the Contractor is in violation of the Prevailing Wage Act, that will constitute a substantial breach of the Contract, warranting termination. The Contractor shall be financially responsible for the payment of prevailing wages by all Subcontractors contracted by it for work on the Project;

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 is named as a party, the Contractor shall immediately advise the Owner, 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.

#### ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

##### § 4.1 General

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

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

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

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

**§ 4.2 Administration of the Contract**

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or more frequently, as otherwise agreed with the Owner, 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, Subject to the Owner/Architect Agreement,~~ the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, will guard the Owner against defects and deficiencies in the work, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

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

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project ~~schedule.~~ schedule and shall supervise construction as required by 1937 PA 306.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and ~~Architect~~ Architect, except as may be required under 1937 PA 306 and/or 1980 PA 299, will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, ~~and and, except as provided herein or in their respective agreements with the Owner,~~ neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~Neither Except as identified in their respective Agreements with the Owner, neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Construction Manager will schedule and coordinate the work of all Contractors on the Project, including the Contractors' use of the site. The Construction Manager will keep the Contractors informed of the Project Construction Schedule to enable the Contractors to plan and perform the Work in a timely manner.~~

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

communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

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

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

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

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

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

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7-7 and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and

make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

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

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

§ 4.2.18 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such ~~interpretations and decisions~~, interpretations, the Architect will endeavor to secure faithful performance by both ~~Owner and Contractor~~, will not show partiality to either and will not be liable for results of interpretations ~~or decisions~~ so rendered in good faith ~~faith and without negligence~~.

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors. The term "Subcontractor" shall also include material and equipment suppliers.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish supplies, materials or equipment, including those fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager ~~may~~ will reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. ~~Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall remain, in all instances, jointly and severally liable to the Owner for all acts or omissions of its Subcontractor. All contractual agreements with additional persons or entities serving as a subcontractor shall incorporate the Contract Documents, expressly identify the Owner as a third-party beneficiary, give the Owner all rights against the Subcontractor that it would have against the Contractor, and state that the Owner shall enjoy all third-party beneficiary rights not prohibited by law.~~

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

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

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

## § 5.3 Subcontractual Relations

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

## § 5.4 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 be equitably adjusted for increases in cost resulting from the suspension may be equitably adjusted as negotiated by the parties.

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15, insurance. . The Construction Manager and Contractor shall be responsible for coordinating the Work with the work of other Contractors, including the Owner's own forces or separate contractors, so as to complete the Work in accordance with the Project time schedule.

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

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

### § 6.2 Mutual Responsibility

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

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

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, Construction Manager, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5. Should a claim be made that the Contractor wrongfully delayed or caused damage to the Work or property of another contractor, the Contractor shall promptly settle the dispute with



such other contractor. If a separate contractor sues the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Construction Manager (on the Owner's behalf) shall notify the Contractor who shall defend such proceedings at the Contractor's sole expense. If any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all costs, including attorneys' fees and court costs, which the Owner may have incurred.

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

§ 7.1.4 Where a change in the Work requires overtime labor, and the Owner approves in advance such overtime labor in writing, the cost to the Owner of overtime labor shall be determined by the actual premium wages paid for such overtime labor, over and above the cost of straight time wages, plus payroll charges applicable thereto, plus the cost of direct additional expenses relating to the overtime work, plus a percentage for the Contractor's overhead cost as stipulated in the Contract. No Contractor profit shall be included in such cost. Overtime labor caused by Contractor's failure to timely and/or properly perform shall be at no additional cost to the Owner.

### § 7.2 Change Orders

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

- .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.

§ 7.2.3 The Contractor's agreement on any Change Order shall constitute its final settlement of all matters relating to the direct and indirect costs associated with such change and any and all related 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 Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

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

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall ~~determine~~ determine, with the Owner's approval, the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to a reasonable amount of the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .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;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for undisputed Work completed under the Construction Change Directive in Applications for Payment. ~~The For those undisputed portions,~~ the Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost

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cost, if agreed to by the Owner in writing, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party—the Contractor to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

### 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall 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.

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If Provided the Contractor submits a written request for an extension not more than fourteen days after the occurrence that gives rise to the delay, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration, litigation, mediation, or arbitration, as applicable, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine may be extended by Change Order. Failure of the Contractor to submit a timely request for an extension shall irrevocably waive the Contractor's right to such an extension of time. If the contract time is subject to extension pursuant to this subparagraph, such extension shall be the exclusive remedy of the Contractor and the Contractor shall not be entitled to recover damages from the Owner. Further, minor modifications in Contract time resulting from adjustments in the Project construction schedule shall not be deemed a sufficient cause for an extension of time under this Section.

§ 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 under other provisions of the Contract Documents.

#### § 8.4 Delay Damage Claims

§ 8.4.1 If the Contractor fails to complete its Work on time resulting in loss or damages to the Owner, the Owner shall be entitled to recover any damages caused by the Contractor's breach, including overhead, profit, extended general conditions, actual attorneys' fees, etc.,

§ 8.4.2 In the event the Contractor is delayed or hindered in the commencement or progress of the Work, including but not limited to those delays caused by the Work or lack of Work of another contractor or subcontractor on the Project, and the Contractor claims monetary damages as a direct and proximate consequence thereof (including, but not limited to, extended general conditions, overhead, profit, overtime, interest, supervision or other costs or profits whatsoever), then the Contractor shall not assert such claims against the Architect, Construction Manager or Owner and, as to the Architect, Construction Manager and Owner, the Contractor's claims of such delay damages are hereby waived. The Contractor's sole and exclusive remedy regarding claims for monetary delay damages shall be to pursue such claims directly against any contractor(s) and/or subcontractors on the job which may have caused the delay, and with regard to such claims asserted against the Contractor by any other contractor(s) and/or subcontractors, the Contractor hereby waives the defense of absence of contractual privity and hereby assumes liability to other contractor(s) and/or subcontractors arising out of the Contractor's actions or inactions resulting in such delay and claim.

§ 8.4.3 For any delay claims raised against the Owner, the Contractor's sole and exclusive remedy is an extension of time to perform the Work not to exceed the time frame of any proven delay. Under no circumstances is the Contractor entitled to monetary delay damages from the Owner.

### ARTICLE 9 PAYMENTS AND COMPLETION

#### § 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

#### § 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment, ~~Before the first Application for Payment, the Contractor shall submit~~ a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

#### § 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if ~~required under Section 9.2,~~ for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders. A Contractor's 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.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit with each monthly Application for Payment (1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied, and (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialman, supplier and laborer or the Contractor addressing all previous Applications for Payment submitted for the Project.

§ 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. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner and Construction Manager for approval to include such material costs in its 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. Costs incurred by the Owner, Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor.
6. Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
7. When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

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

#### § 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors. As between the Owner and Contractor, the failure of the Architect or Construction Manager to notify the Contractor or the Owner of a withheld certification does not render such withholding ineffective, and the Owner shall have no obligation to pay a Contractor for uncertified amounts or amounts for which no Certificate for Payment has been issued. If the Contractor does not receive notice of withheld certification, it shall proceed as provided in Section 9.7.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or ~~Architect~~ Architect, in writing, together with the Certification to which the qualification pertains.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect ~~has~~ has, unless otherwise required by contract or law, (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Nothing in this section shall be deemed to eliminate or reduce the duties of the Construction Manager and Architect, respectively, under 1937 PA 306 or 1980 PA 299.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction

Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied; ~~remedied, or the Contractor is in breach of the Agreement;~~
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents; Documents;~~
- .8 ~~the Work not having progressed to the extent set forth in the Application for payment; or~~
- .9 ~~representations of the Contractor are untrue.~~

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

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Owner, Architect, or Construction Manager with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

~~§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4. The Owner may, in its sole discretion, after providing Contractor with ten (10) days~~

prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project due to nonpayment 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, material men, 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 and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Subject to applicable law, if a petition in bankruptcy or any other arrangement or proceeding regarding insolvency, assignment for the benefit of creditors, trust, chattel mortgage, or similar state or federal proceeding, whether voluntary or involuntary, shall be filed with respect to the Contractor, the Owner may withhold the final balance, or any other payments, whether or not an application for progress payment has been properly filed, until expiration of the period of any guarantees or warranties required for the Contractor, and the Owner may pay out such funds the amount necessary to satisfy any claims or costs that otherwise would have been covered by such guarantees or warranties.

#### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, ~~Contractor and without justifiable basis under the Contract Documents,~~ within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, ~~then the Contractor may, upon seven resolution unless the Owner, in good faith, disputes the amount certified, then the Contractor may, upon twenty-one (21) additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received.~~ until: (1) the Contractor receives payment of the amount owing or (2) the Contractor receives notice from the Architect, Construction Manager, or Owner of a full or partial withheld certification as provided herein. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. ~~Documents; Provided, however, that the Owner shall only be obligated to pay the Contractor for the amount certified in a Certificate for Payment and, if the Architect or Construction Manager fail to act on an Application for Payment, the Owner shall have no responsibility to pay the Contractor until such time as the Owner receives a Certificate for Payment from the Architect. Further, the Owner may withhold payment from a non-performing Contractor irrespective of the issuance of a Certificate for Payment as provided elsewhere in the Contract Documents.~~

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction

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Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item ~~upon notification by the Architect, immediately.~~ In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive list of items to be completed or correct (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 thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, ~~provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager complete. 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, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and ~~(5), payment, (5) an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release executed by the Contractor on a form provided by the Construction Manager; (8) all close-out documents and warranties have been provided in a reasonable and acceptable manner, and (9) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable-actual attorneys' fees.~~

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner ~~except those arising from Owner.~~

- ~~1~~ ~~liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
- ~~2~~ ~~failure of the Work to comply with the requirements of the Contract Documents; or~~
- ~~3~~ ~~terms of special warranties required by the Contract Documents.~~

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
4. construction or operations by the Owner or other Contractors.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall take all reasonable safety precautions with respect to its Work and the 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 Construction Manager any injury to any of Contractor's or its Subcontractors' employees at the site within one (1) day after the occurrence of such injury.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, 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, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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

If either party 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 such 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 to investigate the matter. Owner to investigate the matter. The Contractor's failure to do so shall be an irrevocable waiver of any claim against the Owner 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 limitations provisions established by Michigan law.

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

§ 10.2.8.2 The Owner reserves the right to pay the Contractor suffering damage from monies due the Contractor who is responsible for the Work required by same and shall deduct it from the Contract amount due the said responsible Contractor.

§ 10.2.9 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.

§ 10.2.10 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 provisions, the Contractor shall comply with all laws applicable to students and/or school safety.

**§ 10.3 Hazardous Materials**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner Owner, in its discretion, shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall shall, as a courtesy, furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of to address shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances site. To the extent the Contract requires the removal, transport and disposal of hazardous materials, the Contractor agrees that it assumes responsibility for said tasks as a part of the Agreement.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 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 section 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 the MISS DIG notification system of the planned work (and, if applicable, any other Registered Utility Protection Service of the utility company possibly affected by the planned work).

§ 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).

§ 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.

