



**MINOOKA COMMUNITY HIGH SCHOOL DISTRICT #111
COMMITTEE MEETING
WEDNESDAY, JUNE 5, 2024, 5:30 PM**

The Committee Meeting will be held at the
South Campus Library
26655 West Eames Street
Channahon, Illinois 60410

In order to make a public comment, please sign up 5 minutes prior to Roll Call. The public comment portion of the meeting will be in accordance with Policy 2:230. Please review said policy prior to the Board of Education Meeting. To view the meeting via YouTube, click [here](#).

AGENDA

1. **Call to Order**
2. **Roll Call**
3. **Public Comments**
4. **Discussion**
 - A. Facility Update 2
 - B. DLA Contract 13
 - C. Nicholas and Associates Contract 70
5. **Executive Session** - to adjourn the meeting to executive session for discussion on matters related to the appointment, compensation, discipline, dismissal, employment and performance of specific employees of the District and collective bargaining.
6. **Return to Open Session**
7. **Announcements and Communications**
8. **Adjourn**

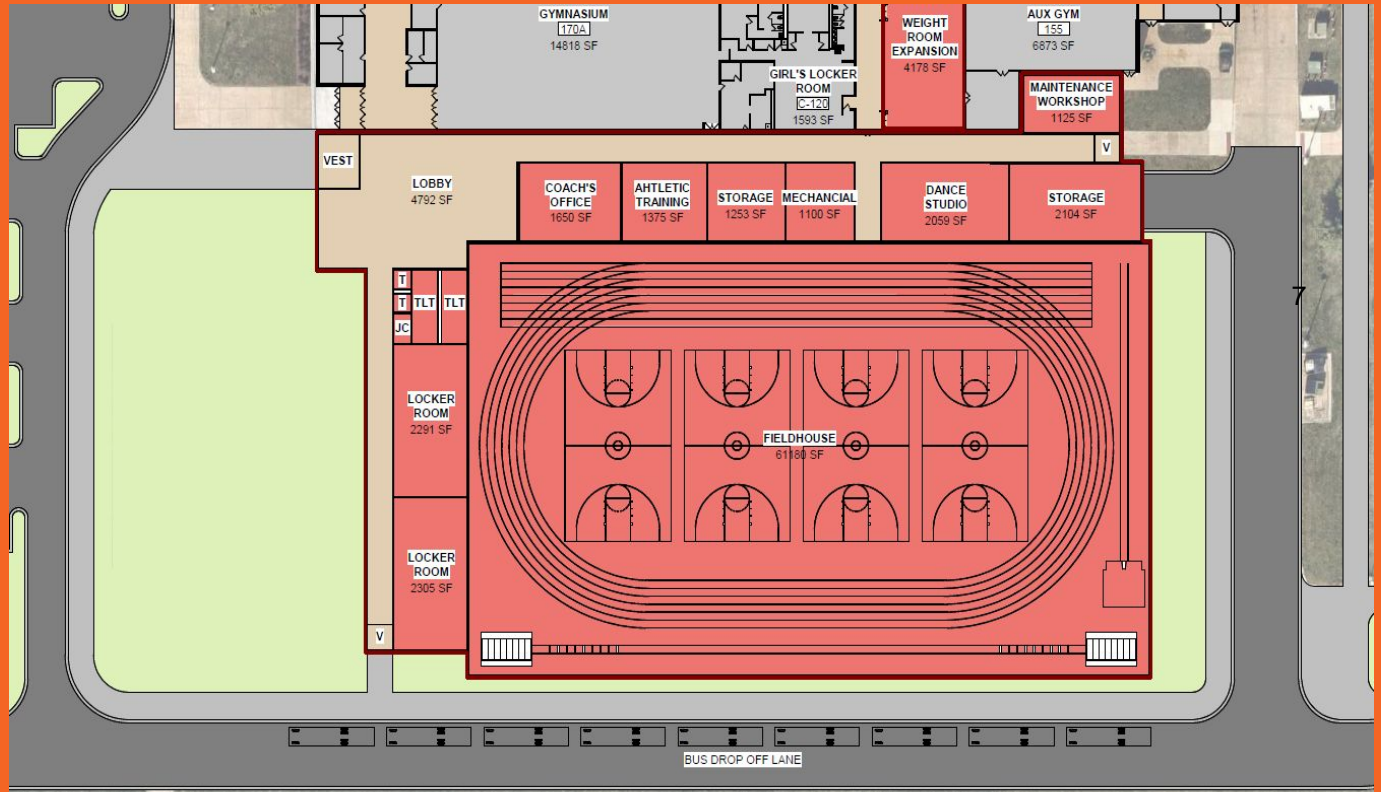
Central Campus & South Campus Additions





Why an Industrial Technology addition?

- Current facilities are undersized
- Current facilities have not seen significant upgrades since their construction over 50 years ago
- GVAC is unable, in its current configuration, to accommodate all of the MCHS students who wish to pursue Industrial Technology
- Transportation to GAVC





Why a Field House at South Campus?

- Physical Education is out of space for classes
- Physical Education is out of locker room space to accommodate all students
- There is not enough space to accommodate the practice/competition needs of athletic teams
- Would allow MCHS to add Badminton to our athletic offerings for girls
- Would be an asset for the community to utilize for various purposes



Design/Construction Timeline

- Design phase June 2024-December 2024
- Bidding January 2025
- March/April 2025 break ground on South Campus
Fieldhouse
- June 2025 break ground on Central Campus Industrial
Technology addition
- Both facilities open at the start of the 2026-2027 school
year



Financing

- \$20 million in current fund balances
- \$27 million can be borrowed through working cash bonds
- \$30 million can be borrowed through the use of debt certificates

10

\$77 million available



Current Tax Rate Will Be Maintained

Fund	2016	2017	2018	2019	2020	2021	2022	Estimated 2023 Rate
Education	\$1.22	\$1.22	\$1.22	\$1.22	\$1.20	\$1.22	\$1.22	\$1.2200
Bonds and Interest	0.72259	0.68887	0.60912	0.55914	0.5213	0.4804	0.45887	\$0.4191
Operations and Maintenance	0.25	0.25	0.25	0.25	0.25	0.25	0.25	11 \$0.2500
IMRF	0.03043	0.02905	0.02892	0.02668	0.02519	0.0236	0.0242	\$0.0245
Transportation	0.12	0.12	0.12	0.12	0.12	0.12	0.12	\$0.1200
Special Education	0.02	0.02	0.02	0.02	0.02	0.02	0.02	\$0.0200
Tort Liability	0.09735	0.09295	0.08389	0.0774	0.07218	0.0675	0.07711	\$0.0735
Social Security/Medicare	0.03854	0.0368	0.03606	0.03327	0.03133	0.0295	0.02925	\$0.0294
Lease	0.05	0.05	0.05	0.03294	0.03133	0.0295	0.02925	\$0.0294
Working Cash	0.05	0.05	0.05	0.05	0.05	0.05	0.05	\$0.0500
Fire Prevention/Safety	0.05	0.05	0.05	0.05	0.05	0.05	0.05	\$0.0500
Total District Tax Rate	\$2.65	\$2.61	\$2.52	\$2.44	\$2.37	\$2.34	\$2.33	\$2.286



Timeline for Phase I finances

Debt Certificates

- September 2024: Due diligence review
- October 2024: Board approves resolution and signs final term sheet for debt certificates.
- October 2024: District closes on debt certificates.

Working Cash Bonds

- November 2024: Board approves resolution of intent to issue Working Cash and ¹² Funding Bonds.
 - December 2024: Board holds a Bond Issue Notification Public Hearing.
 - January 2025: Board approves the sales resolution and signs bond purchase agreement.
 - February 2025: Closing on the bonds.
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EXHIBIT A

MEMORANDUM OF UNDERSTANDING

May 24, 2024

Architect: DLA Architects, Ltd.
DLA Project Number: 2024.057 & 2024.058

Minooka Community High School District 111 hereby authorizes the Architect to provide professional services for the Project identified herein, which professional services shall be subject to all terms and conditions of the Master Agreement AIA B101 dated 01/13/2023 unless specifically provided otherwise in this Memorandum of Understanding.

Project Location:

Minooka Community High School District 111

Central Campus	South Campus
301 S. Wabena Ave.	26655 W. Eames Street
Minooka, IL. 60447	Channahon, IL 60410

Scope of Services provided by Architect:

Central Campus

The scope of Architectural services will include Programming, Schematic Design, Design Development, Construction Documents, Bidding, Construction Administration and Furniture selection services for the proposed scope of work as shown in the attached drawings dated 3/26/24 which includes +/- 31,000 SF CTE addition, adjacent remodeling, utility / sitework, Parking lot and detention expansion.

South Campus

The scope of Architectural services will include Programming, Schematic Design, Design Development, Construction Documents, Bidding, Construction Administration and Furniture selection services for the proposed scope of work as shown in the attached drawings dated 3/26/24 which includes +/- 92,000 SF Fieldhouse addition, adjacent remodeling, utility / sitework, Parking lot reconfiguration and detention expansion.

Due to the fact that the District is intending to utilize a construction manager delivery method (CMC), DLA Architects shall not provide the following services:

- Providing or updating the Construction Cost Estimates (Cost of the Work) for any Phase of the Project.
- Preparation of the overall Project schedule.
- Establish a list of prospective prime contractors for bidding.
- Organize and conduct the bid opening.
- Preparation of prime contractor contracts for construction, preparation of change orders or preparation of pay applications.

Due to the fact that the District is intending to utilize a construction manager delivery method (CMC), DLA Architects shall provide the following services:

- Meet with the Construction Manager in order to convey and coordinate the scope of work and design intent to date.
- Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, Design Development Phase and the Construction Document Phase, if the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.
- Assist the Construction Manager in scope review meetings during the bidding phase.
- Communicate design changes/updates at each phase with the Construction Manager during design services phases.
- Work with the Construction Manager to respond to contractor/ subcontractor questions related to design intent.

Architect's Consultants:

- Structural Engineer
- Mechanical, Electrical, Plumbing & Fire Protection Engineer

Reimbursable Consultants

- Civil Engineer
- Acoustic and Audio / Video Consultant
- Landscape Architect (If Required)

Owner's Consultants:

- Site Survey & Topo: Geotech Inc
- Environmental Consultant (If required)
- Geotechnical Engineer: TBD

Architect's Compensation:

The Architect shall be compensated for Basic Services for a fee of 8.0% of the lowest competitively bid total construction cost including design alternates if applicable.

The Cost of the Work as defined herein shall include the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general condition costs, reimbursable expenses related to construction, insurance and overhead and profit.

Project Schedule:

We are prepared to begin work on this project upon approval of this MOU.

Project Budget:

The conceptual construction budget for the Project will be prepared by the Construction Manager, Nicholas & Associates, Inc. once the initial programming and Schematic Design work begins on the project.

The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

Owner's Project Representative:

Dr. Robert Schiffbauer, Superintendent
John Troy, Assistant Superintendent of Business & General Counsel
Jason Piper, Building & Grounds Director

Owner's Construction Manager

Nicholas & Associates, Inc.
Joe Papanicholas, Vice President

Additional Services:

Any additional services incurred in connection with this project are in addition to the fee set forth above. Examples of additional services may include, but are not limited to, the following:

- Reimbursable expenses in accordance with Article 11.8. Not to exceed \$15,500 without prior District approval.
- All Permitting (ROE permitting is included in base fee above)
- Security system design
- Any consultants or engineers not listed above
- Zoning meetings and documents, site surveys and storm water analysis and permitting.
- LEED services, special governmental / public outreach meetings and approvals
- Multiple phased bid packages – negotiated separately.

- Re-drawing and Re-bidding due to value engineering services if bids received are substantially higher than the construction managers' estimate

Site Observation:

The Architect shall visit the site in accordance with Article 3.6.2.1 on an average of one visit per week during major construction activities.

Completion of Architect's Services:

If the Construction Phase services required for the project have not been completed within sixty (60) days of the date of Substantial Completion through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as an Additional Service.

Architect's Hourly Rate Schedule:

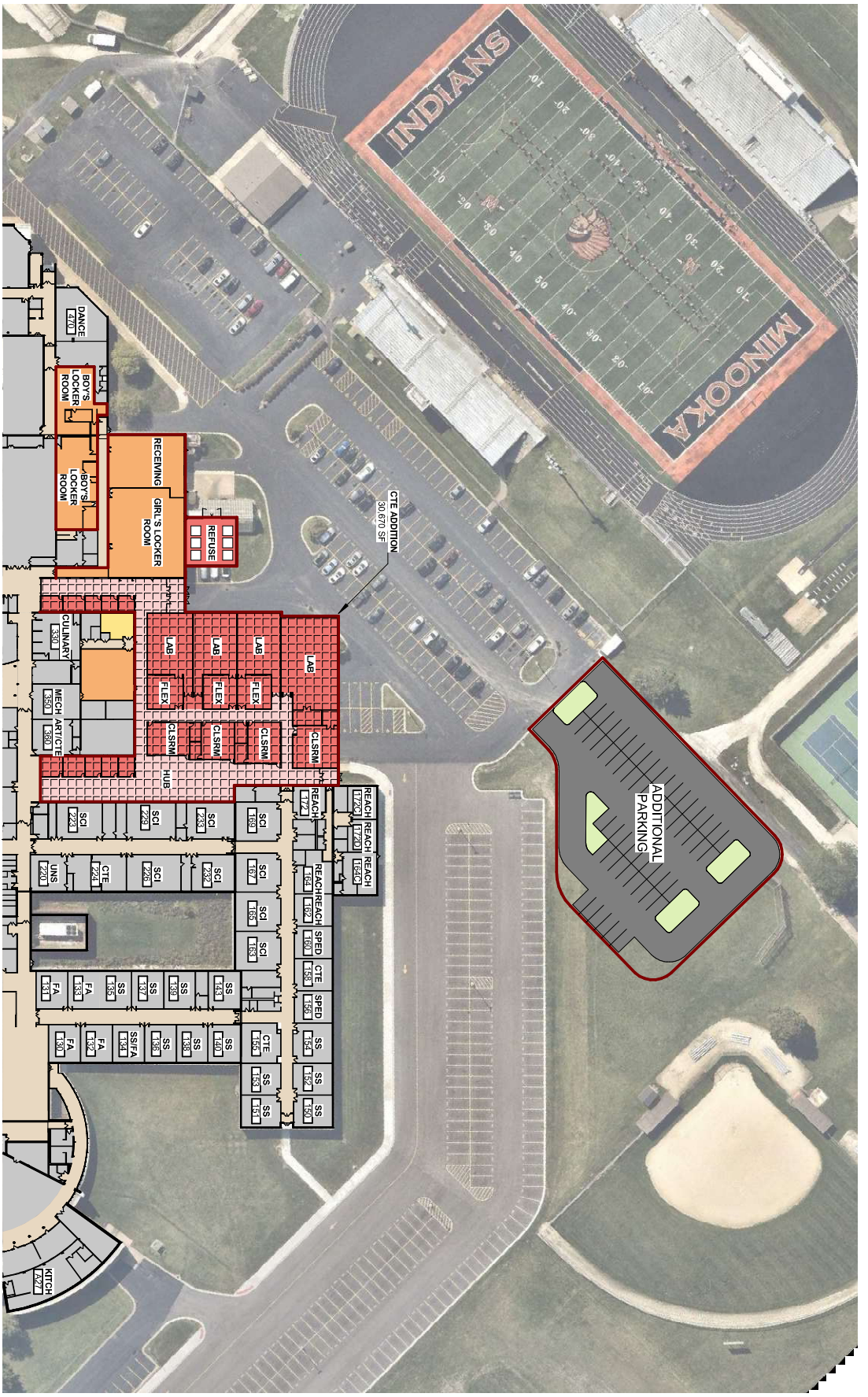
Category	Rate
Principal	\$220.00
Associate Principal	\$200.00
Director	\$180.00
Senior Project Manager	\$175.00
Senior Architect	\$150.00
Architect / Project Manager	\$135.00
Apprentice Architect	\$115.00
Senior Project Technician	\$105.00
Project Technician	\$80.00
Senior Designer	\$145.00
Designer	\$125.00
Senior Interior Designer	\$145.00
Interior Designer	\$125.00
Computer Graphics Manager	\$140.00

Senior Administration	\$130.00
Administration	\$85.00
Owners Representative	\$175.00

ACCEPTANCE OF MEMORANDUM OF UNDERSTANDING

Architect:  05/24/2024
DLA Architects Ltd. Date
Lou Noto,
Principal, Chief Operating Officer

Owner: _____
Minooka CHSD 111 Date



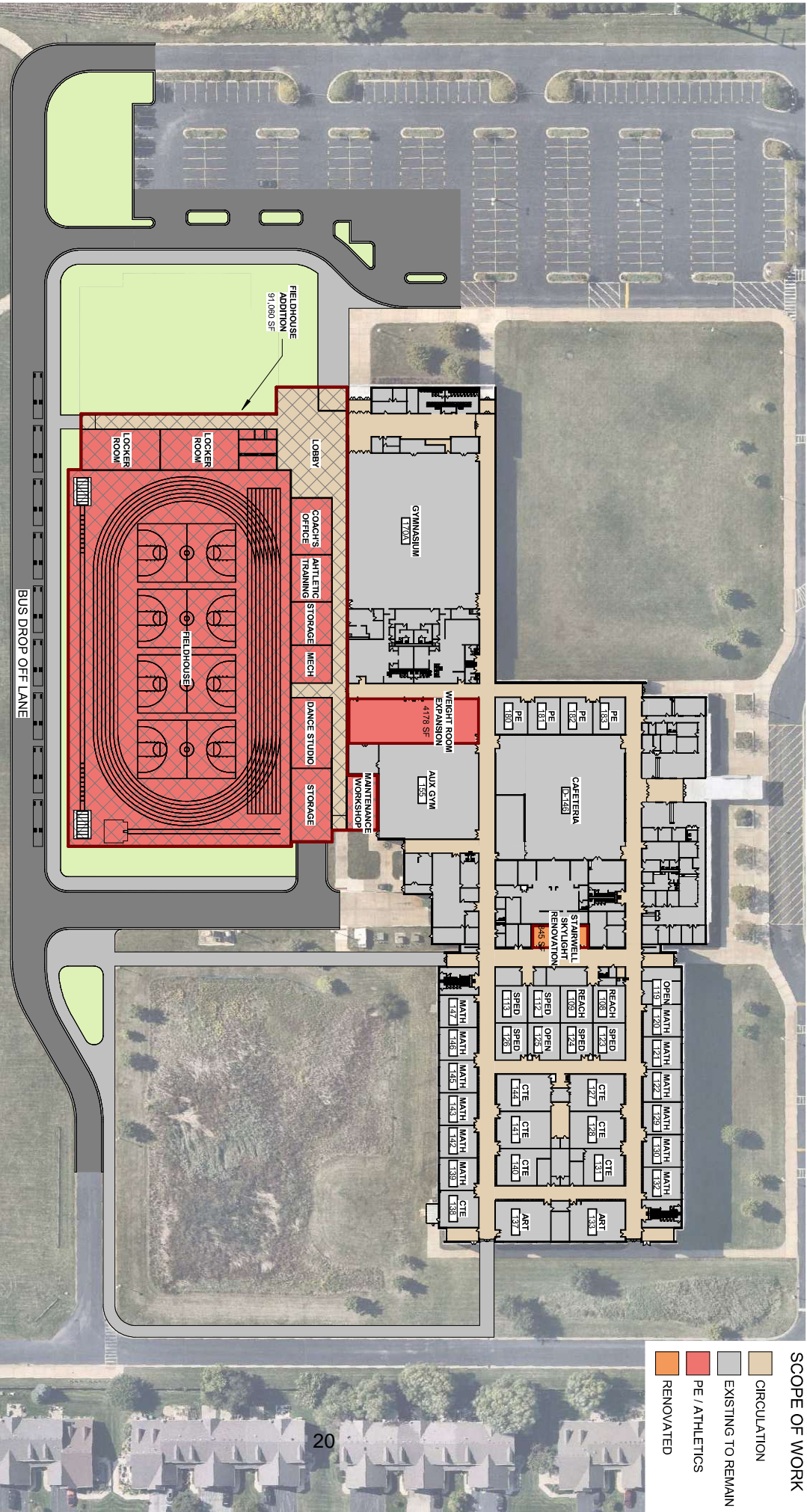
- SCOPE OF WORK**
- CIRCULATION
 - EXISTING TO REMAIN
 - REPURPOSED / RELOCATED
 - RENOVATED
 - ADDITION

⊗ FIRST FLOOR MASTER PLAN - PROPOSED - NORTH PARKING
 1" = 80'-0"

MASTER PLANNING - CENTRAL CAMPUS

MINOOKA COMMUNITY HIGH SCHOOL DISTRICT #111
 MARCH 26, 2024





- SCOPE OF WORK**
- CIRCULATION
 - EXISTING TO REMAIN
 - PE / ATHLETICS
 - RENOVATED

⊕ FIRST FLOOR MASTER PLAN - PROPOSED - PHASE 1
 1" = 80'-0"

MASTER PLANNING - SOUTH CAMPUS

MINOOKA COMMUNITY HIGH SCHOOL DISTRICT #111
 MARCH 26, 2024



Additions and Deletions Report for AIA® Document B101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:09:42 ET on 01/13/2023.

PAGE 1

AGREEMENT made as of the Thirteenth day of January in the year 2023

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Minooka Community High School District 111
26655 W. Eames St.
Channahon, IL 60410

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DLA Architects, Ltd.
Two Pierce Place
Suite 1300
Itasca, IL 60143

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This Agreement is a Master Agreement and shall be the agreement for all projects authorized by Owner. Specific projects under this Master Agreement shall be authorized in writing by the Owner by a Memorandum of Understanding (hereafter "MOU"), which MOU shall be attached hereto as Exhibit A and made a part of this Master Agreement for each project authorized. As additional projects are authorized pursuant to this Master Agreement, such projects shall be authorized by subsequent MOU's, each of which shall be attached to this Master Agreement as Exhibit A for the Project authorized.

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§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1, information set forth in Exhibit A, the MOU for the specific project authorized pursuant to this Master Agreement. Exhibit A is attached hereto and incorporated herein for the Project authorized by the Owner under this Master Agreement. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") Exhibit A, the Memorandum of Understanding (hereinafter "MOU") for a Project, sets forth all Project specific requirements, such as Scope of Services, Project Schedule, Project Budget, Site Observation requirements, Compensation and other Project specific terms which may supplement, supersede or modify the Master Agreement. To the extent of any inconsistency, conflict or discrepancy between the Master Agreement and the MOU, Exhibit A, the MOU shall control. Project as used herein shall mean the Project authorized by the MOU, Exhibit A.

...

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

The Architect will cooperate with the Owner and, if and when selected, the Contractor and help create an environment of mutual respect.

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As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A
PAGE 3

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§ 1.1.6.1 ~~If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204 2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~ Objective in the MOU, Exhibit A, for the Project.

...

John Troy
Minooka Community High School District 111
26655 W. Eames St.
Channahon, IL 60410

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As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A
PAGE 4

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§ 1.2 The Owner and Architect may ~~rely on the Initial Information.~~ reasonably rely on the information set forth in Exhibit A, the MOU for the Project. Both parties, however, recognize that the ~~Initial Information~~ information in Exhibit A may materially change and, in that event, the Architect shall provide prompt notice to the Owner, and, if agreed by the Owner, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation, and/or the Architect's compensation, consistent with this Agreement. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the ~~Initial Information.~~ Information as necessary.

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

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§ 2.1 The Architect shall provide professional services as set forth in ~~this Agreement.~~ the MOU for the Project, Exhibit A and this Agreement during all phases of the Project, as applicable. The Architect will perform the services through itself, its employees and consultants. In the event of an inconsistency or conflict between this Exhibit A and this Agreement, Exhibit A shall govern for the Project. The Architect represents that it is properly licensed in the jurisdiction where the Project is located when required to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. Any subcontracting of the services under this Agreement shall not relieve the Architect from its responsibility for the performance in accordance with the terms and conditions of 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.~~ The Architect shall perform its services be responsible for the performance of the Architect's Services as an independent contractor (i) consistent this Agreement; (ii) consistent with the instructions, guidance and direction of the Owner to the

extent such instructions and directions are consistent with the professional standard of care; (iii) consistent with prevailing skill and care ordinarily expected from members of the architectural profession providing similar services under similar circumstances in the locale of the Project; (iv) consistent with sound architectural practices; and (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. care, the orderly progress of the Project, the instructions of the Owner and this Agreement. The Architect shall endeavor to maximize the use of the Owner's budget for the Project for the benefit of the Owner (the standards of this Section § 2.2 shall be referred to herein as the "Architect's Standard of Care").