§ 10.5.4 The Contractor shall immediately alert the Owner, Construction Manager, 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.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Liability Insurance

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- .9 liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
  - .1 Premises' Operations (deleting X, C, or U exclusions);
  - .2 Owner's and Contractor's Protective;
  - .3 Products and Completed Operations;
  - .4 Contractual -- including specific for the Contractor's obligations under Paragraph 3.18;
  - .5 Any auto;
  - .6 Broad Form Property Damage, including Completed Operations; and
- .10 All bonds required by law, including bid bond, performance bond and payment bond.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents ~~or required by law, as required by law, or as reasonably required by the Owner in light of the nature of services performed and insurance obligations of its other contractors and consultants,~~ whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted by Contractor to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be ~~canceled~~ canceled, reduced, or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable ~~promptness~~ promptness, but no less than 30 days prior to any reduction in coverage.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 On all insurance contracts under which the Contractor is obligated to have its insurance company name the Owner 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."

## § 11.2 Owner's Liability Insurance

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

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### § 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The term "temporary building", as used in this section, shall not include job trailers of any party.

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

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the work.

§ 11.3.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the The Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. References to waivers of subrogation set forth in the Contract Documents shall be deemed null and void. All parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in the Contract Documents is contrary to this provision, such term is void and unenforceable.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators shall use its best efforts, with consultation of the Construction Manager, to reach a quick and fair settlement for all interested parties, with the insurance companies after a loss.



#### § 11.4 Performance Bond and Payment Bond

§ 11.4.1 ~~The Owner shall have the right to require the Contractor to~~ Contractor shall furnish bonds covering faithful performance of 100% of the Contract and payment of 100% of the obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents or by law on the date of execution of the Contract. The bonds shall be provided by a surety that is reasonably acceptable to the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Construction Manager shall obtain copies of the Performance Bond and Payment Bond required by the Agreement from the Contractor prior to Contractor beginning performance pursuant to the Agreement. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to Contractor beginning performance pursuant to the Agreement.

#### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

##### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract ~~Time.~~Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may ~~request~~request, with the Owner's consent, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. At the time Owner's consent is sought as described herein, the Architect and/or Construction Manager shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner or the separate Contractor, shall be responsible for payment of such costs.

##### § 12.2 Correction of Work

###### § 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If any portion of the Work is determined by the Owner, Construction Manager or Architect, either during performance of the Work or during any applicable warranty period, to be defective or not in compliance with the contract requirements, the Construction Manager or Owner shall notify the Contractor in writing that such Work is rejected. Thereupon, the Contractor shall immediately replace and/or correct such Work by making the same comply strictly with all the requirements therefor. The Contractor shall bear all costs of correcting such rejected Work, including work of other Subcontractors and including compensation for the Architect's and Construction Manager's additional services and any delay or related damage to the Owner made necessary thereby. The Construction Manager shall have the right to charge the Contractor for any compensation payable for the Architect's or Construction Manager's additional services required by the Contractor's rejected Work and deduct the payment from the next payment 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner or Construction Manager to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Construction Manager shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the

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~~Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~

§ 12.2.2 The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.3 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, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. 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 material breach, and the Owner may terminate the Contract immediately without following the procedure identified in Section 14.2. As used in this Section 12.2.6, "timely" means the Contractor shall begin correction within three days of receiving the punch list, and correction will be completed in a commercially reasonable time in accordance with the direction of the Construction Manager. 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 backcharge accordingly. The Contractor shall promptly notify the Construction Manager, in writing, when the Work deficiencies and/or punch list items are completed. Upon the review of the Work by the Construction Manager after such notification by the Contractor, if Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse any cost incurred by the Owner, including the Construction Manager's and Architect's fees for reinspections 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.

### § 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, specifically referencing that it addresses nonconforming work, acceptable to the Owner's authorized representative, and signed by all parties. 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 except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. State of Michigan 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 (and all) Project(s).~~

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by national overnight courier service providing a tracking system and proof of delivery to, the last business address known to the party giving notice. Any written notice delivered with a written acknowledgement of receipt by an authorized party shall be deemed duly served, regardless of method.

Wherever the Contract Documents require the Contractor to give "Notice" or "Timely Notice" to the Architect, Public Authority, and/or others, it shall be the Contractor's responsibility to furnish all such notices sufficiently in advance to allow the party receiving the notice reasonable time to react to such notice, including travel time on the job site as necessary, when such notices require the on-site presence of the Architect, Public Authority, their authorized representatives, or others for field observation of inspections, testing or approvals. Reasonable time shall be defined as no less than 24 hours plus normal travel time from the home office of the party being notified to the job site and must also accommodate known, standard, or reasonable processing periods.

### § 13.4 Rights and Remedies

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

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

### § 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Documents or applicable law, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

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

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

#### § 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 Time Limits on Claims

The Owner and the Contractor shall commence all claims and causes of action in accordance with Section 13.1 and Section 13.7.2, regardless of any other time frames identified in this Agreement. The Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7 action in accordance with Section 15.1, other provisions of this Agreement and in accordance with Michigan law.

§ 13.7.2 Regardless of any provisions to the contrary, the statute of limitations with respect to any defective or nonconforming Work which is not discovered by the Owner shall not commence until the discovery of such defective or nonconforming Work by the Owner. See also Section 13.1.

#### § 13.8 SURETY NOTICE AND PRIOR APPROVAL

Except where otherwise expressly required by the terms of the Agreement, the Contract Documents or the General Conditions, exercise by the Owner of any contractual or legal right or remedy without prior notice to or approval by the Contractor's surety shall in no way bar or prohibit the Owner's ability to pursue such right or remedy. Further, pursuit of such a right or remedy without prior notice to or approval of surety shall in no way compromise, limit or bar any claim by the Owner against a surety bond of the Contractor. The Owner's claims against a Contractor's surety bond shall be governed by Section 13.1 with respect to any limitations periods.

§ 13.9 The Contractor agrees that time is of the essence and to start work when directed by the Construction Manager and to furnish sufficient materials and a sufficient number of properly skilled workers, so as not to delay the work of any other Contractor or completion of the Project.

§ 13.10 Notwithstanding any provisions within the Contract Documents, nothing shall be deemed a waiver of any immunity granted to Owner by law or statute, including but not necessarily limited to, governmental immunity under MCL 691.1407.

§ 13.11 The Owner, being a governmental unit, is protected by the Michigan Void Construction Contracts Act, MCL 691.991.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 ~~Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents subject to justifiable withholding of payment as described herein or in the Contract Documents; or~~
- 4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, direct costs incurred by reason of such termination, and damages-termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. The Contractor may not terminate the Contract unless it has submitted claims for the delays and sought an extension of time for each delay.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- 1 ~~repeatedly-refuses or fails to supply enough properly skilled workers or proper materials; materials to the point of negatively impacting the Project and/or the related schedule;~~
- 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 3 ~~repeatedly-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~
- 4 ~~authority;~~ 4 otherwise is guilty of substantial breach of a provision of the Contract Documents- Documents; or
- 5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety; three days' written notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions:~~

- 1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- 2 Accept assignment of subcontracts pursuant to Section 5.4; and
- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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The notice required by this Section 14.2.2 shall not give the Contractor a right to cure defective Work or to cure other grounds for termination under Section 14.2.1. Further, the Owner's failure to strictly comply with the formal requirements of termination (e.g., by providing less than three days' notice of termination) shall not be substantial breach by the Owner.

In the event the Contractor's surety bond requires notice of intent to declare a default of the Contractor and if such bond notice is provided by the Owner, such notice shall be adequate to satisfy the three (3) day written notice described above in this section.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner in pursuing termination and completion of the Work, including actual attorney and legal fees and costs, and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, ~~along with reasonable overhead and profit on the Work not executed-termination.~~

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the ~~Contract-Contract~~, including but not limited to additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the ~~Contract-Contract~~. The responsibility to substantiate Claims shall rest with the party making the Claim. 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 Notice of Claims.** Claims by either the Owner or Contractor must be initiated by written notice to the other party Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to timely and properly initiate a claim shall be an irrevocable waiver of such claim. Claims by the Owner shall be governed by the applicable statute of limitations period, except as such time frame may be longer in accordance with Section 13.1 and Section 13.7.

**§ 15.1.3 Continuing Contract Performance.** Pending final resolution of a Claim, including mediation 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. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 15.1.4 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. A Project delay shall not be a basis for a Claim for additional cost. Delays claims against the Owner may be remedied only through an extension of time per Section 8.4.2.

**§ 15.1.5 Claims for Additional Time**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, additional written notice as provided herein shall be given given in addition to the general requirements for filing a claim. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, the Work, due to the increase in Contract Time sought. In the case of a continuing delay only one Claim is necessary.

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision interpretation. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision interpretation shall be required as a condition precedent to mediation or litigation of any Claim brought by the Contractor against the Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim

Init.

has been referred to the Initial Decision Maker with no ~~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 the Claim-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 materialmen 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 a decision. 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 such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker ~~will 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 and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be ~~final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution subject to the parties' agreed upon dispute resolution process.~~

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Regardless of any other time frames identified herein, claims and causes of action brought by the Owner shall be governed in accordance with the statute of limitations periods under Michigan law, except for such longer periods of time as may be permitted in Section 13.1 and Section 13.7.~~

§ 15.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the ~~Owner may, but is Owner, Architect or Initial Decision Maker may, but are not obligated to,~~ notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the ~~Owner may, but is Owner, Architect or Initial Decision Maker may, but are 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 ~~Claims, 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, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution- mediation.~~



**§ 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.~~

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **§ 15.4 Arbitration**

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

§ 15.4.4.2 The Owner, 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 and/or mediation, as applicable, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration and/or mediation, as applicable, involving an additional person or entity shall not constitute consent to arbitration and/or mediation of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Modified: 01/04/18; 10:58am

**Certification of Document's Authenticity****AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 16:00:58 on 01/16/2018 under Order No. 0673122117 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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*(Signed)*

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*(Title)*

---

*(Dated)*



# AIA® Document B132™ – 2009

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

AGREEMENT made as of the 11<sup>th</sup> day of December in the year 2017  
(In words, indicate day, month and year.)

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

Owosso Public Schools  
645 Alger Avenue  
P.O. Box 340  
Owosso, Michigan 48867

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

Kingscott Associates, Inc.  
259 E. Michigan Avenue, Suite 208  
Kalamazoo, Michigan 49007

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

Owosso Public Schools – planning, design, and full architectural services for work described in Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05, successfully voted on November 7, 2017, all in accordance with applicable law, the approved plans and specifications, the Owner's fixed budget, and as otherwise approved by the Owner.

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

Clark Construction Company  
3535 Moores River Drive  
Lansing, Michigan 48911

The Owner and Architect agree as follows.

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

This document is intended to be used in conjunction with AIA Documents A132™-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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(1966569003)

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

To be determined by the Owner in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

To be determined by the Owner in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05.

§ 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 to be established by the Owner as a condition of this Agreement in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05

§ 1.1.4 The Owner's anticipated design and construction schedule:

- .1 Design phase milestone dates, if any:

Elementary School Projects – Construction Documents – September 2018

Init.

Middle School/High School Project – Construction Documents – December 2018**.2** Commencement of construction:

Elementary School Projects – February 2019  
Middle School/High School Projects – March 2019

**.3** Substantial Completion date or milestone dates:

Elementary School Projects – August 2019  
Middle School/High School Projects – August 2020

**.4** Other:**§ 1.1.5** The Owner intends to retain a Construction Manager adviser and:

*(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)*

- One Contractor  
 Multiple Prime Contractors  
 Unknown at time of execution

**§ 1.1.6** The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

*(List number and type of bid/procurement packages.)*

To be determined

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.4 and 5.5:

*(List name, address and other information.)*

Dr. Andrea Tuttle – Superintendent  
Julie Omer – Chief Financial Officer  
John Klapko – Director, Operations

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

*(List name, address and other information.)*

As the Board of Education directs and as otherwise required by law.

**§ 1.1.10** The Owner will retain the following consultants:

*(List name, legal status, address and other information.)*

Init.  
/

.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: page.

.2 Cost Consultant (if in addition to the Construction Manager):  
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

Detailed cost estimates to be provided by the Construction Manager. The Architect shall review and adopt such cost estimates as provided in MCL 339.2011.

.3 Land Surveyor:

Spicer Group, Inc.  
1400 Zeeb Drive  
St. Johns, Michigan 48879

.4 Geotechnical Engineer:

To be determined

.5 Civil Engineer:

Kingscott Associates, Inc.

.6 Other consultants:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)*

Technology Consultants – To Be Determined

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3 and 2.4:  
(List name, address and other information.)

Brendon Pollard, Principal  
Lee Andrea, AIA, Project Director

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2: 1.1.12.2 and any others as required to perform Basic Services:  
(List name, legal status, address and other information.)

Init.

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be determined

.2 Mechanical Engineer:

To be determined

.3 Electrical Engineer:

To be determined

.4 Food Service

To be determined

.5 Acoustical

To be determined

§ 1.1.12.2 Consultants retained under Additional Services:

To be determined

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

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect ~~shall appropriately adjust~~ may mutually agree to a written adjustment in the schedule, the Architect's services and the Architect's ~~compensation~~ compensation, as applicable.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 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~~ circumstances and familiar with the school construction industry in Michigan. 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 ~~AIA Document C132™ 2009, Standard Form of the Agreement Between Owner and Construction Manager.~~ 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.

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

~~§ 2.6 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~ Agreement in the amounts identified below, in an Architect-provided certificate of insurance, or as required by law, whichever is greater.

~~§ 2.6.1 Comprehensive General Liability with policy limits of not less than (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.~~

~~§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) combined single limit and aggregate for bodily injury and property damage.~~

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

~~§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars (\$ 500,000 ).~~

~~§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and Two Million Dollars (\$2,000,000) in the aggregate.~~

~~§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6-2.6 at the time of execution of this Agreement. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. policies, and coverages will not be terminated, non-renewed, or reduced without at least 30 days prior written notice to the Owner.~~

~~§ 2.6.7 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 coverages and amounts shall be subject to the Owner's reasonable approval.~~

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

~~§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are 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 identified in this Agreement shall be Basic Services unless expressly identified herein as 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 other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants, 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.~~

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**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit ~~to~~ for review by the Owner and the Construction Manager and for the Owner's approval a written schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's ~~review, review and for the Owner's provision of information,~~ (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, ~~and~~ (4) for approval of submissions by authorities having jurisdiction over the ~~Project-Project,~~ and (5) shall include a master design schedule for planning, schematics, design development and construction documents phases.

**§ 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-services and the Project as a whole.~~

**§ 3.1.5** Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable ~~ease-cause and with mutual written agreement of the parties.~~

**§ 3.1.6** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's review or approval.

**§ 3.1.7** The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

**§ 3.1.8** 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-having jurisdiction over the Project and relating to construction design and performance (and, for example, not bond financing).~~ 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. This 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.

**§ 3.1.9** The Architect acknowledges that the services to be provided by the Architect under this Agreement shall include assisting the Owner in complying with the Owner's obligations set forth in Public Act No. 306 of 1937, MCL 388.851, *et seq.*, and Public Act 299 of 1980, MCL 339.2011 (collectively, the "Acts"). Therefore, the Architect hereby agrees to perform the services that shall or may be performed by an "architect" pursuant to those Acts. The parties acknowledge that nothing in this Agreement shall be construed to limit the Architect's services, duties or obligations under either of those Acts, except that the parties further acknowledge that the Construction Manager will provide construction supervision as required by 1937 PA 306.

**§ 3.1.10** 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.

**§ 3.1.11** 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 Schematic Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner and Construction Manager, consult with the Owner regarding same, and shall review and at all times follow laws, codes, and regulations applicable to the Architect's ~~services-services and the Project.~~

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

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§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components. Approval by the Owner 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.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on ~~program~~ program, budget and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

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

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall ~~be entitled to rely on~~ 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~~ 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.

§ 3.2.9 The Architect shall specifically request and obtain the Owner's written approval of the Schematic Design Documents and related construction cost estimates before proceeding to the Design Development Phase.

### § 3.3 Design Development Phase Services

§ 3.3.1 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 pursuant to Section 5.4, the Architect shall prepare and provide Design Development Documents for the Owner's review and approval and the Construction Manager's review. ~~The Design Development Documents shall be based upon~~ 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 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~~ ~~mechanical~~, civil and electrical systems, and such other elements as may be ~~appropriate~~ ~~appropriate~~ or identified in Section 3.1. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall 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.

§ 3.3.4 The Architect shall specifically request and obtain the Owner's written approval of the Design Development Documents and related construction cost estimates before proceeding to the Construction Documents Phase.

#### § 3.4 Construction Documents Phase Services

§ 3.4.1 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 and provide Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the materials and systems, their quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall expressly require in the bid documents and which the Architect shall review in accordance with Section 3.6.4.

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

§ 3.4.3 During the development of the Construction Documents, ~~if requested by the Owner,~~ the Architect shall assist the ~~Owner and the Construction Manager~~ in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms. 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, prevailing wage, and contracting laws applicable to Michigan public school districts and this Project.

§ 3.4.3.1 Documents referenced in Section 3.4.3 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 a statement indicating that modified version(s) of the standard AIA Owner/Contractor Agreement will be utilized. The form of Owner/Contractor Agreement and General Conditions shall either be prepared or reviewed and approved by Owner's legal counsel.

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

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction 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"

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recommended by the Architect for the Project shall constitute approval of that "particular material" by the Owner for aesthetic purposes only.

§ 3.4.6 The Architect shall specifically request and obtain the Owner's written approval of the Construction Documents and related construction cost estimates before proceeding to the Bidding or Negotiation Phase.

### **§ 3.5 Bidding or Negotiation Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining ~~either competitive bids or negotiated proposals~~; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and ~~(4) awarding and preparing contracts for construction~~; (4) preparing contracts for construction; and (5) rendering interpretations and clarifications of drawings and specifications in appropriate written form. The Owner shall award bids as required by law. See Section 12.10.

#### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders ~~and bidders~~, providing clarifications and interpretations of the Bidding Documents in the form of ~~addenda-addenda~~, and providing recommendations for award of bids.
- .4 working with the construction manager to determine compliance with competitive bidding laws, including with respect to bid advertisements, familial disclosure statements, and Iran Economic Sanctions Act certifications.
- .5 participating in post-bid conferences with apparent low bidders.

**§ 3.5.2.3** The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements, and proposed Contract Documents ~~Documents~~ and shall adhere to competitive bidding thresholds established by applicable law.

**§ 3.5.3.2** The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- .1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 if requested by the Owner, participating in negotiations with prospective contractors.

**§ 3.5.3.3** The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### **§ 3.6 Construction Phase Services**

#### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. ~~If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement-Edition, as amended.~~ In the event there is any conflict between this Agreement and AIA Document A232-2009, as amended, the terms of this Agreement shall prevail. Otherwise, both documents shall govern.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner and Construction Manager during the ~~Construction Phase Services. Services described in this Agreement.~~ The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of 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 the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.6.1.3** ~~Subject to Section 4.3, the~~ The Architect's responsibility to provide Construction Phase Services commences with the award of the ~~Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. initial Contract for Construction and terminates at the end of the Contractors' applicable warranty periods (not less than 1 year after substantial completion).~~

### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of ~~construction, or as otherwise required in Section 4.3.3, construction~~ to become generally familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies, to comply with statutory obligations, 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 Section 3.1.9, 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 report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the ~~Construction Manager, Owner, or Contractor through the Construction Manager. Owner.~~ 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, interpretations,~~ the Architect shall endeavor to secure faithful performance by both ~~Owner and Contractor, shall not show partiality to either, the Contractor,~~ and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters rendered in good faith and without negligence. The Architect's interpretations 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 Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2009, the Architect shall render ~~initial decisions~~ written interpretations on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify an application for payment ~~not more frequently than monthly.~~ Within within seven days after the Architect receives an application for payment forwarded from the Construction Manager,

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unless the circumstances require a shorter time period. The Architect shall review and certify the application as follows:

- 1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- 2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the ~~Architect~~ Architect in writing and accompanying the relevant certification.

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

§ 3.6.3.4 The Architect shall maintain a record of the applications and certificates for ~~payment~~ 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 Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals 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 Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's 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 Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. ~~The Subject to its professional~~ experience and expertise, the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

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~~§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall~~ The Architect shall timely review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information. 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 transmitted 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 shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager or otherwise for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted or modified.

§ 3.6.5.2 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted or modified.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work. The Architect shall contemporaneously review with the Owner all changes and potential changes in the Work for any reason, cause, cost and responsibility. Said issues shall be recorded and reported in a Change Management Log for the Project, the review and approval of which by the Architect shall evidence concurrence in the resolution of the issue as identified therein.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; upon Substantial Completion, jointly with a relevant Contractor and the Construction Manager, prepare a list of incomplete or unsatisfactory items and schedule their completion; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance for the purpose of identifying potential warranty issues and to verify adequacy of the facility operations and performance.



**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services (including those listed below and not identified as Basic Services) may be provided by the Architect and compensated by the Owner 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 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.

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Basic Service	
§ 4.1.2 Multiple preliminary designs	Basic Service	
§ 4.1.3 Measured drawings of existing facilities unrelated to the Project		
§ 4.1.4 Existing facilities surveys	Basic Service	
§ 4.1.5 Site evaluation and planning (B203™-2007)	Basic Service	
§ 4.1.6 Building information modeling (E202™-2008)		
§ 4.1.7 Civil engineering	Basic Service	
§ 4.1.8 Landscape design	Basic Service	
§ 4.1.9 Architectural interior design (B252™-2007)	Basic Service	
§ 4.1.10 Value analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating	Basic Service with the Construction Manager	See MCL 339.2011
§ 4.1.12 On-site project representation (B207™-2008)		See Section 4.2
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-designed record drawings	Basic Service	
§ 4.1.15 As-constructed record drawings		
§ 4.1.16 Post occupancy evaluation	Basic Service	
§ 4.1.17 Facility support services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants	Basic Service	
§ 4.1.20 Telecommunications/data design design/technology	Basic Service	
§ 4.1.21 Security evaluation and planning (B206™-2007)	Basic Service	
§ 4.1.22 Commissioning (B211™-2007)		See Section 4.2
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® certification (B214™-2012)(B214™- 2007)		
§ 4.1.25 Historic preservation (B205™-2007)		
§ 4.1.26 Furniture, furnishings, and equipment design (B253™-2007)	Basic Service	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document for additional description.

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Section 4.1.12: The Architect shall provide on-site representation only as required by this Agreement (e.g., Section 3.6) and applicable laws as a Basic Service.

Section 4.1.22: The Architect shall review basic system start-up and balancing information provided by the contractor(s) as part of its Basic Services.