...

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

§ 2.5.1 Commercial General Liability with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) for each occurrence and THREE MILLION (\$ 3,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles ~~owned, hired and non-owned vehicles used, used~~ by the Architect with policy limits of not less than ~~(\$ —) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~ ONE MILLION DOLLARS (\$ 1,000,000) combined single limit or per occurrence.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. ~~The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ 2.5.3.1 Excess/Umbrella Liability with policy limits of no less than FIVE MILLION DOLLARS (\$5,000,000), following form coverage,

§ 2.5.4 Workers' Compensation at Illinois statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) each employee, and FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) per claim and THREE MILLION DOLLARS (\$ 3,000,000) in the aggregate.

The Architect will secure and maintain for four (4) years after Substantial Completion professional errors and omissions insurance in an amount no less than \$1,000,000 per claim and \$3,000,000 aggregate for damages that may result in any way from the negligent performance of the Architect's professional services under this Agreement. The Architect shall promptly notify the Owner of any material changes to, interruption of, or termination of this insurance. The Architect shall contractually require its consultants of any tier to maintain professional errors and commissions insurance equal to the above amount, unless otherwise agreed by the Owner. If professional errors and omissions insurance is not reasonably available for a class of consultants, or reasonably available in the future to the Architect, the Architect shall so notify the Owner immediately.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or ~~umbrella policies~~ umbrella policies for Commercial General Liability and Automobile Liability to include ~~the Owner as an~~ the Owner, its successors and assigns and the respective administrators, directors, and employees of each of the foregoing, as additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner upon request that evidence compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability and Automobile Liability. Such certificates of insurance shall have additional endorsements attached, if any, (including renewal or replacement certificates).. On the policies on which the Owner is an additional insured, the certificates shall further state that the policies shall not be cancelled by the insurer without giving thirty (30) days prior notice to Owner of such cancellation, except if the cancellation results from non-payment of premium, in which case, the Architect shall provide ten (10) days written notice to the Owner. . The foregoing requirements as to insurance and acceptability to the Owner of insurers shall not in any manner limit or qualify the liabilities or obligations assumed by the Architect under this Agreement.

§ 2.6 The Architect shall, at no cost to the Owner, promptly and satisfactorily correct any services, which are defective or not in conformance with the requirements of this Agreement. If the Architect fails to make such corrections within fourteen (14) days of written notice from the Owner, the Owner may do so, by contract or otherwise, and recover (e.g. by offset against compensation otherwise payable under this Agreement) the cost from the Architect. The obligations of the Architect to correct defective or nonconforming services shall not limit any other obligations of the Architect and is in addition to any and all other rights and remedies available to the Owner under the Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the Owner to make any corrections of defective or nonconforming services..

§ 2.7 The Construction Documents shall, subject to the Architect's Standard of Care, comply with applicable federal, state, and local building and zoning laws, regulations, codes, and orders in existence at the times when of submission for permitting. In the event of conflict between laws, codes, and regulations of various governmental authorities having jurisdiction over the design of the Project, the Architect shall promptly notify the Owner of the nature and impact of the conflict. The Owner agrees to cooperate and work with the Architect in an effort to resolve the conflict.

§ 2.8 The Architect shall be and operate as an independent contractor in the performance of the services and shall have responsibility for all personnel performing the services. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant between and among the parties to this Agreement or their affiliates or subsidiaries. In no event shall the Architect be authorized on behalf of the Owner: to enter into any agreements or undertakings in the name of the Owner, to waive any provisions of the Contract, to execute any documents for Payment except the Certificates of Payment referenced in Article 3.6.3 herein, Change Order or other documents except as set forth in Article 3.6.5 herein, to authorize any payments or approve any documents, work, services, goods or materials that result in a change of the Contract Sum or Contract Time without prior written approval of the Owner, or to act as or be an agent or employee of the Owner.

§ 2.9 The Architect shall engage consultants qualified by training and experienced in their respective fields to address the requirements of the Project. Any subcontracting of the services shall not relieve the Architect from its responsibility for the performance of the services in accordance with the terms of this Agreement nor from its responsibility for the performance of any of its other obligations under this Agreement. The Owner shall review and approve the Architect's selected consultants before the Architect contracts with such consultants. Upon request by the Owner, the Architect shall furnish the Owner with a copy of the Architect's contracts with its consultants. These contracts shall be consistent with the terms of this Agreement.

§ 2.10 The Architect hereby agrees to indemnify and hold harmless the Owner, its successors and assigns and the administrators, directors, and employees of the foregoing ("Indemnified Parties"), from and against losses, costs, liabilities, damages and expenses (including attorney's fees recoverable under applicable law) for which Indemnified Parties are found liable to a third parties to the extent caused by a wrongful or negligence act or omission (i) in the performance of services by, (ii) the obligations of, or (iii) the negligent or wrongful acts or omissions of the Architect or any of its consultants of any tier, the respective successors and assigns of the Architect or any such consultants, the directors, officers, employees and agents of each of the foregoing, or anyone acting on the Architect's behalf in connection with this Agreement or its performance. Nothing herein shall be construed to require the Architect to indemnify and hold harmless any Indemnified Parties for their own negligence.

§ 2.11 The Architect shall enforce strict discipline and good order among the Architect's employees, consultants, and other persons carrying out the Agreement, including observance of Owner's rules on use of drugs, smoking, tobacco, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of

personnel on the Owner's property. The Architect shall require that all persons performing the Services under this Agreement comply with the Owner's tobacco free use policy and will not engage in inappropriate conduct or inappropriate contact with students or staff. The Owner shall conduct background checks on Architect's employees and consultants who are on Owner's premises in accordance with the Owner's policies and provide such background checks to the Architect. The Owner reserves the right to require the Architect to remove any Architects employees, agents, or consultants deemed incompetent or detrimental by the Owner, in compliance with any and all applicable local, state, and/or federal laws and regulations.

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§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and the MOU, Exhibit A, for the Project and may include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 and other engineering services as set forth in the MOU as set forth in Exhibit A. Services not set forth in the MOU, Exhibit A for the Project, are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, and the services of the Architect's consultants and administer the Project to the extent specified in this Agreement. The Architect shall consult with the Owner, 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 with those services provided by its consultants as well as by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule shall be set forth in the MOU, Exhibit A, for the Project. The schedule initially shall include anticipated dates for the commencement of construction, for identified milestones, for cost estimates and design reviews, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The Owner shall render decisions in a timely manner so as not to impact the Project schedule. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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§ 3.1.5 The Architect shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by those authorities and entities. The Architect shall respond to applicable written publicly available design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall, in a timely manner to not delay the orderly progress of the Project, prepare Construction Documents and shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project, such Construction Documents required for the approval of governmental authorities having jurisdiction over the design of the Project and in obtaining such required approvals. The Architect will assist the Owner in connection with the Owner's responsibility for submitting certain documentation to the Regional Office of Education. The Architect shall have primary responsibility for applying for building code reviews of the Construction Documents, shall provide separate packages of documents for local, state and other applicable permit applications as necessary, shall coordinate and attend meetings with governmental bodies. If the Architect is requested to make application for and coordinate all necessary use, zoning, right-of-way, and utility applications, such services shall be an Additional Services and shall be compensated in accordance with Article 11.3. As part of the Basic Services, the Architect shall make all revisions to the Construction Documents required by state, local, and other applicable reviews by authorities having jurisdiction over the design of the Project and as required to comply with applicable building and zoning codes, laws, interpretations thereof in effect at the time of submission for permitting.

§ 3.1.7 Upon request of the Owner, the Architect shall make presentations as described in the Agreement to explain the design of the Project to representatives of the Owner. The Architect shall be entitled to rely on written approvals received from the Owner in the further development of the design; however, the Owner's approval of design documents shall in no way be construed as a waiver of any rights or requirements as set forth in this Agreement.

...

§ 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, the proposed procurement and 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 in a timely manner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the ~~Project~~ Project, including the feasibility of incorporating environmentally responsible design approaches for major systems only. The Architect shall reach an understanding with ~~the Owner~~ the Owner, which the Architect shall confirm in writing, 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, for the Owner's approval, ~~a preliminary design~~ multiple preliminary designs as set forth in the MOU, Exhibit A, illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed-upon program, schedule and construction budget requirements as well as Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

...

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Owner's approval shall be deemed only an approval of the proposed concept and not the means, techniques, or material recommended.

...

§ 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, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical ~~systems,~~ systems if included in Exhibit A, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

...

§ 3.4.2 ~~The Architect shall incorporate the design~~ During this phase, the Architect will respond to comments from building and planning officials and meet with the Owner and its consultants. The Architect shall also assist the Owner to submit to, and respond to comments from, building, planning, health, water and sewer districts, electricity and natural gas providers and similar agencies and utility providers having jurisdiction. The Architect shall incorporate the

written publicly available requirements of governmental authorities having jurisdiction over the design of the Project into the Construction Documents. The Architect shall be responsible as part of its Basic Services (with the assistance of the Owner) for coordinating, and the Owner will be responsible (with the assistance of the Architect) for filing documents required for approval of governmental authorities having jurisdiction over the design of the Project. The Architect shall be responsible for making changes in the Construction Documents required by governmental authorities at its expense, except where such required changes are inconsistent with previous direction from the same governmental agency or between governmental agencies.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner ~~in~~ with the development and preparation of (1) Contractor 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). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

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§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review the Architect shall incorporate Owner's comments into final Construction Documents.

§ 3.4.6 Any design errors or omissions in the Construction Documents furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of, or payment for, all or any part of the Architect's Services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder. If, due to the Architect's negligence, omission or failure to perform in accordance with the terms of this Agreement, a required item or component of the Project is omitted from the Construction Documents or if, due to such negligence, omission or failure, the Construction Documents must be modified through a Change Order, the Architect shall be responsible for paying the cost required to add or modify such item or component to the Project, excluding the reasonable cost that would have been incurred by the Owner at the time of the original bid for such Project item or component to the extent that such item or component would have been required and included in the original Construction Documents and to the extent recoverable under applicable law. In no event shall the Owner pay more than once for an item or component of the Project.

...

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining ~~either competitive bids or negotiated proposals; competitive bids or negotiated proposals from~~ prospective contractors in accordance the Illinois competitive bidding process. (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

...

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, ~~as an Additional Service,~~ consider requests for substitutions, shall submit substitutions for the Owner's consideration and if the Owner approves substitutions in writing shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

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§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, ~~as an Additional Service,~~ consider requests for substitutions, shall submit substitutions for the Owner's consideration and if the Owner approves substitutions in writing shall prepare and distribute addenda identifying approved substitutions to all prospective ~~contractors;~~ bidders

...

§ 3.6.1.1 The Architect shall ~~provide~~ assist the Owner in providing administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for

~~Construction.~~ Construction as well as the Owner's Supplementary General Conditions and the Owner's General Requirements to the extent the foregoing documents are consistent with this Agreement. If the Owner and Contractor modify AIA Document A201-2017, ~~those A201-2017 or require services inconsistent with this Agreement in the documents referenced herein, those documents and modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

§ 3.6.1.2 The Architect shall be a representative, but not an agent, of and shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's ~~negligent acts or omissions, negligent acts or omissions and for the negligent acts or omissions of the Architect's consultants and for the failure of the Architect to comply with the requirements of this Agreement,~~ but shall not have control over or charge of, and shall not be responsible for, acts or omissions of ~~the Contractor or of any other persons or entities performing portions of the Work.~~ the Work, including the Contractor and the Contractor's subcontractors

§ 3.6.1.3 Subject to Section 4.2 and ~~except as provided in Section Article 4.2 and 3.6.6.5,~~ the Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement 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 later of the issuance to the Owner of the final Certificate for Payment or the Owner's receipt and approval of final closeout documents.~~

...