§ 4.3 Additional Services may be provided after execution of this Agreement, in compliance with the first paragraph of Section 4.1 without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and and, if necessary, an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The following Additional Services shall be provided if there has been compliance with the first paragraph of Section 4.1. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services Subject to Section 6.6 and Section 6.8, 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, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; interpretations which 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.);
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner manner, acknowledging the Owner's obligations under the Open Meetings Act or any other failure of performance on the part of the Owner, Construction Manager Owner or the Owner's other consultants or contractors;
- .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .7 Preparation of 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; thereto or at which the Architect's services are at issue;
- .10 Evaluation of the qualifications of bidders or persons providing proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. promptly comply with the opening paragraph of Section 4.1 for the following Additional Services. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Architect. The Owner shall have no further obligation to compensate the Architect for those services; services not accepted in writing by the Owner:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;

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- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the approved by the Owner that exceed the scope of the Work and Project cost and that require substantial preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor Owner and making subsequent revisions to Instruments of Service resulting therefrom; therefrom after bids have been awarded; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier after the time frame identified in Section 3.6.1.3.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1  reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2  visits to the site by the Architect over the duration of the Project during construction
- .3  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

§ 4.3.4 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.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner Upon the Architect's specific written request, the Owner shall provide information regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2009, Standard Form of the Agreement Between Owner and Construction Manager. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The In addition to the Architect's responsibilities under MCL 339.2011, the Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality. The parties acknowledge the Owner's fixed limit of construction cost for the Project.

~~§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

~~§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. Project, subject to parameters of authority set by the Owner. 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. services, subject to the Owner's status as a public body, including being subject to the Open Meetings Act.~~

~~§ 5.6 The Where required by the circumstances of the Project and requested by the Architect in writing, 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 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.~~

~~§ 5.7 The Where required by the circumstances of the Project and as requested by the Architect in writing, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic, evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Architect shall assist the Owner in obtaining such services as a part of the Architect's Basic Services, and the Owner will pay for such services as applicable.~~

~~§ 5.8 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 in this Agreement, or authorize the Architect to furnish them as an Additional Service, 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 Architect shall assist the Owner in selecting a service provider as part of Basic Services. The Owner and Architect shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.~~

~~§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services.~~

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

~~§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, 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.~~

~~§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to~~

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the Contract Documents. ~~Documents that may affect the Architect's services.~~ Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the ~~Owner shall coordinate~~ Architect shall assist the Owner with coordination of the Architect's duties and responsibilities set forth in the Contract for Construction 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 Contractor, including the General Conditions of the Contract for Construction.

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

#### 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 contractors' general conditions costs, overhead and profit. ~~The Cost of the Work includes the profit, compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including consultants, and compensation of the Architect and the Architect's consultants, including respective compensation for reimbursable expenses at the job site, if any. The For purposes of calculating fees or other costs determined on a percentage of the Cost of the Work only, the~~ Cost of the Work does not include the compensation of the ~~Architect, the Architect or the Architect's consultants, compensation of the Construction Manager or the Construction Manager's consultants, work for which the Architect is not providing services (for example, unused contingency dollars, Owner-purchased equipment),~~ the costs of the land, rights-of-way, financing, 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 Initial Information, ~~and may be adjusted throughout the Project as required under Sections 5.4 and 6.4.~~ Information. A fixed limit of construction cost shall be established by the Owner as a condition of this Agreement in accordance with the relevant application for preliminary qualification of bonds. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional ~~professional familiar with the construction industry.~~

§ 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 required to prepare its own~~ estimates of the Cost of the Work ~~the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, as necessary to perform its Basic Services.~~ The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its ~~services, however, the Architect own~~ Basic Services and shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating ~~services as an Additional Service, services,~~ and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another. The Architect shall ensure compliance with MCL 339.2011.

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

§ 6.5 ~~If at any time the 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 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

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- 3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's 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 modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6-Work.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when Work. When the excess is due to Architect negligence or changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment, the Work shall be performed as a Basic Service.

§ 6.8 In the event the lowest bid (or bids) exceed the budget for the Project, the Architect, in consultation with and at the direction of the Owner, shall without additional compensation provide such modifications in the Contract Documents and services as necessary to bring the cost of the Project within budget.

#### 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall may endeavor to establish necessary protocols governing such transmissions.

§ 7.2 ~~The Except as otherwise provided in this Agreement, 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 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively. Owner shall have a nonexclusive, irrevocable license and right to access, use and reproduce the Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses and adding to the Project or completing the Project should Architect not provide services through completion. On behalf of, and for the benefit of, the Owner, the Architect shall obtain similar rights from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Such rights shall, without limitation, authorize the Owner and the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, contractors and other design professionals, to utilize and to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Any termination of this Agreement for any reason or under any condition shall in no way terminate or otherwise diminish the licenses and rights described herein.

§ 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.

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§ 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. ~~The Except as allowed in this Agreement, the Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. Michigan law, but in no case shall a claim by the Owner be deemed untimely if filed within six (6) years of Substantial Completion of the overall Project or, if longer, one year after the discovery of a defect caused by the Architect's gross negligence.~~ 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 A232-2009, 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.~~

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

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

### § 8.2 Mediation

§ 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 the Agreement. ~~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 the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. 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. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### § 8.3 Arbitration

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

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

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

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

### § 8.3.4 Consolidation or Joinder

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

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

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



**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If 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-~~services for this reason. In the event of such a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to ~~suspension and any expenses incurred in the interruption and resumption of the Architect's services-~~suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted-subject to negotiation by the parties.

§ 9.2 If the Owner suspends the ~~Project, 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-subject to negotiation 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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due ~~and all Termination Expenses as defined in Section 9.7-~~ due.

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

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section ~~11.9-~~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 ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section ~~8.3-~~State of Michigan.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for ~~Construction-Construction,~~ as modified on behalf of the Owner. In the event of any inconsistency between this Agreement and the General Conditions, the terms of this Agreement shall govern.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of ~~execution-~~execution unless circumstances require a shorter time frame. 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.

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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 information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. The Architect shall obtain the Owner's approval prior to disclosures of 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 by the other party as "confidential" or "business proprietary," the receiving party receives Owner information that is "confidential" or "business proprietary," the Architect shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 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.

#### § 10.10 Waiver and Severability

§ 10.10.1 Any waivers hereunder must be in writing. No waiver or right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. A waiver of any term, condition, or covenant by a party shall not constitute a waiver of any other term, condition or covenant.

§ 10.10.2 If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

### ARTICLE 11 COMPENSATION

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

*(Insert amount of, or basis for, compensation.)*

A stipulated lump sum fee in accordance with the relevant application for preliminary qualification of bonds, which fee shall not exceed \$2,337,062.

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

As mutually agreed by the parties in writing prior to the performance of service in accordance with the hourly rates set forth in Section 11.7

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

§ 11.4 Compensation for 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 plus ~~percent (—%), or as otherwise stated below:~~ without mark-up.

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

Compensation is due and payable in monthly progress payments for services properly completed and authorized expenses incurred. As a guideline for anticipating payments, architectural services are approximately apportioned as follows:

Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design-Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

<u>Employee or Category</u>	<u>Rate (\$0.00) per hour</u>
<u>Principal</u>	<u>\$ 150.00</u>
<u>Project Director/Planner</u>	<u>\$ 135.00</u>
<u>Architect</u>	<u>\$ 110.00</u>
<u>Interior Designer</u>	<u>\$ 75.00</u>
<u>Engineer</u>	<u>\$ 130.00</u>
<u>Designer</u>	<u>\$ 85.00</u>
<u>Construction Administration</u>	<u>\$ 100.00</u>
<u>CAD Operator</u>	<u>\$ 65.00</u>
<u>Clerical</u>	<u>\$ 50.00</u>

### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- ~~1~~ Transportation and authorized out-of-town travel and subsistence;
- ~~2~~ Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- ~~3~~ Fees paid for securing approval of authorities having jurisdiction over ~~the Project;~~ the Project. The Architect will pay initial deposits for plan reviews as a reimbursable expense. Invoices for the balance of such fees may be forwarded to, and paid directly by, the Owner;
- ~~4~~ Printing, reproductions, plots, standard form ~~documents;~~ documents for use and reviews by Owner and governmental agencies;
- ~~5~~ Postage, handling and delivery;
- ~~6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~7~~ Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- ~~8~~ Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- ~~9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~10~~ Site office expenses; and
- ~~11~~ 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 zero percent ( 0 %) of the expenses incurred. Reimbursable expenses shall not exceed \$ 85,000 without the prior written consent of the Owner.

The Architect's total compensation package, including fee and reimbursable expenses, shall not exceed \$ 2,422,062 without the prior written approval of the Owner.

### § 11.9 Compensation for Use of Architect's Instruments of Service

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

### § 11.10 Payments to the Architect

§ 11.10.1 An initial payment of zero dollars (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for undisputed services shall be made monthly in proportion to services performed. ~~Payments are due and payable upon presentation~~ Undisputed payments are due and payable within thirty (30) days of the Owner's receipt of the Architect's invoice. Amounts unpaid thirty ( 30 ) 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 below.  
(Insert rate of monthly or annual interest agreed upon.)

~~%~~ Five Percent 5% (See MCL 438.31)

§ 11.10.3 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.

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

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**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

§ 12.1 The Architect shall perform its duties, responsibilities and services in a manner consistent with the professional standards of the architectural profession.

§ 12.2 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, material shortages, etc.

§ 12.3 The Architect shall immediately notify the Owner, in writing, of the presence of any hazardous material in connection with this Project of which the Architect is aware. The Owner, at its cost, shall be responsible for analysis, design, removal, remediation or other action related to any asbestos or hazardous substances.

§ 12.4 (a) If errors and omissions in the Project are detected in the plans and specifications before the work is bid, the costs 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 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 Owner and Architect acknowledge that no set of drawings will be free of errors and that some errors and omissions in the drawings may be within the applicable industry standard, and the cost of any such non-negligent errors and omissions may, at the Owner's option, be paid from available construction contingency.

§ 12.5 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.

§ 12.6 The Architect will, as part of Basic Services, attend the Owner's Board of Education meetings and staff meetings (in person or via communication media) as reasonably requested by the Owner.

§ 12.7 Services deleted from Article 4 shall be deemed to be a part of Basic Services.

§ 12.8 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 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.

§ 12.9 The Owner reserves the right to approve the identity of the Architect's project representative(s) and to require their replacement upon two (2) weeks' notice. The Architect shall make available the services of Lee Andrea, Brendon Pollard, and other such individuals as may be required to provide the services defined as Basic Services or needed in the course of the Project to complete the Project as described in the Agreement. In the event that any individual identified above is discharged, dies, is disabled or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Architect shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement of the Owner.

§ 12.10 The Architect will assist the Construction Manager in all contract award services, including but not necessarily limited to, conducting pre-award conferences with apparent low bidders, reviewing bids or negotiated proposals, and advising the Owner whether such bids and proposals are responsive and acceptable in the context of the Project requirements.

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§ 12.11 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.

§ 12.12 The Architect, with the assistance of the Construction Manager, shall include in bidding information, plans or specifications a requirement that the successful Contractor(s) shall provide operation manuals to the Owner and Contractor(s) shall provide adequate training for the Owner in the operation of any and all facility systems installed by the Contractor(s) including mechanical, civil, electrical, HVAC systems and any other building systems.

§ 12.13 The Architect agrees that it will be the Architect responsible for the construction described in this Agreement and shall not specify as a building material in any Construction document for the Project any material which the Architect knew or reasonably should have known was an asbestos containing building material (ACBM), as defined in Section 763.83 of 40 CFR Part 763, as amended. Upon the issuance of the final certificate for payment, the Architect shall furnish the Owner a signed statement (dated current) that, to the best of Architect's knowledge, no asbestos containing building material was used as a building material in the Project. The Architect shall include in specifications that no ACBM shall be used in the construction of the school building and that each contractor shall certify to the School District and Architect that none was used in the construction; the Architect shall cooperate with the Owner and the Construction Manager in obtaining such Contractor certifications.

§ 12.14 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.

§ 12.15 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provisions of this Agreement shall be deemed to be void and non-existent in the event the Owner, in its discretion, determines the other party should become a party to that dispute by joinder or otherwise.

§ 12.16 In the event of mediation arising out of or relating to this Agreement, the 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.

§ 12.17 Production of original drawings and specifications, as well as all construction bulletin drawings and specifications in both pdf and a CADD CD-ROM form acceptable to the Owner shall be a part of Basic Services and shall be made available to the Owner upon request at any time after they have been created. Additionally, the Architect shall assemble and deliver all field drawings used for the Project as part of Basic Services.

§ 12.18 The Architect, without additional cost to the Owner, shall maintain in force insurance coverage as set forth in Section 2.6. Insurance shall be either (a) occurrence-based and shall be maintained in force during the life of the Project and for a period of no less than twelve (12) months after the relevant date of Substantial Completion of the Project, or (b) claims-made and shall be maintained in force during the life of the Project and for a period of no less than six (6) years after the relevant date of Substantial Completion of the Project. The Architect shall notify the Owner thirty (30) days in advance if the 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 required of the Architect, which certificates shall be attached to the Agreement. The Owner shall be listed as an "additional insured" on all applicable insurances.

§ 12.19 The Architect and Construction Manager shall provide the Owner the necessary bidding information and shall assist the Owner in the preparation of the General Conditions of the contract and the Form of Agreement Between Owner and Contractor. The referenced documents 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) will be utilized; such contract shall be subject to the Owner's approval.

§ 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 contract.

§ 12.21 The parties acknowledge that the Owner is a Michigan general powers school district and is therefore subject to legal requirements and restrictions that may not apply in the private sector.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- 1. AIA Document B132™-2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition-Edition, as modified.
- 2. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- 3. AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- 4. Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

**OWOSSO PUBLIC SCHOOLS,**

**KINGSCOTT ASSOCIATES, INC.,**

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
ARCHITECT (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

Modified: 01/18/18; 9:45am

Init.

**Certification of Document's Authenticity****AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 09:47:19 on 01/18/2018 under Order No. 0673122117 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ – 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-83**

**FOR ACTION**

Subject:

Construction Management Services – Bond

Recommendation:

Recommend that the Board authorize the Superintendent to sign the agreement with Clark Construction for construction management services for the bond passed in November of 2017

Rationale:

The formalization of the relationship with Clark Construction for construction management services needs to occur to facilitate the planning phase of the bond to continue

Statement of Purpose/Issue:

To formally retain construction managements services in order to proceed with bond project planning.

Facts/Statistics:

Selection of bond partners was done back in 2007 when the Board authorized the Superintendent at the time to proceed with a bond exploration process. A typical question that may be asked is “Why wouldn’t the Board have gone through this process again during the intervening time period”. The answer would be that “These partners, during an exploration process, invest a lot of time and money on behalf of the District without compensation to give the necessary professional assistance to guide the District in the bond process. This results in the District honoring these relationships when a bond is passed **unless** the partners have proved themselves to be unreliable or not a good fit”. This has not been the case with the partners selected back in 2007 and therefore it is being recommended that the Board move forward with formalizing these relationships, the construction managers being one of them. (Note: All of the minutes from interviews and actions by the Board are contained and available for review).

For bond construction management services, in January of 2007, a comprehensive request for proposal was sent out requesting construction management services. Six firms responded to the request (Christman, Clark, E. Gilbert & Sons, Granger, Spence and Wolgast). The responses again were reviewed by an internal team and Christman, Clark and Granger were selected to be interviewed by the Board at their February 12, 2007 board meeting. The interviews resulted in Clark Construction being selected as the Construction Manager.

The resulting proposed contract has been submitted to Thrun for review with the recommended changes presented to all parties. This is still considered in “draft” format for the December 11<sup>th</sup> meeting as all comments from both parties have not been formalized. The draft contract has been included with this board report and the accompanying letter from the attorneys provided “at place” that outlines substantive changes to the standard AIA document. All changes will be incorporated for formal approval by the Board at the January 22<sup>nd</sup> meeting.

Motion

Seconded

Vote – Ayes

Nays

Motion



# AIA® Document C132™ – 2009

## Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2017.  
(In words, indicate day, month and year.)

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

Owosso Public Schools  
645 Alger Avenue  
P.O. Box 340  
Owosso, Michigan 48867

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

Clark Construction Company  
3535 Moores River Drive  
Lansing, MI 48901  
Phone: (517) 372-0940  
Fax: (517) 372-0668

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

Owosso Public Schools – work described in Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05, successfully voted on November 7, 2017, all in accordance with applicable law, the approved plans and specifications, the Owner's fixed budget, and as otherwise approved by the Owner.

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

Kingscott Associates, Inc.  
259 E. Michigan Avenue, Suite 208  
Kalamazoo, Michigan 49007

The Owner and Construction Manager agree as follows.

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

To be determined by the Owner in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05. The Construction Manager shall assist the Owner with Preparation of the Program as described in Section 3.2.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

To be determined by the Owner in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05.

§ 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 to be established by the Owner as a condition of this Agreement in accordance with Application for Preliminary Qualification of Bonds No. 78-110-4-K12-06-05

§ 1.1.4 The Owner's anticipated design and construction schedule:

- .1 Design phase milestone dates, if any:

Commencement of Design: April 2018

Completion of Design: June 2018

Bidding:

Bryant Elementary: September-October 2018

Central Elementary: September-October 2018

Emerson Elementary: September-October 2018

Owosso 6-12: January-February 2019

2 Commencement of construction:

Bryant Elementary: November 2018

Central Elementary: November 2018

Emerson Elementary: November 2018

Owosso 6-12: March 2019

3 Substantial Completion date or milestone dates:

Bryant Elementary: May 2019

Central Elementary: May 2019

Emerson Elementary: May 2019

Owosso 6-12

Auditorium: August 2020

I3 Classroom Addition: November 2019

Gymnasium Addition: November 2019

Media Center Addition: November 2019

Music Room Addition: November 2019

Remodeling: August 2020

4 Other:

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

Competitively bid multiple Prime contracts

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

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

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

Superintendent of Schools

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

As the Board of Education directs and as otherwise required by law.

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

.1 Land Surveyor:

.2 Geotechnical Engineer:

.3 Civil Engineer:

To be provided by Architect.

.4 Other:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)*

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

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

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

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§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

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

Not applicable. The Construction Manager will provide detailed cost estimating services.

- .2 Other consultants:

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

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

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust may mutually agree to a written adjustment in the schedules, the Construction Manager's services and the Construction Manager's compensation, as applicable.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances and familiar with the school construction industry in Michigan. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™ - 2009, Standard Form of the Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

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

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

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost. Agreement in the amounts identified or as required by law, whichever is greater.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than Five Million Dollars (\$ 5,000,000 ) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000 ) combined single limit and aggregate for bodily injury and property damage.

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

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars (\$ 500,000 ).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per claim and in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.6.7 The parties agree that the Owner is not waiving any rights its Insurer(s) may have to subrogation. To the extent any term in the Agreement is contrary to this provision, such term is void and ARTICLE unenforceable.

### ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

#### § 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 ~~and include 3.3, AIA Document A232, as modified, Article 12 of this Agreement, and any other services identified in this Agreement, unless such services are expressly designed as Additional Services.~~ Basic Services shall include, but not be limited to, usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation and supervision of construction activities among the Multiple Prime Contractors.

#### § 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall ~~review-review, analyze and assist in the development of the program~~ furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. ~~The Construction Manager shall periodically update the Construction Management Plan will be used, and (6) a Project Schedule, which shall be subject to the Owner's approval. The Construction Manager shall update the Construction Management Plan monthly, or as otherwise appropriate, over the course of the Project.~~

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and

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equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Such reviews do not alter the Architect's responsibility for its design.

§ 3.2.6 The Construction Manager shall prepare and periodically update in writing, at least monthly as or otherwise agreed by the Owner and Construction Manager, the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. The anticipated Construction Schedule, including critical and long-lead time items, should be taken into account.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, in writing, at least monthly or as otherwise agreed by the Owner and Construction Manager, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and shall make recommendations for corrective action.

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

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

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

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

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

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of products, materials, and equipment, including those that must be ordered well in advance of construction.

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

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

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

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

§ 3.2.18 The Construction Manager shall develop and submit the list of prospective bidders to whom copies of the invitation to bid are to be sent for the Architect's review and the Owner's input and approval. Additionally, the Construction Manager acknowledges that its Basic services include assisting the advising the Owner with respect to compliance with the competitive bidding requirements of MCL 380.1267 and MCL 380.1274, as applicable.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders-bidders, prepare and publish necessary bid notices, advertisements, certifications, and disclosures, and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda. All bid documents shall acknowledge that modified Construction Contract and General Conditions forms shall be used.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses. After the Owner receives bids, the Construction Manager shall prepare bid analyses, conduct post-bid interviews with apparent low bidders, and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts prepare Construction Contracts using form documents modified by the Owner's legal counsel and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors. As part of its assistance, the Construction Manager shall verify that the Construction Contracts have been modified to conform with this Agreement and the Agreement between the Owner and Architect, including but not limited to, dispute resolution procedures, permit requirements, bond requirements, prevailing wage requirements, insurance requirements, and an acknowledgment of the supremacy of Michigan law.

§ 3.2.22 The Construction Manager shall advise the Owner as to all building and special permits required for the Project and shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

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

### § 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the The Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the later of the date the Architect issues the final Certificate for Payment. Payment or 30 days after final payment to all Contractors is due.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

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§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser ~~Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement. Edition, as modified for the Project.~~ The Construction Manager shall request a modified form of the General Conditions of the Contract from the Owner's legal counsel, and the Construction Manager shall include the modified General Conditions of the Contract in bid specifications and ensure the document is included in the final Contract Documents.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project ~~schedule~~ schedule, Project cost estimates and the Contract Documents.

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

§ 3.3.6 The Construction Manager shall schedule and conduct progress and construction meetings at least monthly, or as otherwise agreed by the parties, to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

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

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

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

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

§ 3.3.11 ~~The Construction Manager shall develop~~ On a monthly basis or as otherwise agreed by the parties in writing, the Construction Manager shall develop and deliver to the Owner cash flow reports and forecasts for the ~~Project.~~ Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.

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**§ 3.3.12** The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records, all of which shall be updated on at least a monthly basis.

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

**§ 3.3.12.2** Not more frequently than ~~monthly~~, monthly or as otherwise provided in the relevant Contracts for Construction, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

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

**§ 3.3.12.3** The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality and quantity of the Work is in accordance with the Contract Documents. Documents and has been performed in a good and workmanlike manner. 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 Construction Manager. Manager, identified in writing along with the relevant certification. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

**§ 3.3.12.4** The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Nothing in this subsection shall reduce the Construction Manager's duty to supervise, particularly as provided in Sections 3.3.14 and 12.18.

**§ 3.3.13** The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall advise the Owner and Contractor of safety violations, if observed by the Construction Manager, and shall verify Contractor's correction of the same. Such duties and responsibilities of the Construction Manager shall in no way waive, limit or excuse the Contractor's full duty and liability with regard to safety.

**§ 3.3.14** The Construction Manager shall determine ~~in general~~ and ensure that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents using the best efforts consistent with the

standards of the construction industry for a construction manager-adviser and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. ~~The Construction Manager shall have the authority to Subject to the authority of the Owner, the Construction Manager shall reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection.~~ The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures. See Section 12.2.