§ 3.6.2.1 The Architect shall visit the site ~~at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the~~ as set forth in the MOU, Exhibit A to become generally familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall document and keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, ~~and shall endeavor to guard the Owner against defects and deficiencies in the Work, and shall promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.~~

§ 3.6.2.2 The Architect has the authority to recommend to the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall ~~have the authority to require~~ recommend to the Owner inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. The Architect's review of such testing or inspections, except environmental testing, is a part of Basic Services. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by ~~both Owner and Contractor, shall not show partiality to either, and shall not~~ the Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. ~~The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.~~

~~§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor.~~ Upon the Owner's request, the Architect shall provide written advice within a reasonable time on Claims, disputes or other matter in question between the Owner and the Contractor relating to the physical execution or progress of the Work or the interpretation of the Drawings and Specifications as provided in the Contract Documents. Such interpretations shall not be attributable to the Owner. If the Owner makes interpretations or decisions concerning the performance under or requirements of the Contract Documents without the written approval of the Architect, the Owner shall be fully and solely responsible for such interpretations and decisions and the consequences of such interpretations or decisions.

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§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and the Contractor's construction schedule and updates and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. The Architect administratively shall receive from the Contractor mechanics lien waivers and the Contractor's sworn statement listing subcontractors and material suppliers before issuing payment certificates and if such waivers or sworn statements cannot be obtained, then the Architect's Certificate shall be conditional upon receipt of the Contractor's waivers or sworn statement.

...

~~§ 3.6.3.3 The Architect shall maintain a written record of the Applications and Certificates for Payment.~~ for the Owner's benefit.

...

~~§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon,~~ In accordance with the Architect-approved submittal schedule, 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 Samples~~ for the limited purpose of checking for conformance with information given and the design ~~concept expressed~~ concepts 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 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. The Architect shall not approve substitution requests after contract award unless written permission from the Owner is obtained.

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~~§ 3.6.4.4 Subject to Section 4.2, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

...

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to~~

~~Section 4.2, the~~ The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specification and other necessary supporting documentation and data to describe Work to be added, deleted, or modified. Basic Services shall include providing recommendations concerning proposed Change Orders or Construction Change Directives, and all aspects of the preparation and processing of Change Orders and Construction Change directives resulting from errors, omissions or deficiencies of the Architect in the preparation of the Contract Documents. Any change order or series of change orders resulting in an increase in the Contract Sum of \$5,000 or more, or an increase in the Contract Time of 10 days or more, must be approved in writing by the Owner in order to be binding on the Owner, and then only if one of the following criteria is satisfied. The Owner determines that the circumstances requiring the change a) was not reasonably foreseeable at the time the Agreement was signed; b) is germane to the original Agreement as signed; or c) is in the best interest of the Owner and is authorized by law.

...

§ 3.6.5.3 Where changes are proposed in which the Contractor identifies that additional cost or time may be merited, whether initiated by the Owner or Contractor, the Architect shall review the Contractor proposal for a change order for compliance with the Contract Documents, the intended scope of the direction provided, and to determine whether costs proposed by the Contractor associated with the change are generally equitable.

...

- ~~.1~~ .1 conduct inspections-an inspection to determine the date ~~or dates~~ of Substantial Completion and the date of final completion;
- ~~.2~~ .2 issue Certificates-Certificate of Substantial Completion;

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§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner 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 Contractor of Work to be completed or corrected. Architect shall assist in supplying information, advice and communication with respect to the warranty or correction periods of the construction contract The Architect and the Owner shall cooperate in inspecting for and securing the correction of defective work. At Substantial Completion, the Architect shall prepare for review and coordination of the Owner a "punch list" of observed items requiring correction, completion or replacement by the Contractor. The Architect shall review the Project upon Final Completion to determine compliance with the Contract Documents and shall issue a final Certificate of Payment recommending that the Work is completed in compliance with the requirements of the Contract.

...

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of ~~one year~~ two years, 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.

§ 3.6.6.6 Subsequent to meetings with the Owner as indicated in 3.6.6.5, the Architect shall conduct a walkthrough with the Owner and Contractor to review any open warranty issues for the purpose of developing a final list of items to be corrected prior to the expiration of the final warranty period.

...

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, so stated in the MOU, Exhibit A and mutually agreed by the Owner and Agreement as a Supplemental Service, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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See MOU, Exhibit A for the Project

...

See MOU, Exhibit A for the Project

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ – 2017, Sustainable Projects Exhibit, attached to this Agreement, set forth in the MOU, Exhibit A. The Owner shall compensate the Architect as provided in Section 11.2.

...

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Agreement, if mutually agreed in writing by the Owner and Architect, without invalidating the Agreement. In the absence of mutual agreement in writing, and subject to Section 4.2.2 below, the Architect shall promptly notify the Owner prior to providing any services requiring an adjustment in the Architect's compensation and shall specify the proposed adjustment. Except for services required due to the ~~fault~~ fault, negligence, or responsibility of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to a mutually agreed upon adjustment in compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, ~~Services not caused by the fault or negligence of the Architect,~~ the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the ~~Initial Information,~~ in the information in the MOU, Exhibit A, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

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- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and
- .9 ~~Evaluation of the qualifications of entities providing bids or proposals; Intentionally Deleted.~~
- .10 Consultation concerning replacement of Work resulting from fire or other cause during ~~construction;~~ or,
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect.~~ construction.

...

- .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; Intentionally Deleted;~~

...

- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker; or, Intentionally Deleted.~~
- .5 Evaluating substitutions proposed by the Owner or ~~Contractor and~~ Contractor, and with the Owner's written agreement, making subsequent revisions to Instruments of Service resulting ~~therefrom.~~ therefrom;
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 90 days after (1) the date of Substantial Completion of the Work and not within the original scope of Basic Services, except for correction period responsibilities.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. ~~Services unless necessitated by the fault or negligence of the Architect.~~ When the limits below are reached, the Architect shall notify the ~~Owner~~ Owner in writing:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(—)~~ See MOU, Exhibit A, for the number of visits to the site by the Architect during construction
- .3 One (1) 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 One (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than ~~60-90~~ days after (1) the date of Substantial Completion of the Work or (2) ~~the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier,~~ Work, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase ~~Services~~ Services and to the extent those services are not within the scope of the Architect's correction period responsibilities.

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~(—) months of the date of this Agreement,~~ the time period set forth in the MOU, Exhibit A, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, ~~including which, upon mutual agreement may include~~ 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.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect ~~shall~~ may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. ~~The~~ When provided to the Owner in a timely manner, 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. The Architect shall provide submittals to the Owner in a timely manner.

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

§ 5.5 ~~The~~ Unless otherwise provided for in the MOU, Exhibit A, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

...

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the ~~Architect.~~ Architect with the Architect's involvement and assistance. Upon the Architect's request, the Owner shall furnish

copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, Agreement when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work 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's review of such tests, inspections, and reports shall be included as part of the Architect's compensation for 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. These services are not provided directly to the Architect or for the Architect's benefit

§ 5.11 The Owner shall provide prompt written notice to the 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. Provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions, or inconsistencies. The Owner's failure to so notify shall not relieve the Architect of its responsibilities under this Agreement.

§ 5.12 Except as otherwise provided for thin this Agreement, the Architect shall contemporaneously provide the Owner with copies of all written communications between the Architect and the Contractor concerning cost, time, scope, or requirements of the Project. The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor ~~otherwise relating to the Project.~~ that may impact the Architect's Services under this Agreement. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 ~~Before executing the Contract for Construction, the Owner shall~~ Architect shall have reasonable opportunity to review the proposed form of Contract and provide comments to the Owner to coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The 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.

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~~§ 5.15 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.~~

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work ~~also~~ includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the ~~Architect; Architect or the Architect's consultants;~~ the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility ~~of the Owner of the Owner,~~ but the Cost of the Work shall include the following:

- .1 Contractor's overhead and profit and General Conditions associated with the Project;
- .2 alternate bids. For alternate bids not accepted, 80% of the cost associated with the alternate shall be used for Architect's fee calculations. Deductive alternates will be treated as added costs;
- .3 full change order amount for all change orders as it increases contract amount. For change orders not accepted, 80% of the cost associated with the change order shall be used for the Architect's fee calculation.
- .4 change order credits as added project costs;

.5 For change orders that do not change the construction cost in proportion to the design work required, the Architect's fee shall be computed on a time and material basis.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect. Architect and the Architect shall have no responsibility for such variance nor shall the Architect be responsible if the bids or Cost of the Work exceeds the estimate of the Owner's budget.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service. Service

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§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the ~~Owner~~ Owner, at its sole option, shall

...

.3 terminate in accordance with Section ~~9.5;~~ 9.5 of this Agreement;

...

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by twenty (20%) percent or less, the Architect shall modify the Construction Documents as requested by the Owner as an Additional Service. If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. by more than twenty (20%) percent, the Architect shall modify the Construction Documents without additional compensation to reduce the Cost of the Work to conform to Owner's budget. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

...

§ 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 endeavor to establish necessary protocols governing such transmissions.

...

§ 7.3 The Architect grants to the Owner a nonexclusive ~~license~~ license, royalty free, to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, ~~maintaining, altering and adding to the Project, and maintaining the Project and for informational purposes only in connection with altering or adding to the Project~~ provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, ~~subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project.~~ Service. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of ~~Service, Service on the Project or on other projects,~~ 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 defend, 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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§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, ~~in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.~~ The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 ~~To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.~~ Intentionally Deleted.

§ 8.1.3 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.~~ Agreement.

...

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. The parties will cooperate in good faith and attempt to resolve any dispute that arises prior to mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by ~~the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.~~ ADR Systems Inc., 20 N. Clark Street, Chicago, Illinois with a mutually acceptable mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint ~~or other 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.

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(Check the appropriate box.)

...

Litigation in a Grundy County, Illinois court of competent jurisdiction

Other: *(Specify)*

~~If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.~~

~~§ 8.3 Arbitration~~The provisions of this Article 8 shall survive the termination of this Agreement.

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

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

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

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

~~§ 8.3.4 Consolidation or Joinder~~

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

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

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

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

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect ~~elects to suspend services,~~ properly elects to suspend service in accordance with this Agreement, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of such a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's ~~services.~~ services only if the Owner suspends the Project for more than thirty (30) consecutive days. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the ~~Architect, Architect or funding purposes,~~ 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 or materially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

...

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. The Owner shall not be liable for any consequential or incidental damages, including but not limited to loss of profits on other projects or of reputation incurred by the Architect as a result of termination.

...

N/A

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Per mutual agreement between the Owner and the Architect

§ 9.8 ~~Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.~~Intentionally Deleted.

§ 9.9 ~~The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.~~

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

...

§ 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, provided the Lender agrees to assume the Owner's rights and obligations, including any and all payments due to the Architect by the Owner prior to and at the time of the assignment.

...

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall endeavor to provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 ~~If~~ Except in accordance with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140, if the Architect or Owner receives information specifically designated on its face as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement. It is understood that the definition of the terms "confidential" and "business proprietary" as used here will be determined by the application of the State of Illinois Freedom of Information Act, and that this Agreement and records generated or received by either party pursuant to this Agreement are subject to the State of Illinois Freedom of Information Act and may, therefore, be open to the public upon request

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§ 10.10 The Architect certifies that it **complies with the procedures and requirement of the Illinois Drug Free Workplace Act 30 ILCS 580/ and the Illinois Human Rights Act 775 ILCS 5/2.**

...

~~.1 Stipulated Sum~~

~~— (Insert amount)~~

~~.2 Percentage Basis~~

~~— (Insert percentage value)~~

~~— () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

~~.3 Other~~

~~— (Describe the method of compensation)~~

As set forth in the MOU, Exhibit A, for the Project.

...

In accordance with the Hourly Rates set forth in the MOU, Exhibit A, for the Project.

...

In accordance with the Hourly Rates set forth in the MOU, Exhibit A, for the Project.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (%), or as follows: 10 %).

...

Schematic Design Phase	<u>twenty</u>	percent (<u>20</u>	%)
Design Development Phase	<u>fifteen</u>	percent (<u>15</u>	%)
Construction Documents Phase	<u>forty</u>	percent (<u>40</u>	%)
Procurement Phase	<u>five</u>	percent (<u>5</u>	%)
Construction Phase	<u>twenty</u>	percent (<u>20</u>	%)

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§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include reasonable 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; Intentionally deleted;~~
- ...
- .3 ~~Permitting and other fees required~~ fees paid for securing approval by authorities having jurisdiction over the Project;
- ...
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the ~~Owner; Owner in writing;~~
- ...
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect or Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect’s consultants; the minimum limits set forth in this Agreement;
- .9 All taxes levied ~~on professional services and on reimbursable expenses;~~
- ...
- .11 ~~Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and; Intentionally deleted;~~
- .12 Other similar Project-related ~~expenditures; expenditures pre-approved by the Owner..~~

§ 11.8.2 Exhibit A, the MOU, includes the estimated cost of reimbursable expense anticipated the Architect. The Architect shall not exceed the estimated cost of such expenses without the Owner’s prior written approval. For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 **Architect’s Insurance.** ~~If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~

~~(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)~~

Intentionally Deleted.

...

§ 11.10.1.1 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.

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

~~§ 11.10.2.1~~ Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (~~—~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(~~Insert rate of monthly or annual interest agreed upon.~~)

~~—%~~ shall be due and interest shall be calculated in accordance with the Illinois Governmental Prompt Payment Act.

~~§ 11.10.2.2~~ The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or ~~has been found liable for the amounts in a binding dispute resolution proceeding.~~ is found liable for such amounts.

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~~§ 12.1~~ No failure of either the Architect or the Owner to exercise any power given in this Agreement or to insist upon strict compliance by the other party with any obligation hereunder and no custom or practice of the Owner or the Architect at variance with the terms hereof shall constitute a waiver of the right of either party to demand strict compliance with the terms of this Agreement.

~~§ 12.2~~ **Any claims arising out of this Agreement shall be brought against the contracting parties and not against any individual director, officer, or employee of the party.**

...

~~§ 13.1~~ This Agreement and Exhibit A, the MOU for the Project represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

...

~~.2~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

~~—~~ (~~Insert the date of the E203-2013 incorporated into this agreement.~~)

~~.3~~ Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

~~.2~~ Exhibits:

AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

(~~Insert the date of the E204-2017 incorporated into this agreement.~~) Exhibit A The Memorandum of Understanding (MOU) for the Project

Other Exhibits incorporated into this Agreement:

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

~~4~~ Other documents:

~~(List other documents, if any, forming part of the Agreement.)~~

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

Minooka Community High School District 111

DLA Architects, Ltd.

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Dr. Robert Schiffbauer , Superintendent

Louis F. Noto , Principal

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 its associated Additions and Deletions Report and this certification at 14:09:42 ET on 01/13/2023 under Order No. 2114302648 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

 **AIA[®] Document B101[™] – 2017****Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the Thirteenth day of January in the year 2023
(In words, indicate day, month and year.)

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

Minooka Community High School District 111
26655 W. Eames St.
Channahon, IL 60410

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

DLA Architects, Ltd.
Two Pierce Place
Suite 1300
Itasca, IL 60143

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

This Agreement is a Master Agreement and shall be the agreement for all projects authorized by Owner. Specific projects under this Master Agreement shall be authorized in writing by the Owner by a Memorandum of Understanding (hereafter "MOU"), which MOU shall be attached hereto as Exhibit A and made a part of this Master Agreement for each project authorized. As additional projects are authorized pursuant to this Master Agreement, such projects shall be authorized by subsequent MOU's, each of which shall be attached to this Master Agreement as Exhibit A for the Project authorized.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND 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 information set forth in Exhibit A, the MOU for the specific project authorized pursuant to this Master Agreement. Exhibit A is attached hereto and incorporated herein for the Project authorized by the Owner under this Master Agreement.

Exhibit A, the Memorandum of Understanding (hereinafter "MOU") for a Project, sets forth all Project specific requirements, such as Scope of Services, Project Schedule, Project Budget, Site Observation requirements, Compensation and other Project specific terms which may supplement, supersede or modify the Master Agreement. To the extent of any inconsistency, conflict or discrepancy between the Master Agreement and the MOU, Exhibit A, the MOU shall control. Project as used herein shall mean the Project authorized by the MOU, Exhibit A.

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

The Architect will cooperate with the Owner and, if and when selected, the Contractor and help create an environment of mutual respect.

§ 1.1.2 The Project's physical characteristics:

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

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

Init.

/

§ 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.)

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

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

.1 Design phase milestone dates, if any:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.2 Construction commencement date:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.3 Substantial Completion date or dates:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.4 Other milestone dates:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

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

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall define the terms, conditions and services related to the Owner's Sustainable Objective in the MOU, Exhibit A, for the Project.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

John Troy
Minooka Community High School District 111
26655 W. Eames St.
Channahon, IL 60410

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

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

Init.

.1 Geotechnical Engineer:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.2 Civil Engineer:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

As may be identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

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

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.2 Mechanical Engineer:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

.3 Electrical Engineer:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.1.11.2 Consultants retained under Supplemental Services:

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

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

As identified in the Memorandum of Understanding for the Project attached hereto as Exhibit A

§ 1.2 The Owner and Architect may reasonably rely on the information set forth in Exhibit A, the MOU for the Project. Both parties, however, recognize that the information in Exhibit A may materially change and, in that event, the Architect shall provide prompt notice to the Owner, and, if agreed by the Owner, the Owner and Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and/or the Architect's compensation, consistent with this Agreement. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information as necessary.

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in the MOU for the Project, Exhibit A and this Agreement during all phases of the Project, as applicable. The Architect will perform the services through itself, its employees and consultants. In the event of an inconsistency or conflict between this Exhibit A and this Agreement, Exhibit A shall govern for the Project. The Architect represents that it is properly licensed in the jurisdiction where the Project is located when required to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. Any subcontracting of the services under this Agreement shall not relieve the Architect from its responsibility for the performance in accordance with the terms and conditions of this Agreement.

§ 2.2 The Architect shall be responsible for the performance of the Architect's Services as an independent contractor (i) consistent this Agreement; (ii) consistent with the instructions, guidance and direction of the Owner to the extent such instructions and directions are consistent with the professional standard of care; (iii) consistent with prevailing skill and care ordinarily expected from members of the architectural profession providing similar services under similar circumstances in the locale of the Project; (iv) consistent with sound architectural practices; and (v) as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project, the instructions of the Owner and this Agreement. The Architect shall endeavor to maximize the use of the Owner's budget for the Project for the benefit of the Owner (the standards of this Section § 2.2 shall be referred to herein as the "Architect's Standard of Care").

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.5.1 Commercial General Liability with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) for each occurrence and THREE MILLION (\$ 3,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles hired and non-owned vehicles used by the Architect with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) combined single limit or per occurrence.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ 2.5.3.1 Excess/Umbrella Liability with policy limits of no less than FIVE MILLION DOLLARS (\$5,000,000), following form coverage,

§ 2.5.4 Workers' Compensation at Illinois statutory limits.

Init.

§ 2.5.5 Employers' Liability with policy limits not less than FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) each employee, and FIVE HUNDRED THOUSAND DOLLARS (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) per claim and THREE MILLION DOLLARS (\$ 3,000,000) in the aggregate.

The Architect will secure and maintain for four (4) years after Substantial Completion professional errors and omissions insurance in an amount no less than \$1,000,000 per claim and \$3,000,000 aggregate for damages that may result in any way from the negligent performance of the Architect's professional services under this Agreement. The Architect shall promptly notify the Owner of any material changes to, interruption of, or termination of this insurance. The Architect shall contractually require its consultants of any tier to maintain professional errors and commissions insurance equal to the above amount, unless otherwise agreed by the Owner. If professional errors and omissions insurance is not reasonably available for a class of consultants, or reasonably available in the future to the Architect, the Architect shall so notify the Owner immediately.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, its successors and assigns and the respective administrators, directors, and employees of each of the foregoing, as additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner upon request that evidence compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability and Automobile Liability. Such certificates of insurance shall have additional endorsements attached, if any, (including renewal or replacement certificates).. On the policies on which the Owner is an additional insured, the certificates shall further state that the policies shall not be cancelled by the insurer without giving thirty (30) days prior notice to Owner of such cancellation, except if the cancellation results from non-payment of premium, in which case, the Architect shall provide ten (10) days written notice to the Owner. . The foregoing requirements as to insurance and acceptability to the Owner of insurers shall not in any manner limit or qualify the liabilities or obligations assumed by the Architect under this Agreement.

§ 2.6 The Architect shall, at no cost to the Owner, promptly and satisfactorily correct any services, which are defective or not in conformance with the requirements of this Agreement. If the Architect fails to make such corrections within fourteen (14) days of written notice from the Owner, the Owner may do so, by contract or otherwise, and recover (e.g. by offset against compensation otherwise payable under this Agreement) the cost from the Architect. The obligations of the Architect to correct defective or nonconforming services shall not limit any other obligations of the Architect and is in addition to any and all other rights and remedies available to the Owner under the Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the Owner to make any corrections of defective or nonconforming services..

§ 2.7 The Construction Documents shall, subject to the Architect's Standard of Care, comply with applicable federal, state, and local building and zoning laws, regulations, codes, and orders in existence at the times when of submission for permitting. In the event of conflict between laws, codes, and regulations of various governmental authorities having jurisdiction over the design of the Project, the Architect shall promptly notify the Owner of the nature and impact of the conflict. The Owner agrees to cooperate and work with the Architect in an effort to resolve the conflict.

§ 2.8 The Architect shall be and operate as an independent contractor in the performance of the services and shall have responsibility for all personnel performing the services. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant between and among the parties to this Agreement or their affiliates or subsidiaries. In no event shall the Architect be authorized on behalf of the Owner: to enter into any agreements or undertakings in the name of the Owner, to waive any provisions of the Contract, to execute any documents for Payment except the Certificates of Payment referenced in Article 3.6.3 herein, Change Order or other documents except as set forth in Article 3.6.5 herein, to authorize any

payments or approve any documents, work, services, goods or materials that result in a change of the Contract Sum or Contract Time without prior written approval of the Owner, or to act as or be an agent or employee of the Owner.

§ 2.9 The Architect shall engage consultants qualified by training and experienced in their respective fields to address the requirements of the Project. Any subcontracting of the services shall not relieve the Architect from its responsibility for the performance of the services in accordance with the terms of this Agreement nor from its responsibility for the performance of any of its other obligations under this Agreement. The Owner shall review and approve the Architect's selected consultants before the Architect contracts with such consultants. Upon request by the Owner, the Architect shall furnish the Owner with a copy of the Architect's contracts with its consultants. These contracts shall be consistent with the terms of this Agreement.

§ 2.10 The Architect hereby agrees to indemnify and hold harmless the Owner, its successors and assigns and the administrators, directors, and employees of the foregoing ("Indemnified Parties"), from and against losses, costs, liabilities, damages and expenses (including attorney's fees recoverable under applicable law) for which Indemnified Parties are found liable to a third parties to the extent caused by a wrongful or negligence act or omission (i) in the performance of services by, (ii) the obligations of, or (iii) the negligent or wrongful acts or omissions of the Architect or any of its consultants of any tier, the respective successors and assigns of the Architect or any such consultants, the directors, officers, employees and agents of each of the foregoing, or anyone acting on the Architect's behalf in connection with this Agreement or its performance. Nothing herein shall be construed to require the Architect to indemnify and hold harmless any Indemnified Parties for their own negligence.