**§ 3.3.15** The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent authorized by law and provided in this Agreement. The Construction Manager 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 of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. ~~The Except as otherwise provided in this Agreement, the Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's or the Construction Manager's agent's negligent acts or omissions, including but not limited to failures to reject non-conforming Work,~~ but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the ~~Work.~~ Work (that are not employed or engaged by the Construction Manager).

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

**§ 3.3.17** The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are ~~accepted, accepted and approved by the Owner,~~ prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. -The Construction Manager shall contemporaneously review all changes and potential changes in the Work with the Owner and Architect for reason, cost, cause and responsibility.

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

**§ 3.3.19** Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

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

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

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

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

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

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

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

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

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

**§ 3.3.25** When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial ~~Completion~~ Completion, dated current. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make

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recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

§ 3.3.29 ~~Upon request of the Owner, and prior~~ Prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

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

§ 3.3.31 To the extent required by law or as required by the Owner, the Construction Manager shall require each Contractor for each separately bid portion of the Work to obtain and maintain a performance bond and payment bond in an amount covering the Contractor in a form and with a surety acceptable to the Owner in connection with its obligations thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any work at the Project site.

§ 3.3.32 The Construction Manager shall assist the Owner and the Architect in the planning and sequencing of construction activities in order to accommodate necessary Work during occupancy of the Project area in a manner acceptable to the Owner. The Construction Manager acknowledges and agrees that the Owner needs and will be using the Project area or portions thereof for its educational purposes during construction. The Construction Manager will perform its work and will coordinate and manage the work of the Contractors so as not to interfere with the Owner's use of the Project area for educational purposes, including but not limited to controlling and managing noise levels, safety, dirt, dust, debris, convenient access, etc.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 ~~Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. (including those listed below and not identified as Basic Services) may be provided by the Construction Manager and compensated by the Owner as an Additional Service if: (a) required for the Project, (b) the Owner authorizes the performance of same in writing prior to the Construction Manager's provision of any such service, and (c) the Construction Manager~~

~~(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.) provides a good faith estimate of the cost of 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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Services	Responsibility (Construction Manager, Owner <del>or Not</del> or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	Not Provided	
§ 4.1.2 Architectural interior design(B252™-2007)	Not Provided	
§ 4.1.3 Tenant-related services	Not Provided	
§ 4.1.4 Commissioning (B211™-2007)in accordance with B211™-2007	Not Provided	
§ 4.1.5 LEED® certification (B214™-2012)	Not Provided	
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	Not Provided	

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

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. ~~Agreement if done so in compliance with the first paragraph of Section 4.1. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.~~

§ 4.3.1 ~~Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization. The following Additional Services shall be provided if there has been compliance with the first paragraph of Section 4.1:~~

- ~~1~~ Services necessitated by a Subject to Section 6.6, services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- ~~2~~ Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- ~~3~~ Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- ~~4~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~5~~ Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto; thereto, or the Construction Manager's services are at issue;
- ~~6~~ Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; -or
- ~~7~~ Assistance to the Initial Decision Maker, if other than the Architect; or -9 Providing Services to manage work that is added to the Program Scope by the
- ~~8~~ Service as the Initial Decision Maker. Owner arising from realized savings in the originally-allocated budget.

§ 4.3.2 ~~To avoid delay in the Construction Phase, the The Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services. Services if there is compliance with the first paragraph of Section 4.1:~~

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- 1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work ~~when the Architect is serving as the Initial Decision Maker except those claims required for the timely completion of construction.~~
- 2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, ~~whichever is earlier, the timeframe established in Section 3.3.1.~~
- 3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.
- 4 Providing surveys and other legal information referenced in Section 5.6.
- 5 Providing geotechnical services or other related services as referenced in Section 5.7.

~~§ 4.3.3 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.~~

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

~~§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information as specifically requested by the Construction Manager in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any requirements subject to the Owner's status as a public body that is not a construction professional.~~

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

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

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

~~§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. Project subject to the Owner's parameters. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services-services, subject to the Owner's status as a public body. The Construction Manager shall timely prepare and submit to the Owner all recommendations, documents, or other matters for which Owner's approval is required. The Construction Manager will also forward to the Owner, as necessary, the drawings and specifications created by the Architect.~~

~~§ 5.6 Unless provided by the Construction Manager, As necessary for the Project, 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 necessary data with respect to existing buildings, other improvements and trees; and information~~

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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. Upon Owner's request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.

~~§ 5.7 Unless provided by the Construction Manager, As necessary for the project, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.~~

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

~~§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.~~

~~§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests-interests, beyond those required of the basic Services of the Construction Manager.~~

~~§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. Failure of the Owner to provide notice shall not relieve the Construction Manager of its responsibilities. Further, the Owner does not assume any duty of inspection by the inclusion of this section. The Construction manager shall provide the Architect and the Owner prompt written notice if it becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.~~

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

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

~~§ 5.14 Before executing execution of the Contract for Construction, the Owner shall coordinate Construction Manager shall assist the owner in coordinating the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall~~

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

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

#### 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 overseen/supervised by the Construction Manager and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the profit, compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including its consultants, compensation of the Architect and its consultants, including respective compensation for reimbursable expenses at the job site, if any. The For purposes of calculating fees or other costs determined on a percentage of the Cost of the Work only, the Cost of the Work does not include the compensation of the Architect, Architect and its consultants, the compensation of the Construction Manager and Construction Manager's Consultants, work for which the Construction Manager is not providing services (for example, unused contingency dollars, Owner-purchased equipment), the costs of the land, rights-of-way, financing, 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 Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Information and is a fixed limit of construction cost as a condition of this Agreement. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager. The foregoing statement does not waive the fixed limit of construction cost.

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

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

§ 6.5 If the 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, fixed limit of construction cost identified in the Owner's budget is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus the Construction Manager's estimate of other elements of cost for the Project, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2 or Section 6.5.3, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the Construction Cost within the fixed limit established as a condition of this

#### ARTICLE Agreement.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, ~~but in any case not more than 10 Michigan law, but in no case shall a cause of action by the Owner be deemed untimely if filed within six (6) years after the date of Substantial Completion of the Work, for the overall Project.~~ The Owner and Construction Manager 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 Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

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

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

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager shall initially 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 the Agreement. ~~Agreement, except that either party may, if in good faith, declare a mediation impasse and proceed with litigation after one (1) full business day of mediation that fails to resolve the dispute at issue.~~ A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. During the pendency of any mediation, the parties agree that

applicable limitations periods applicable to claims that are subject to the mediation process, or that are related to claims subject to that process, 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. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### **§ 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 the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

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

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

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

### **§ 8.3.4 Consolidation or Joinder 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.~~

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

#### ARTICLE 9 TERMINATION OR SUSPENSION

~~§ 9.1 If the Owner fails to make undisputed payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, services for this reason, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of such a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted subject to negotiation.~~

~~§ 9.2 If the Owner suspends the Project, Project for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted subject to negotiation.~~

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

~~§ 9.4 Either party 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 Construction Manager for the Owner's convenience and without cause.~~

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

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

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

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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, as modified on behalf of the Owner, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager. In the event of a conflict or inconsistency between the General Conditions of the Contract for Construction and this Agreement, the terms of this Agreement shall govern.

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

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

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

**§ 10.6** Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.7** ~~The~~ Unless terminated prior to completion of the Project, the Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information ~~if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary information.~~ The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. The Construction Manager shall obtain the Owner's approval prior to disclosures of information for the purpose of verifying that such information disclosures contain no confidential information (including, for example, information protected by FERPA).

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

**§ 10.9** The Construction Manager agrees to retain permanent records relating to the services performed under this Agreement for a period of at least six (6) years following final completion of the Project, after which period such records will be offered to the Owner for the Owner's retention.

**§ 10.10 Integration, Waiver and Severability**

**§ 10.10.1** This is the entire agreement between the Owner and Architect with respect to the matters covered herein and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing signed by both parties. Any waivers hereunder must be in writing. No waiver or right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default.

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§ 10.10.2 A waiver of any term, condition, or covenant by a party shall not constitute a waiver of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

**ARTICLE 11 COMPENSATION**

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

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

See Section 11.1.2.

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

The Construction Manager's total compensation shall be based on the project scope according to the "Proposal Summary" as set forth in the Construction Manager's proposal dated December 1, 2017. The Construction Manager's total fee, costs, staffing, general conditions, and reimbursable expenses shall not exceed \$2,232,528.

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

To be negotiated prior to performance, taking into consideration the hourly rates schedule in Section 11.5.

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

To be negotiated prior to performance, taking into consideration the hourly rates schedule in Section 11.5.

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager ~~plus percent (%)~~, or as otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, ~~are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.~~ will be determined by mutual agreement of the Parties before Additional Services are performed.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

<u>Employee or Category</u>	<u>Rate (\$0.00)</u>
Senior Project Manager	\$ _____ hour
Project Executive	\$ _____ hour
Estimator	\$ _____ hour
Superintendent	\$ _____ hour
Project Engineer	\$ _____ hour
Clerical/Coordinator	\$ _____ hour

**Employee or Category****Rate (\$0.00)****§ 11.6 Compensation for Reimbursable Expenses**

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

- .1 ~~Transportation and authorized out-of-town travel and subsistence, in connection with authorized out-of-town travel and subsistence other than to and from the Project;~~
- .2 ~~Long distance services, services (excluding phone service of the Construction manager's main office), dedicated data and communication services, teleconferences, and Owner approved Project Web sites, and extranets;~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Owner in writing;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 ~~Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;~~
- .9 ~~All taxes levied on professional services and on reimbursable expenses;~~
- .10 Site office expenses; and expenses
- .11 ~~Other similar Project-related expenditures.~~

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses actually incurred by the Construction Manager and the Construction Manager's consultants plus percent (%) of the expenses incurred at cost and without markup. Reimbursable expenses, including all General Conditions and supervisory personnel costs, shall not exceed the amounts set forth in Section 11.1.2 and as set forth in the Construction Manager's proposal dated December 1, 2017.

**§ 11.7 Payments to the Construction Manager**

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

§ 11.7.2 Unless otherwise agreed, payments for undisputed services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice performed, except that the final payment shall not be made until Final Completion of the Project. Undisputed payments are due and payable thirty (30) days of the Owner's receipt of the Construction Manager's invoice unless and to the extent reasonably disputed by the Owner in good faith. Undisputed amounts unpaid thirty ( 30 ) days after the 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 Construction Manager below.

*(Insert rate of monthly or annual interest agreed upon.)*

% Five percent (5%) per annum. See MCL 438.31.

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding is otherwise responsible.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times forwarded to the Owner with each applicable invoice.

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**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

§ 12.1 The Construction Manager shall perform its responsibilities and provide services in a prompt manner and with that degree of care and skill normally exercised by a Construction Manager of recognized experience and expertise that specializes in providing construction management services for the construction of public school facilities.

§ 12.2 On the basis of its regular on-site observations, Construction Manager will report to the Owner any construction means, methods, techniques, sequences, or procedures observed by it that do not appear to conform with industry standards, and shall also report to Owner any work that appears not to be in conformance with the Contract Documents. The performance of additional services made necessary by defects or deficiencies in the work of the contract shall not entitle the Construction Manager to additional compensation if such services were of such a nature that they should have been observed by the Construction Manager so that the work would not be necessary.

§ 12.3 The Construction Manager shall timely inform both the Owner and the Architect of any observed defects or deficiencies in the quality of workmanship of the various contractors.

§ 12.4 The Construction Manager shall provide daily on-site field supervision during the entire construction phase. The Owner reserves the right to approve the identity of the Construction Manager's field supervisor and other Project representatives, and to require the replacement of any of them upon two (2) weeks' written notice.

The Construction Manager shall make available the services of all personnel and other such individuals as may be required to provide the services defined as Basic Services or needed in the course of the Project to complete the Project as described in the Agreement. In the event that any individual identified above is discharged, dies, is disabled or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Construction Manager shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement of the Owner.

§ 12.5 The Construction Manager shall, upon completion of the Project, deliver to the Owner all records and files of the Project, which shall have been organized in a reasonable manner by the Construction Manager, including all field marked copies of the Drawings and Specifications.

§ 12.6 The Construction Manager shall inspect the work of the trade contractors on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the work performed and the materials furnished are in accordance with the Contract Documents and that work on the Project is progressing on schedule using its best efforts consistent with the standards of the construction industry for an Agency Construction Manager. In the event that the quality control testing should indicate that the work, as installed, does not meet the requirements of this Project, the Architect and Construction Manager shall determine the extent of the work that does not meet the requirements and the Construction Manager shall direct the trade contractor(s) to take appropriate corrective action, and advise the Owner of the correction action.

§ 12.7 As part of Basic Services, the Construction Manager shall provide callback services for a period of 18 months following substantial completion, or to the end of the longest Contractor warranty period, whichever is later.

§ 12.8 The Construction Manager shall immediately notify the Owner, in writing, of the presence of any hazardous material in connection with this Project of which the Construction Manager is aware. The Owner, at its cost, shall be responsible for analysis, design, removal, remediation or other action related to any asbestos or hazardous substances.

§ 12.9 The Construction Manager shall act as the Owner's agent at the site of the work to the extent so designated in writing and mutually agreed to by the parties to the Agreement. This shall include, but is not limited to, the arranging for construction support and general condition items benefiting the multiple contractors, performing work on the site, such as the field office, phones and service, fax equipment, copy machine, computer(s), 2-way radios, furniture, supplies, sanitary facilities, utilities, access road, parking areas, enclosed warehouse facilities, site security, temporary lighting and power, temporary heat, temporary enclosures, crane service, housekeeping, and final clean-up.

§ 12.10 The Owner agrees to provide and pay for construction support items or general condition items and the items listed in Paragraph 12.9 not included under this Agreement and not included as a part of any contractor's contract. Such items shall be designated by the Construction Manager and approved by the Owner before they are provided, and shall be the property of the Owner and shall be competitively bid as required by law.

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

§ 12.12 Any service that is deleted from Article 4 shall be deemed a part of Basic Services.

§ 12.13 The Construction Manager will, as part of Basic Services, attend the Owner's Board of Education meetings and staff meetings (in person or via communication media) as reasonably requested by the Owner.

§ 12.14 The Owner reserves the right in its discretion to require consolidation or joinder of any mediation relating to this Agreement with another mediation involving an independent contractor or consultant engaged by the Owner in connection with the Project. 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.

§ 12.15 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provision of this Article shall be deemed to be void and nonexistent in the event the Owner, in its discretion, determines the Construction Manager should become a party to that dispute by joinder or otherwise.

§ 12.16 The Owner reserves the right to require any mediation to be held near the Owner's principal place of business.

§ 12.17 The Construction Manager further agrees to include a similar mediation provision as identified herein in the form Owner/Contractor Agreement (per Section 3.2.21) and in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between parties to those agreements. The Construction Manager shall be responsible for ensuring the inclusion of this provision in pertinent bid documents and contract forms, the preparation of which the Construction Manager provides or with which the Construction Manager assists in preparation.

§ 12.18 The Construction Manager shall be responsible for supervision of construction under 1937 PA 306.

§ 12.19 The Construction Manager shall actively enforce all applicable policies of the Owner, including but not limited to those related to alcohol and tobacco.

§ 12.20 The Construction Manager shall not be entitled to additional compensation in the event it is necessary to extend the completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, etc., unless such delay negatively impacts the critical path of construction, for which the Construction Manager may seek additional compensation in accordance with the first paragraph of Section 4.1.

§ 12.21 In the event of any inconsistency between the Agreement and AIA Document A232, as modified, the terms of this Agreement shall govern.

§ 12.22 The Construction Manager shall not utilize photographs of this Project for any advertising or promotional purpose that include the image of any student of the Owner with the express written permission of the parent or guardian of that student if that student is a minor and Owner. If the student is of age of majority or is an emancipated minor, the Construction Manager must obtain express written permission from that student and Owner. Such express written permission shall acknowledge the Construction Manager's intent for use of those images. The Owner, in its discretion, may assist the Construction Manager in securing such permission.

§ 12.23 DEFENSE AND INDEMNIFICATION: The Construction Manager shall indemnify and hold harmless the Owner, its Board of Education, its board members in their official and individual capacities, administration, its successors, assigns, employees and agents (the "Indemnitees"), from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, to the extent caused in whole or in part by or asserted to arise from (i) the negligent acts or omissions of the Construction Manager, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representation or warranty by the Construction Manager under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which the Owner or one or more of the Indemnitees may be entitled to indemnification under this Agreement. The Construction Manager shall not be responsible for indemnifying an Indemnitee for the Indemnitee's negligence, but shall remain responsible to the fullest degree of Construction Manager's fault.

§ 12.24 The Owner shall be identified as an "additional insured" on all general liability insurance policies held by the Construction Manager which are applicable to the Project. The Construction Manager shall also ensure that the Contract Documents applicable to contractors and subcontractors require that contractors and subcontractors include the Owner as an "additional insured" on all general liability insurance policies applicable to the Project held by contractors and subcontractors. The Construction Manager shall provide (and acquire as necessary) certificates of insurance evidencing the Owner's status as "additional insured" on all required policies, as well as a provision that insurance coverage cannot be reduced or eliminated without 30 days' notice to the Owner.

§ 12.25 The Construction Manager will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, 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.

Init.

**§12.26 STANDARD OF CARE, RESPONSIBILITIES OF CONSTRUCTION MANAGER:** The Construction Manager shall perform its responsibilities and provide services in a prompt manner and with that degree of care and skill normally exercised by a Construction Manager of recognized experience and expertise that specializes in providing construction management services for the construction of public school facilities.

**§ 12.27** The Owner shall have no obligation to pay any fees or other costs to the Construction Manager if the relevant bond election fails or the bonds financing the Project fail to close.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- ~~1~~ AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser/Adviser, as modified.
- ~~2~~ AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- ~~3~~ AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- 4 Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

The Construction Manager's proposal dated December 1, 2017.

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

**OWOSSO PUBLIC SCHOOLS, CLARK CONSTRUCTION COMPANY,**

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

Modified: 01/08/18: 9:33am

**Certification of Document's Authenticity****AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 16:02:45 on 01/16/2018 under Order No. 0673122117 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C132™ - 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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*(Signed)*

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*(Title)*

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*(Dated)*

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**17-84**

**FOR ACTION**

**Subject:**

Revision to the temporary easement to the south driveway and contiguous property of the Middle School located at 219 N. Water St to the Kincaid Henry Building Group, Inc. located at 934 Clark St., Lansing, Michigan and the Shiawassee Regional Chamber of Commerce located at 215 N. Water St., Owosso as approved at the September 25, 2017 board meeting

**Recommendation:**

Resolve that the Board of Education authorize the Superintendent to sign off on the amended temporary easement to the property located by and inclusive of the south driveway alongside of the Owosso Middle School located at 219 N. Water St. to the Kincaid Henry Building Group, Inc. and Shiawassee Regional Chamber of Commerce

**Facts/Statistics:**

At the regularly scheduled Board meeting on September 25, 2017, the Board approved a temporary easement for the property located to the South of the Middle School in order to allow the construction group to move forward with the Chamber project involving the old armory building. The easement allowed their machinery to access the property to facilitate the renovation and construction of the property owned by the Shiawassee Regional Chamber of Commerce. Originally, the easement included leveling property to allow smooth access to the site and which could eventually result in the potential for the property to be turned into additional parking for the staff and visitors to the Middle School. This would have been accomplished by the construction company excavating the 840 feet of property necessary for access, leveling it with sand and finishing it off with crushed limestone at no cost to the district. The change to the proposal reflects only the need for the construction company to reseed the area to a green space and repair any damage to the existing sidewalk. The original plan to turn this into additional parking is no longer considered to be a financially prudent given the eventual change in use of the Middle School by the District.

All proposed changes to the easement originally passed by the Board are have been highlighted in the document accompanying this report for signature by the Superintendent. The proposed changes do not impact the current easement already granted to the construction company to access the property as the phase of returning the area outlined to green space and repairing the sidewalk will not take place until towards the final stages of construction. It is duly noted that the property will continue to be owned by the District and that the easement being granted is for the term of the current project and does not extend beyond such a reasonable time frame for completion of said project.

**District Goal Addressed:**

Fiscal integrity

Motion

Seconded

Vote – Ayes

Nays

Motion

**REVISION TO EASEMENT PASSED BY BOARD AT SEPTEMBER 25, 2017 BOARD MEETING**

**September 26 January 22, 2018**

To the parties at the Shiawassee Regional Chamber of Commerce, Kincaid Henry Group, Inc. and the City of Owosso:

At a regularly scheduled Board meeting on ~~September 25~~ **January 22, 2018** of the Owosso Public Schools Board of Education, the Board authorized the Superintendent of the Owosso Public Schools to sign off a document to grant a temporary easement to approximately 840 feet of the property located by and inclusive of the south driveway alongside of the Owosso Middle School located at 219 N. Water St. to the Kincaid Henry Building Group, Inc. and Shiawassee Regional Chamber of Commerce. This is in recognition that the property must be utilized by the construction group to move forward with the Chamber project involving the old armory building.

The stipulation on the easement is that the property in question will be leveled to allow the machinery of the construction company appropriate access to the property and at the conclusion of the project will put the area in a condition inclusive of: **extending and repair of existing sidewalk, adding topsoil and grass seed to any remaining area that was disrupted during the construction process leveling, sand and finishing with crushed limestone**, at no cost to the district; ~~that will allow the District the option to pave the area for additional parking for the property at the Middle School without any additional preparation of the area by the District.~~ Any damage sustained to the property or liability arising out of use of the property by Kincaid Henry Group, Inc. or the Shiawassee Regional Chamber of Commerce will be assumed by both or either of the parties thereby indemnifying the District of any liability or financial responsibility. Use of the easement constitutes recognition of all aspects of the easement as outlined.

It is duly noted that the property will continue to be owned by the District and that the easement being granted is for the term of the current project and does not extend beyond such a reasonable time frame for completion of said project.

\_\_\_\_\_  
Dr. Andrea Tuttle  
Superintendent Owosso Public Schools

\_\_\_\_\_  
Date

Witnesses to signature above: \_\_\_\_\_  
Julie Omer, Chief Financial Officer

\_\_\_\_\_  
Clara Pitt, Administrative Assistant to the Superintendent

# Future Action

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**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2017**  
**Report 17-85**

**FOR FUTURE ACTION**

Subject:

Out-of-state Student Travel – OHS 2018 Choral experience in Chicago, IL

Recommendation:

Resolve that the Board of Education approve the out-of-state travel for Owosso High School Choir students and teacher Jessica Nieuwkoop on a trip to Chicago, IL February 15, 2018

Rationale:

Ms. Nieuwkoop and approximately 50 OHS 9<sup>th</sup> – 12<sup>th</sup> grade students will travel by Charter Bus for a vocal music experience in Chicago. Students will be accompanied by Ms. Nieuwkoop and chaperones composed of OPS Staff & Parents. This is an enhancement to the Vocal Music curriculum and a unique opportunity to engage with professional performers.