§ 2.11 The Architect shall enforce strict discipline and good order among the Architect's employees, consultants, and other persons carrying out the Agreement, including observance of Owner's rules on use of drugs, smoking, tobacco, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel on the Owner's property. The Architect shall require that all persons performing the Services under this Agreement comply with the Owner's tobacco free use policy and will not engage in inappropriate conduct or inappropriate contact with students or staff. The Owner shall conduct background checks on Architect's employees and consultants who are on Owner's premises in accordance with the Owner's policies and provide such background checks to the Architect. The Owner reserves the right to require the Architect to remove any Architects employees, agents, or consultants deemed incompetent or detrimental by the Owner, in compliance with any and all applicable local, state, and/or federal laws and regulations.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in the MOU, Exhibit A, for the Project and may include usual and customary structural, mechanical, and electrical and other engineering services as set forth in the MOU as set forth in Exhibit A. Services not set forth in the MOU, Exhibit A for the Project, are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, and the services of the Architect's consultants and administer the Project to the extent specified in this Agreement. The Architect shall consult with the Owner, 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 with those services provided by its consultants as well as by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which shall be set forth in the MOU, Exhibit A, for the Project. The schedule initially shall include anticipated dates for the commencement of construction, for identified milestones, for cost estimates and design reviews, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The Owner shall render decisions in a timely manner so as not to impact the Project schedule. Once approved by the Owner, time limits established by the schedule shall

not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

§ 3.1.5 The Architect shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable written publicly available design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall, in a timely manner to not delay the orderly progress of the Project, prepare Construction Documents and shall assist the Owner in connection with the Owner's responsibility for filing such Construction Documents required for the approval of governmental authorities having jurisdiction over the design of the Project and in obtaining such required approvals. The Architect will assist the Owner in connection with the Owner's responsibility for submitting certain documentation to the Regional Office of Education. The Architect shall have primary responsibility for applying for building code reviews of the Construction Documents, shall provide separate packages of documents for local, state and other applicable permit applications as necessary, shall coordinate and attend meetings with governmental bodies. If the Architect is requested to make application for and coordinate all necessary use, zoning, right-of-way, and utility applications, such services shall be an Additional Services and shall be compensated in accordance with Article 11.3. As part of the Basic Services, the Architect shall make all revisions to the Construction Documents required by state, local, and other applicable reviews by authorities having jurisdiction over the design of the Project and as required to comply with applicable building and zoning codes, laws, interpretations thereof in effect at the time of submission for permitting.

§ 3.1.7 Upon request of the Owner, the Architect shall make presentations as described in the Agreement to explain the design of the Project to representatives of the Owner. The Architect shall be entitled to rely on written approvals received from the Owner in the further development of the design; however, the Owner's approval of design documents shall in no way be construed as a waiver of any rights or requirements as set forth in this Agreement.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 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, the proposed procurement and 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 in a timely manner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches for major systems only. The Architect shall reach an understanding with the Owner, which the Architect shall confirm in writing, 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, for the Owner's approval, multiple preliminary designs as set forth in the MOU, Exhibit A, illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed-upon program, schedule and construction budget requirements as well as Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable 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 more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Owner's approval shall be deemed only an approval of the proposed concept and not the means, techniques, or material recommended.

§ 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, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems if included in Exhibit A, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

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

§ 3.4.2 During this phase, the Architect will respond to comments from building and planning officials and meet with the Owner and its consultants. The Architect shall also assist the Owner to submit to, and respond to comments from, building, planning, health, water and sewer districts, electricity and natural gas providers and similar agencies and utility providers having jurisdiction. The Architect shall incorporate the written publicly available requirements of governmental authorities having jurisdiction over the design of the Project into the Construction Documents. The Architect shall be responsible as part of its Basic Services (with the assistance of the Owner) for coordinating, and the Owner will be responsible (with the assistance of the Architect) for filing documents required for approval of governmental authorities having jurisdiction over the design of the Project. The Architect shall be responsible for making changes in the Construction Documents required by governmental authorities at its expense, except where such required changes are inconsistent with previous direction from the same governmental agency or between governmental agencies.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner with the development and preparation of (1) Contractor 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)

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the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review the Architect shall incorporate Owner's comments into final Construction Documents.

§ 3.4.6 Any design errors or omissions in the Construction Documents furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of, or payment for, all or any part of the Architect's Services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder. If, due to the Architect's negligence, omission or failure to perform in accordance with the terms of this Agreement, a required item or component of the Project is omitted from the Construction Documents or if, due to such negligence, omission or failure, the Construction Documents must be modified through a Change Order, the Architect shall be responsible for paying the cost required to add or modify such item or component to the Project, excluding the reasonable cost that would have been incurred by the Owner at the time of the original bid for such Project item or component to the extent that such item or component would have been required and included in the original Construction Documents and to the extent recoverable under applicable law. In no event shall the Owner pay more than once for an item or component of the Project.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining competitive bids or negotiated proposals from prospective contractors in accordance the Illinois competitive bidding process. (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 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 in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions, shall submit substitutions for the Owner's consideration and if the Owner approves substitutions in writing shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

- 4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions, shall submit substitutions for the Owner's consideration and if the Owner approves substitutions in writing shall prepare and distribute addenda identifying approved substitutions to all prospective bidders

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall assist the Owner in providing administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction as well as the Owner's Supplementary General Conditions and the Owner's General Requirements to the extent the foregoing documents are consistent with this Agreement. If the Owner and Contractor modify AIA Document A201–2017 or require services inconsistent with this Agreement in the documents referenced herein, those documents and modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall be a representative, but not an agent, of and shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions and for the negligent acts or omissions of the Architect's consultants and for the failure of the Architect to comply with the requirements of this Agreement, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of any other persons or entities performing portions of the Work, including the Contractor and the Contractor's subcontractors

§ 3.6.1.3 Subject to Article 4.2 and 3.6.6.5, the Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment or the Owner's receipt and approval of final closeout documents.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site as set forth in the MOU, Exhibit A to become generally familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall document and keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, shall endeavor to guard the Owner against defects and deficiencies in the Work, and shall promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to recommend to the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the Owner inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. The Architect's review of such testing or inspections, except environmental testing, is a part of Basic Services. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 Upon the Owner's request, the Architect shall provide written advice within a reasonable time on Claims, disputes or other matter in question between the Owner and the Contractor relating to the physical execution or progress of the Work or the interpretation of the Drawings and Specifications as provided in the Contract Documents. Such interpretations shall not be attributable to the Owner. If the Owner makes interpretations or decisions concerning the performance under or requirements of the Contract Documents without the written approval of the Architect, the Owner shall be fully and solely responsible for such interpretations and decisions and the consequences of such interpretations or decisions.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and the Contractor's construction schedule and updates and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. The Architect administratively shall receive from the Contractor mechanics lien waivers and the Contractor's sworn statement listing subcontractors and material suppliers before issuing payment certificates and if such waivers or sworn statements cannot be obtained, then the Architect's Certificate shall be conditional upon receipt of the Contractor's waivers or sworn statement.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the 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.

§ 3.6.3.3 The Architect shall maintain a written record of the Applications and Certificates for Payment for the Owner's benefit.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the limited purpose of checking for conformance with information given and the design concepts 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 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. The Architect shall not approve substitution requests after contract award unless written permission from the Owner is obtained.

§ 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specification and other necessary supporting documentation and data to describe Work to be added, deleted, or modified. Basic Services shall include providing recommendations concerning proposed Change Orders or Construction Change Directives, and all aspects of the preparation and processing of Change Orders and Construction Change directives resulting from errors, omissions or deficiencies of the Architect in the preparation of the Contract Documents. Any change order or series of change orders resulting in an increase in the Contract Sum of \$5,000 or more, or an increase in the Contract Time of 10 days or more, must be approved in writing by the Owner in order to be binding on the Owner, and then only if one of the following criteria is satisfied. The Owner determines that the circumstances requiring the change a) was not reasonably foreseeable at the time the Agreement was signed; b) is germane to the original Agreement as signed; or c) is in the best interest of the Owner and is authorized by law.

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

§ 3.6.5.3 Where changes are proposed in which the Contractor identifies that additional cost or time may be merited, whether initiated by the Owner or Contractor, the Architect shall review the Contractor proposal for a change order for compliance with the Contract Documents, the intended scope of the direction provided, and to determine whether costs proposed by the Contractor associated with the change are generally equitable.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

§ 3.6.6.2 The Architect shall assist in supplying information, advice and communication with respect to the warranty or correction periods of the construction contract. The Architect and the Owner shall cooperate in inspecting for and securing the correction of defective work. At Substantial Completion, the Architect shall prepare for review and coordination of the Owner a "punch list" of observed items requiring correction, completion or replacement by the Contractor. The Architect shall review the Project upon Final Completion to determine compliance with the Contract Documents and shall issue a final Certificate of Payment recommending that the Work is completed in compliance with the requirements of the Contract.

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years, 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.

§ 3.6.6.6 Subsequent to meetings with the Owner as indicated in 3.6.6.5, the Architect shall conduct a walkthrough with the Owner and Contractor to review any open warranty issues for the purpose of developing a final list of items to be corrected prior to the expiration of the final warranty period.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if so stated in the MOU, Exhibit A and mutually agreed by the Owner and Agreement as a Supplemental Service, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

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

See MOU, Exhibit A for the Project

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

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

See MOU, Exhibit A for the Project

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services set forth in the MOU, Exhibit A. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, if mutually agreed in writing by the Owner and Architect, without invalidating the Agreement. In the absence of mutual agreement in writing, and subject to Section 4.2.2 below, the Architect shall promptly notify the Owner prior to providing any services requiring an adjustment in the Architect's compensation and shall specify the proposed adjustment. Except for services required

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due to the fault, negligence, or responsibility of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to a mutually agreed upon adjustment in compensation pursuant to Section 11.3 and adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services not caused by the fault or negligence of the Architect, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the information in the MOU, Exhibit A, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and
- .9 Intentionally Deleted.
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Intentionally Deleted;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Intentionally Deleted.
- .5 Evaluating substitutions proposed by the Owner or Contractor, and with the Owner's written agreement, making subsequent revisions to Instruments of Service resulting therefrom;
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 90 days after (1) the date of Substantial Completion of the Work and not within the original scope of Basic Services, except for correction period responsibilities.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services unless necessitated by the fault or negligence of the Architect. When the limits below are reached, the Architect shall notify the Owner in writing:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 See MOU, Exhibit A, for the number of visits to the site by the Architect during construction
- .3 One (1) 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 One (1) inspections for any portion of the Work to determine final completion.

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§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 90 days after (1) the date of Substantial Completion of the Work, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services and to the extent those services are not within the scope of the Architect's correction period responsibilities.

§ 4.2.5 If the services covered by this Agreement have not been completed within the time period set forth in the MOU, Exhibit A, 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 regarding requirements for and limitations on the Project, which, upon mutual agreement may include 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.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. When provided to the Owner in a timely manner, 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. The Architect shall provide submittals to the Owner in a timely manner.

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

§ 5.5 Unless otherwise provided for in the MOU, Exhibit A, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect with the Architect's involvement and assistance. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work 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's review of such tests, inspections, and reports shall be included as part of the Architect's compensation for 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. These services are not provided directly to the Architect or for the Architect's benefit

§ 5.11 The Owner shall provide prompt written notice to the 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. Provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions, or inconsistencies. The Owner's failure to so notify shall not relieve the Architect of its responsibilities under this Agreement.

§ 5.12 Except as otherwise provided for thin this Agreement, the Architect shall contemporaneously provide the Owner with copies of all written communications between the Architect and the Contractor concerning cost, time, scope, or requirements of the Project. The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor that may impact the Architect's Services under this Agreement. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Architect shall have reasonable opportunity to review the proposed form of Contract and provide comments to the Owner to coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The 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 shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect or the Architect's consultants; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner, but the Cost of the Work shall include the following:

- .1 Contractor's overhead and profit and General Conditions associated with the Project;
- .2 alternate bids. For alternate bids not accepted, 80% of the cost associated with the alternate shall be used for Architect's fee calculations. Deductive alternates will be treated as added costs;
- .3 full change order amount for all change orders as it increases contract amount. For change orders not accepted, 80% of the cost associated with the change order shall be used for the Architect's fee calculation.
- .4 change order credits as added project costs;
- .5 For change orders that do not change the construction cost in proportion to the design work required, the Architect's fee shall be computed on a time and material basis.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of

determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect and the Architect shall have no responsibility for such variance nor shall the Architect be responsible if the bids or Cost of the Work exceeds the estimate of the Owner's budget.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner, at its sole option, shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5 of this Agreement;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by twenty (20%) percent or less, the Architect shall modify the Construction Documents as requested by the Owner as an Additional Service. If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by more than twenty (20%) percent, the Architect shall modify the Construction Documents without additional compensation to reduce the Cost of the Work to conform to Owner's budget. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license, royalty free, to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, and maintaining the Project and for informational purposes only in connection with altering or adding to the Project provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement.

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The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service on the Project or on other projects, 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 defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 Intentionally Deleted.

§ 8.1.3 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.

§ 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 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. The parties will cooperate in good faith and attempt to resolve any dispute that arises prior to mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by ADR Systems Inc., 20 N. Clark Street, Chicago, Illinois with a mutually acceptable mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint 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.

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

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

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Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a Grundy County, Illinois court of competent jurisdiction

Other: *(Specify)*
(Paragraphs deleted)

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

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect properly elects to suspend service in accordance with this Agreement, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of such a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services only if the Owner suspends the Project for more than thirty (30) consecutive days.. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or funding purposes, 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 or materially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. The Owner shall not be liable for any consequential or incidental damages, including but not limited to loss of profits on other projects or of reputation incurred by the Architect as a result of termination.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

N/A

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

Per mutual agreement between the Owner and the Architect

§ 9.8 Intentionally Deleted.

(Paragraph deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Illinois, venue shall be any court of competent jurisdiction in Grundy County, Illinois.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 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, provided the Lender agrees to assume the Owner's rights and obligations, including any and all payments due to the Architect by the Owner prior to and at the time of the assignment.

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall endeavor to provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 Except in accordance with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140, if the Architect or Owner receives information specifically designated on its face as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement. It is understood that the definition of the terms "confidential" and "business proprietary" as used here will be determined by the application of the State of Illinois Freedom of Information Act, and that this Agreement and records generated or received by either party pursuant to this Agreement are subject to the State of Illinois Freedom of Information Act and may, therefore, be open to the public upon request

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such

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information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

§ 10.10 The Architect certifies that it **complies with the procedures and requirement of the Illinois Drug Free Workplace Act 3 30 ILCS 580/ and the Illinois Human Rights Act 775 ILCS 5/2.**

ARTICLE 11 COMPENSATION

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

(Paragraphs deleted)

As set forth in the MOU, Exhibit A, for the Project.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

In accordance with the Hourly Rates set forth in the MOU, Exhibit A, for the Project.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

In accordance with the Hourly Rates set forth in the MOU, Exhibit A, for the Project.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %).

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	twenty	percent (20	%)
Design Development Phase	fifteen	percent (15	%)
Construction Documents Phase	forty	percent (40	%)
Procurement Phase	five	percent (5	%)
Construction Phase	twenty	percent (20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent

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budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include reasonable expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Intentionally deleted;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 fees paid for securing approval by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner in writing;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect or Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of the minimum limits set forth in this Agreement;
- .9 All taxes levied on reimbursable expenses;
- .10 Site office expenses;
- .11 Intentionally deleted;
- .12 Other similar Project-related expenditures pre-approved by the Owner..

§ 11.8.2 Exhibit A, the MOU, includes the estimated cost of reimbursable expense anticipated the Architect. The Architect shall not exceed the estimated cost of such expenses without the Owner's prior written approval. For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9

(Paragraphs deleted)

Intentionally Deleted.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 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.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments

(Paragraphs deleted)

shall be due and interest shall be calculated in accordance with the Illinois Governmental Prompt Payment Act.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or is found liable for such amounts.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.1 No failure of either the Architect or the Owner to exercise any power given in this Agreement or to insist upon strict compliance by the other party with any obligation hereunder and no custom or practice of the Owner or the Architect at variance with the terms hereof shall constitute a waiver of the right of either party to demand strict compliance with the terms of this Agreement.

§ 12.2 Any claims arising out of this Agreement shall be brought against the contracting parties and not against any individual director, officer, or employee of the party.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

(Paragraphs deleted)

- .2 Exhibits:

Exhibit A The Memorandum of Understanding (MOU) for the Project

(Paragraphs deleted)

(Paragraphs deleted)

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

Minooka Community High School District 111

DLA Architects, Ltd.



OWNER *(Signature)*

ARCHITECT *(Signature)*

Dr. Robert Schiffbauer , Superintendent
(Printed name and title)

Louis F. Noto , Principal
(Printed name, title, and license number, if required)





EXHIBIT 1 (PRELIMINARY)

May 29, 2024

Mr. John Troy
Assistant Superintendent of Business & General Counsel
Minooka Community High School District 111
26655 W. Eames Street
Channahon, IL 60410

RE: PRELIMINARY Construction Management Fee Structure
Field House at South Campus and Career & Technical Education (CTE) Addition at Central Campus

Dear Mr. John Troy,

Nicholas & Associates will provide Construction Management services for the **Field House at South Campus and Career & Technical Education (CTE) Addition at Central Campus** projects based on a preliminary construction value of \$65,000,000 (Per DLA on 5.29.24 via Phone Call) and construction duration of 18 months. All Pre-Construction, Pre-Bid, Bidding, & Construction Phases are included in our C.M. Fee. Each bid package will be competitively bid and read aloud at a Bid Opening at the District Office. Our fees will be based on the following schedule:

Pre-Construction Activities: No Charge

C.M. Fee (At Risk): 3.5% of the Total Construction Costs - \$2,275,000

Payment and Performance Bond Premium: 1% of Total Construction Costs - \$650,000

Fixed General Conditions (Based on 18 month schedule – April 2025 thru September 2026)

Breakdown as Follows:

Senior Project Manager – 20 hrs/week for 18 months = \$194,400
Project Manager – 40 hrs/week for 17 months = \$353,600
Full Time Site Superintendent – 45 hrs/week for 18 months = \$388,800
Full Time Site Superintendent – 45 hrs/week for 18 months = \$388,800
Assistant Superintendent – 45 hrs/week for 18 months = \$324,000
Assistant Superintendent – 45 hrs/week for 18 months = \$324,000
General Superintendent – 6 hrs/week for 18 months = \$54,000
Safety Officer – 1 audit/week/site for 18 months = \$57,600
Director of Quality Assurance (Bill Farley) = No Charge
Vice President (Joe Papanicholas) = No Charge
Total Fixed General Conditions: \$2,085,200
Total CM Compensation (CM Fee plus Fixed General Conditions): \$4,360,200

Fixed General Conditions: expenses for the Project consist of the services provided by the Senior Project Manager (\$135/hr), Project Manager (\$130/hr), General Superintendent (\$125/hr), Site Superintendent (\$120/hr), Assistant Site Superintendent (\$100/hr) & Safety Director (\$400/Audit). The fixed General Conditions expenses are based on 18 month construction duration. In the event the construction of the Project exceeds or falls short of the 18 months, the General Conditions shall be renegotiated by the parties, in good faith, based on the above stated hourly rates.

Reimbursable General Conditions (Pass Thru Invoice w/o mark-up): On-Site Construction Trailer with reasonable Furnishings; Rubbish and Trash Removal; Temporary Partitions; Temporary Toilets; Temporary Fencing; Temporary Roads; Temporary Utilities, Surveying, Testing Services, Winter Protection, Street Cleaning; Daily Cleanup; Final Cleanup; and Insurance.

Insurance: \$448,500 (.69% - Fixed)

Estimated Reimbursable General Conditions: \$1,950,000 (3% Placeholder)

Note: To be finalized and itemized once design is underway and scope is defined.

Not Included Above:

- Utility Usage
 - o Propane and/or Natural Gas
 - o Energy & Water Consumption
- Utility Relocations, New Services, etc.
- Permit Costs
- Builder's Risk Policy (District to Obtain)

Nicholas & Associates looks forward to a successful relationship with Minooka Community High School District 111. We trust you will find that this fee proposal clearly identifies our services; however, should you require any additional information, please feel free to contact our offices.

Joe Papanicholas
Vice President

AIA Document A134' - 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the day in the year Two Thousand
(In words, indicate day, month, and year.)

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

Minooka Community High School District No. 111
26655 W. Eames Street
Channahon, IL 60410

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

Nicholas & Associates, Inc.
1001 Feehanville Drive
Mount Prospect, IL 60056

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

Master Agreement for various projects utilizing a Construction Manager.
Individual projects and the terms for those projects will be attached to this Master Agreement as exhibits.

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

To be determined based on the project

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.3 The Owner's budget for the Contract Sum, as defined in Section 2.4:
(Provide total and, if known, a line item breakdown.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

.1 Design phase milestone dates, if any:

See Attachment

.2 Construction commencement date:

See Attachment

.3 Substantial Completion date or dates, if not established in this Agreement under Section 3.3.1.3:

See Attachment

.4 Other milestone dates:

See Attachment

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234TM_2Q19-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234TM-2Q19-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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 contact information.)

As set forth in the exhibit attached to this Master Agreement for the individual project

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

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As set forth in the exhibit attached to this Master Agreement for the individual project.

.2 Civil Engineer:

As set forth in the exhibit attached to this Master Agreement for the individual project.

.3 Other, if any:

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

§ 1.1.11 The Architect's representative:

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for reconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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 the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Contract Sum and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

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ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 3.2.2 and revisions prepared by the Architect in writing and furnished by the Owner as described in Section 3.2.7. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information ~~required~~ requested by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The terms Subcontractor and Trade Contractor shall be used interchangeably throughout this Agreement and the A201-2017 as amended.

§ 2.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude. The Construction Manager shall exercise skill and care consistent with the expertise, experience and qualifications of construction management professionals necessary for the successful performance in a timely manner of this project.

The Construction Manager, to the best of its information, knowledge and belief, hereby represents and warrants to the Owner the following:

- (a) that Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services required and perform its obligations hereunder;
- (b) that Construction Manager is able to furnish any of the plant, tools, materials, supplies, equipment and labor required to complete the services required hereunder and to perform all of its obligations hereunder and has sufficient experience and competence to do so;
- (c) that Construction Manager is authorized to do business in Illinois and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it to undertake the services required hereunder and the Project itself;
- (d) that Construction Manager's execution of this Agreement and the performance thereof are within its duly authorized powers; and
- (e) that Construction Manager's duly authorized representative has visited the school site, familiarized him or herself with the local conditions under which the services required hereunder are to be performed and correlated his or her observations with all the requirements of the Contract Documents.

The Board of Education of the Owner ~~Illinois~~, by majority vote, has the power and authority to enter or amend this contract, to approve changes in the scope of the Work, to agree to an extension of the date of Substantial or Final Completion, or to terminate a contract.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, ~~as amended and attached hereto~~ shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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§ **2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, as amended and attached hereto which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ **2.4 Contract Sum, Contract Time and Changes in the Work**

The Contract Sum is the actual Cost of the Work as defined in Section 7.1.1 plus the Construction Manager's Fee as defined in Section 6.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2017. The Contract Time shall be measured from the date of commencement of the Work. Changes in the Work shall be governed by Article 7 of A201-2017.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's identified representative shall have express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

§ **3.1 Preconstruction Phase**

§ **3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ **3.1.2** The Construction Manager shall review design documents during their development phases and provide Owner with a written preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ **3.1.2.2** Designer of record is responsible to prepare a complete set of plans and specifications ensuring that all design elements are compatible with one another and with the existing conditions. Construction Manager will perform its due diligence to identify potential errors, conflicts, etc. Upon identifying a conflict/error it is the Construction Manager's contractual obligation to bring to the attention of the owner and design team in a reasonable timeframe. If the CM is negligent in notifying the owner and design team in a reasonable time, then the CM shall bear some responsibility.

§ **3.1.3 Consultation**

§ **3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ **3.1.3.2** The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. All project schedules (including updates) shall be formatted using the Critical Path Method (CPM) or another Owner pre-approved scheduling method.

§ 3.1.3.4 The Construction Manager shall assist the Owner and Architect in preparing Construction Documents and advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule 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 identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 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, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 3.2. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.6.4 In accordance with Section 3.1, above, the Construction Manager shall provide detailed cost estimates at the following intervals:

- Baseline Budget Assessment
- 100% Design Development/High Level Budget Assessment
- 50% Construction Documents Budget Assessment
- 75% Construction Documents Budget Assessment
- 100% Construction Documents Budget Assessment -- (Construction Manager's Control Estimate)

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§ 3.1.7 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 regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 **Subcontractors and Suppliers**

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 **Procurement**

The Construction Manager shall prepare for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction as agreed to in writing by the Owner. If the Owner agrees to procure any items prior to the advertisement for bids, the Owner shall procure the items on terms and conditions in consultation with the Construction Manager.