Statement of Purpose:

The purpose of this trip is to provide our students with a global choral experience outside of the classroom. Students will be provided the opportunity to view a professional performance and see many of the skills that we use in class daily in action. Students will also have the opportunity to visit Shed Aquarium, the Magnificent Mile and the CIBC theater to see Hamilton!

Facts/Statistics:

This trip is sponsored by Owosso High School Vocal Music department. Students and Chaperones are responsible for all of the cost. Chaperones and students will leave for the trip at 7:00 AM on February 15, 2018. Students will return home on February 16 around 4:30 AM. An organizational parent meeting will take place before students go on the trip. Bob Rogers Travel is our trips organizer.

Motion

Seconded

Vote – Ayes

Nays

Motion





*Bob Rogers Travel*

Making Moments That Matter

PREPARED FOR THE: OWOSSO HIGH SCHOOL CHOIR  
 UNDER THE DIRECTION OF: MRS. JESSICA A. NIEUWKOOP, CHOIR DIRECTOR  
 TOUR DESTINATION: CHICAGO, IL  
 TOUR DATE: FEBRUARY 15, 2018

ITINERARY AS OF SEPTEMBER 21, 2017

JEFF MCLAIN, TRAVEL CONSULTANT ~ MELISSA CLUTERS, TRAVEL COORDINATOR  
 ALL TOUR INCLUSIONS ARE SUBJECT TO AVAILABILITY AND CHANGE

**THURSDAY, FEBRUARY 15<sup>TH</sup>**

Meals Included Today: **Dinner**

- 7:00 AM Your privately chartered motor coach arrives for loading at:  
**Owosso High School**  
 765 East North Street  
 Owosso, MI 48867
- 7:30 AM EST Coach departs for the **Chicago, IL!**  
 🎵 The estimated driving distance is 254 miles; the calculated drive time is approximately 4 ½ hours without stops. ½ hour of additional time has been factored into your travel for a rest stop and traffic delays. **Please note that upon arriving in Chicago you are in the central time zone.**
- 11:30 AM CST Arrive in downtown Chicago at the **Atrium at Thompson Center for lunch at your own expense.** Designed by world renowned architect Helmut Jahn, the award-winning marble, glass and steel structure surrounds one of the largest enclosed spaces in the world. The building's steel frame is topped by a cylindrical skylight soaring 75 feet above the roof level. The interior is an architectural marvel, with a three hundred foot tall skylight and atrium. The rotunda, which is one hundred sixty feet in diameter, is supported by sixteen floors of balconied, open space.  
**Your Professional Bob Rogers Travel Tour Director will meet you here and accompany your group throughout your tour.**
- 12:30 PM Board the coach and transfer to the **John G. Shedd Aquarium.**
- 1:00 PM Arrive at the **Shedd Aquarium.** At the Shedd Aquarium animals will connect you to the living world, inspiring you to make a difference. From whales to snails, tarantulas to turtles, you'll meet more than 32,000 creatures from aquatic habitats around the world.
- TIME TBD **Aquatic Show.**

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-86**

**FOR FUTURE ACTION**

Subject:

2017-18 General Fund Appropriations Revision #1

Recommendations:

Resolve that the Board adopt the revised resolution to the appropriations for the General Fund 2017-18 fiscal year.

Rationale:

The purpose of a budget amendment is to provide a more accurate picture of what is anticipated for the financial year to look like for the District than was originally previewed during the June 2017 budget process. This is then utilized for completion of the planning process for the current fiscal year as well as for the budgeting process for the coming fiscal year.

Statement of Purpose/Issue:

The Board will adopt an amendment to the budget to incorporate projected revenues and expenditures in order to comply with statutory requirements.

Facts/Statistics:

- Revisions to the budget are always necessary to reflect changes in expenditures and revenues based on the best information available at the time of revision.
- Revised budgeted expenditures can be used for comparative purposes in the 2018-19 budgeting process with more validity.
- The major changes in the budget revision stem from somewhat better estimates for revenue and known adjustments to plans for utilization of funds including federal grants.
- An executive summary of the major changes that have taken place since the June 2017 adoption will be provided to provide a more detailed picture of the changes that have occurred.
- Another budget revision will be adopted, at a minimum, in June 2018 as a final.
- It also should be noted that the budget, by law, is required to be posted on the District's website. After adoption by the Board at the February meeting, the budgets for the funds indicated will be posted by the Technology department.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-87**

**FOR FUTURE ACTION**

Subject:

2017-18 School Service Fund Appropriations Revision #1

Recommendations:

Resolve that the Board adopt the revised resolution to the appropriations for the School Service Fund for the 2017-18 fiscal year.

Rationale:

The purpose of a budget amendment is to provide a more accurate picture of what is anticipated for the financial year to look like for the District than was originally previewed during the June 2017 budget process. This is then utilized for completion of the planning process for the current fiscal year as well as for the budgeting process for the coming fiscal year.

Statement of Purpose/Issue:

The Board will adopt an amendment to the budget to incorporate projected revenues and expenditures in order to comply with statutory requirements.

Facts/Statistics:

- Revisions to the budget are always necessary to reflect changes in expenditures and revenues based on the best information available at the time of revision.
- Revised budgeted expenditures can be used for comparative purposes in the 2018-19 budgeting process with more validity.
- The major changes in the budget revision stem from somewhat better estimates for revenue and expenses including staffing.
- An executive summary of the major changes that have taken place since the June 2017 adoption will be provided to provide a more detailed picture of the changes that have occurred.
- Another budget revision, at a minimum, will be adopted in June 2018 as a final.
- It also should be noted that the budget, by law, is required to be posted on the District's website. After adoption by the Board in February, the budgets for the funds indicated will be posted by the Technology department.

Motion

Seconded

Vote – Ayes

Nays

Motion

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education Meeting**  
**January 22, 2018**  
**Report 17-88**

**FOR FUTURE ACTION**

Subject:

Band uniform purchase

Recommendation:

Recommend that the Board authorize the purchase of high school marching band uniforms and high school concert band uniforms and high school Majorette uniforms with a general fund cost not to exceed \$ \_\_\_\_\_,

Rationale:

Replace the current high school band uniforms in the summer of 2018.

Statement of Purpose/Issue:

To authorize the high school to move forward with the ordering of band uniforms in order to achieve a delivery date in the summer of 2018.

Facts/Statistics:

It has been discussed over the last several years that the high school band uniforms have been in need of replacement. In an effort to better understand the costs and design, the high school band department moved forward with asking for designs and costs from three companies (given in the table presented). Some things to consider in reviewing the bids are as follows:

- Due to the items being purchased being unique and control of the design being needed, a true “closed” bid process could not be achieved.
- A basic request for bid packet was sent out with ideas for design being solicited. The costs presented in the table are the current costs as known however, there are some variables that will come out as the process moves forward.
- The quality of the uniforms is paramount in making a final decision on which company to recommend.
- There is still information that is being garnered in order to better understand the complete costs of the uniforms which are not available at the time that this report is published. This has resulted in the overall “not to exceed” amount being left blank.
- Stanbury Uniforms and Francis Enterprises are closely connected by the individual that co-owns Francis Enterprises also being employed by Stanbury as a regional manager. The two companies work in tandem with each other on projects of this nature.
- This report is needed to be brought forward in its incomplete status in order to have the board consider approving the costs at the February 26, 2018 board meeting to meet the March 1<sup>st</sup>, 2018 ordering deadline.
- The Owosso Band Boosters have committed to paying \$50,000 towards the uniforms costs which is not reflected in the bid costs presented.
- Based on the information gathered thus far, the net costs (net of \$50,000 Band Boosters donation) appears to be within the preliminary rough estimate of \$125,000 communicated to the board during subcommittee meetings.
- It should be noted that the timing of any payment is pending the following: 1) Board approval of the amount; and 2) The need to incorporate final figures into the final budget revision for the year as it has not been incorporated yet.

Motion

Seconded

Vote – Ayes

Nays

Motion

**MARCHING BAND/CONCERT BAND UNIFORMS BIDS  
JANUARY 2018**

	<b>STANBURY UNIFORMS, INC. Brookfield, MO/ FRANCIS ENTERPRISES, LLC Mason, MI</b>	<b>OREFICE Walker, MI</b>	<b>DEMOULIN Greenville, IL</b>
<b>MARCHING BAND UNIFORMS</b>			
225 Shakos	\$13,500.00	Included	\$11,720.25
225 Plumes	\$5,625.00	Included	\$4,000.50
225 Coats	\$47,250.00	Included	\$59,537.25
225 Jumpsuits	\$23,625.00	Included	\$25,751.25
225 Shako boxes	\$3,037.50	Included	Included
225 Garment bags	\$3,375.00	\$2,272.50	\$2,913.75
225 Spats	\$1,563.75	Included	\$1,563.75
6 Drum Major Jumpsuits	\$630.00	?	\$652.08
225 Raincoats	\$13,725.00	\$13,713.75	\$15,963.75
Shipping costs*	?	4% of order	Included
<b>TOTAL COST OF MARCHING BAND UNIFORMS*(Not including Majorettes – still need additional information where “?” are listed)</b>	<b>\$112,331.25</b>	\$417.80/Uniforms without garment bags, raincoats and drum major jumpsuits = Total Cost of <b>\$109,991.25 (without shipping costs)</b>	<b>\$122,102.58</b>
<b>CONCERT BAND UNIFORMS</b>		Orefice concert band information is based on standardized pricing – confirmation and clarification will be obtained prior to the February board meeting	
225 Tuxedo Coats	\$14,906.25	\$13,950.00	\$11,576.25
225 Tuxedo Pants	\$6,738.75	\$6,075.00	\$5,951.25
225 Tuxedo Shirts	\$4,263.75	\$3,825.00	\$3,813.75
225 Banded Bow Ties	\$731.25	\$731.25	\$675.00
225 Cummerbunds	\$1,912.50	\$1,968.75	\$1,575.00
<b>TOTAL COST OF CONCERT BAND UNIFORMS*</b>	<b>\$28,552.50</b>	<b>\$26,550.00</b>	<b>\$23,591.25</b>
PROVISION FOR MAJORETTE UNIFORMS (Note: Not supplied by any of these vendors – a local vendor Donna Nault does the work on the majorette uniforms.)	\$6,000	\$6,000	\$6,000
<b>TOTAL ESTIMATED COSTS AT THE TIME OF THIS REPORT WITH INFORMATION STILL NEEDED AND EXCLUDING BAND BOOSTERS DONATION</b>	<b>\$146,883.75</b>	<b>\$142,541.25</b>	<b>\$151,693.83</b>

**\*\*** - Delivery costs are still being explored and will need to be added to the costs for any companies that have not included it in their pricing. In addition, there are some companies offered prepayment discounts.

## Information

2025-2026 | 1-800-368-6868 | [www.mhfi.org](https://www.mhfi.org)

**OWOSSO PUBLIC SCHOOLS**  
**Board of Education**  
**January 22, 2018**

**Report 17-89**

**FOR INFORMATION**

Subject:  
Personnel Update

**Accepted Positions**

Austin Klapko has accepted the Student Facilitator position at Bryant Elementary.

**Resignations**

Heather Smith, Food Service Worker at Central Elementary has submitted her letter of resignation effective, January 12, 2018, but will continue to work for the district as a sub food service worker.

**Retirement**

Linda Cauthen, Paraprofessional at Emerson Elementary has retired effective January 5, 2018 after 17 years of service with the District.