§ 3.1.13 **Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 **Other Preconstruction Phase Services**

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.1.14.1 Owner is a school district bound by the public bidding requirements of 105 ILCS 5/10-20.21 and is required to procure the Work through public bidding and award the contracts for the Work to the lowest responsive and responsible bidder. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Subcontractors" or "Trade Contractors") are identified, Owner shall assign those trade contracts (the "Subcontracts") to Construction Manager provided that notwithstanding any language in this Agreement or in A201-2017, as amended, the Construction Manager shall assume all contractual obligations and duties of the Trade Contracts and Trade Contractors.

The Construction Manager shall cause the Subcontracts to incorporate substantially the following provisions:
This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner shall be deemed to have assigned its rights in this Agreement to the Owner's Construction Manager, which is identified herein as the Contractor and/or Construction Manager.

By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become an assigned Subcontractor to the Construction Manager.

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Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement, and, except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Construction Manager.

§ 3.1.14.2 Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions. Construction Manager shall ensure that the amended A201-2017 General Conditions are incorporated into the bid package in the form to be provided by the Owner, and that no other provisions of the bid package conflict with them. Drawings and specifications shall be provided by the Architect. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

§ 3.1.14.3 Prior to advertisement for bids, unless the Owner agrees otherwise, Construction Manager shall provide all contractor or subcontract agreements to the Owner for review and comment.

§ 3.1.14.4 Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced and scheduled meetings.

§ 3.1.14.5 The Owner shall receive, open, and read aloud all bids as required by the applicable procurement laws. The Construction Manager shall record all bids, prepare bid analyses, and make recommendations to the Owner for the Owner's award of contracts and/or rejection of bids.

§ 3.1.14.6 The Subcontract documents prepared by Construction Manager shall require full compliance with all state and local laws.

§ 3.1.14.7 The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete the Work. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect regarding the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Control Estimate

§ 3.2.1 Upon 100% completion of the Construction Documents by the Architect, and before advertisement for bids, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work, Reimbursable Expenses, General Conditions, and the Construction Manager's Fee and shall include those items set forth in Section 3.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall upon request by the Construction Manager, acknowledge it in writing.

§ 3.2.2 The Control Estimate shall include:

- 1 the documents enumerated in Article 15, including all Modifications thereto;
- 2 a list of the assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 3.2.4, to supplement the information provided by the Owner and contained in the Contract Documents;
- 3 a statement of the estimated Cost of the Work organized by trade categories or systems, and the Construction Manager's Fee;
- 4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequence and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, and the Owner's occupancy requirements;
- 5 a date of Substantial Completion, if not established in accordance with Section 3.3.1.3; and
- 6 contingencies for further development of design and construction, as required by Section 3.2.4.

§ 3.2.3 The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is approved by the Owner, the Owner shall acknowledge its approval in writing. The Owner's approval of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 3.2.4 To the extent that the Contract Documents are anticipated to require further development, the Control Estimate shall include the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 3.2.5 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 3.2.6 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, unless pre-approved in writing by the Owner.

§ 3.2.7 All trade Work shall be performed by Subcontractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Subcontractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsive or responsible, and to present such evidence in a timely manner such that the Owner suffers no detriment in procuring another Subcontractor if necessary. The Construction Manager shall not perform any Work with its own forces except if Owner in its sole discretion pre-approves such Work in writing and consistent with all applicable public bidding requirements.

§ 3.2.8 The Control Estimate for each bid period shall be deemed to materially vary from the aggregate total of the lowest responsive and responsible bids for the Work of that bid period if the Control Estimate is at least 15% greater or less than the total aggregate of those bids. In the event such material variance, the Construction Manager shall:

- a) If the Owner chooses to accept the bids, compensate the Owner for additional design costs to modify scope of Work to cause the Control Estimate to immaterially vary from the aggregate bids; and
- b) Negotiate respective change orders with the respective Subcontractors to incorporate the aforesaid design changes at no additional charge to the Owner; or
- c) If the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding; and
- d) Administrate the re-bid of the affected portions of Work at no additional cost to the Owner.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or, prior to acceptance of the Control Estimate, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to approval of the Control Estimate.

§ 3.3.1.3 Substantial Completion

§ 3.3.1.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than _____ calendar days from the date of commencement of the Work.

By the following date: As set forth in the exhibit attached to this Master Agreement for the individual project.

By the date to be established in the Control Estimate and approved by the Owner.

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§ 3.3.1.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
As set forth in the exhibit attached to this Master Agreement for the individual project.	As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 3.3.1.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section 3.3.1.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.7.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.1O of A201-2017. The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or another Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201-2017, as amended, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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 required by the Owner. The Construction Manager shall develop a system of cost control for the Work including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawing, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Subcontractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents. Including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

§ 3.3.2.6 The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

§ 3.3.2.7 The Construction Manager shall record the progress of the Project. Monthly, 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 required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect the progress of the Work, accidents, injuries, and other information required by the Owner.

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§ 3.4 Staffing.

At all times during the Construction Phase, Construction Manager shall supervise the Work and coordinate the progress of the Subcontractors. Construction Manager shall not replace any staff without Owner's written approval which shall not be unreasonably withheld. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has an objection. If Owner notifies Construction Manager that it has an objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval

§ 3.5 Construction Schedule

§ 3.5.1 Time is of the essence of this Agreement. Construction Manager shall, with the Owner's approval, establish the Construction Schedule. Construction Manager shall schedule, sequence, and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Construction Schedule.

§ 3.5.2 The Construction Schedule shall commence with the notice to proceed and shall schedule the Subcontractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule monthly to show current and forecasted progress and completion. A copy of each schedule and schedule update shall be transmitted to the Owner, Architect and each Subcontractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

§ 3.5.3 If a monthly Project Schedule update indicates that the previously-approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

§ 3.6 Requests for Information

§ 3.6.1 The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications and shall timely assist in the resolution of such requests.

§ 3.6.2 The Construction Manager shall create and maintain a log of all requests for information from all Subcontractors showing, at a minimum, a description of the request, date of submission, a description of the response, and date of response.

§ 3.7 Subcontractor Change Orders

§ 3.7.1 Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Subcontractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Subcontractors proposals, submit recommendations to the Architect and Owner, and if they are accepted, prepare Change Orders and Construction Change Directives, which incorporate the modifications to the Construction Documents. For each change anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive. Construction Manager shall compare the detailed value estimate with the submittal of the Subcontractor. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the Project turn over such documentation to the Owner.

§ 3.7.2 The Construction Manager shall create and maintain a log of all requests for changes showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition of request.

§ 3.7.3 The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time, if any.

§ 3.7.4 Notwithstanding the foregoing, no change order with a cost more than \$10,000 shall be made except in compliance with the requirements set forth in 720 ILCS 5/33E-9.

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§ 3.8 Claims

§ 3.8.1 The Construction Manager shall assist the Owner and Architect in the review, evaluation, and documentation of Claims. The Construction Manager shall provide a written recommendation to the Owner suggesting the proper disposition of each Claim. The Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim's cost and schedule impact. Construction Manager shall submit a detailed recommendation that reasonably facilitates the Owner's review and consideration of each Claim.

§ 3.8.2 The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of claim, demanded change in contract price, demanded change in contract time, and disposition.

§ 3.9 Equitable Extension of Time and No Damages for Delay To the extent that Construction Manager's services under this Agreement are delayed by the Owner or causes not under the control of Construction Manager, the Contract Time shall be equitably extended. For all delays, such extension of the Contract Time shall be Construction Manager's sole and exclusive remedy. Notwithstanding, the Owner and Construction Manager may mutually agree upon an equitable adjustment to the Construction Manager's compensation to account for increased costs resulting from delay events exceeding 15 working days in duration.

§ 3.10 Site Safety. At appropriate intervals, Construction Manager shall hold regular safety meetings with all Subcontractors then engaged in onsite Work. Construction Manager shall maintain all required safety record and logs. The Construction Manager shall review, evaluate, and make recommendations to the Subcontractors regarding the Safety Programs developed by each of the Subcontractors. Neither the Owner, nor the Architect are responsible for site safety. Construction Manager shall cause each individual Subcontracts to provide that the Subcontractor are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their Work and the Work performed by their personnel.

§ 3.11 Quality Control

§ 3.11.1 Construction Manager shall review the Work of Subcontractors for compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether such Work is fabricated, installed, or completed. The Construction Manager, in consultation with the Architect and Owner, shall have the right and obligation to reject Work which does not conform to the requirements of the Contract Documents.

§ 3.11.2 The Construction Manager shall obtain from the responsible Subcontractors correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards. If the Subcontractors do no correct portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards, then Construction Manager shall correct such Work at its sole cost and at no additional cost to Owner.

§ 3.12 As-Built Documents Construction Manager shall obtain data from Subcontractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported and actual changes during construction. Construction Manager shall transmit a copy of all As Built Drawings and Specifications to Architect for the preparation of final As Built Drawings and Specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Subcontractors' data to verify that they are recording information sufficient to allow preparation of the As Built Documents.

§ 3.13 Submission Of Record Documents Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, certified payrolls, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

§ 3.14 Operations and Maintenance Training Manuals Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner personnel by authorized representatives commencing upon start-up and the commissions of each system prior to substantial completion. Prior to Final Completion, Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and along with the Architect, shall review for completeness, clarity, and conformance with the respective Contract Documents.

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After all operations and maintenance manuals are received and approved and prior to Final Completion, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

§ 3.15 Construction Manager Obligations after Substantial Completion For a period of one year after the Date of Substantial Completion, the Construction Manager shall, without additional compensation, act on behalf of the Owner to:

1. Coordinate and expedite the resolution of construction-related problems.
2. Coordinate and expedite the repair/ replacement of items covered under guarantees/warranties.
3. Conduct an 11th month follow-up review of the complete facility to verify satisfactory performance of materials and systems.

§ 3.16 Other Construction Manager Services The Construction Manager shall, without additional compensation, provide services reasonably necessary to (1) effect completion of all "punch list" work and to obtain final completion; (2) obtain warranties and guarantees to be provided under the Contract Documents; and (3) resolve start-up or initial operational difficulties.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 When requested by the Construction Manager, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on Project, provided that nothing in this paragraph shall require the Owner to independently perform architectural services or services required of the Construction Manager.

§ 4.1.2

§ 4.1.3 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 Article 7, (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 Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, when requested by the Construction Manager, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

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

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

§ 4.1.4.3 The Owner, when such services are reasonably required by the scope of the Project and are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234TM_2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services as necessary to design and complete the Project. The Owner shall provide the Construction Manager with a copy of the agreement between the Owner and the Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

Individual or Position	Rate
------------------------	------

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's

(Paragraphs deleted)

invoice in accordance with the Local Government Prompt Payment Act (see Section 11.3).

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ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after approval of the Control Estimate. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 6.1.5 DELETED.

§ 6.1.6 Unit prices, if any: As set forth in the exhibit attached to this Master Agreement for the individual project.

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 6.1.7 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Liquidated Damages, if any, shall be determined for each individual project and outlined in the exhibit attached to this Master Agreement for the individual project.. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect, or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for in this Agreement. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 6.1.8 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Changes in the Work

§ 6.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction. The

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Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 6.2.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.2.2 Increased costs for the items set forth in Sections 7.1 through 7.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 6.1.3.

§ 6.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work in comparison with the Control Estimate or the date of Substantial Completion, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 6.2.4 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.2.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval in writing of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 7.2.3 Wages or salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining

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agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

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§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; and (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

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§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not to Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 through 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 through 7.7; and
- .8 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 The Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Document, which discounts, rebates, and refunds shall accrue to the benefit of the Owner.

§ 8.2 For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager and Trade Contractors shall provide bonds for Work performed by each entity, respectively, as set forth in this Agreement pursuant to Article 11 of the AIA Document A201-2017, as amended. [THIS WILL BE PROVIDED IN THE COMMENTS TO THE AIA 201 2017, WITH THE INSURANCE CONSULTANT'S INPUT.]

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded based on cost plus a fee.

§ 9.2 DELETED

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

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ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments because the Contract Sum by checks payable directly to the Trade Contractors for the Work completed and to the Construction Manager for the Construction Fee, Reimbursable Expenses and any Work performed by the Construction Manager, as provided below, and elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AJA Document G702, Application and Certification for Payment, supported by AJA Document G703, Continuation Sheet.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Upon receipt of a properly submitted Certificate for Payment shall be made as provided in the Local Government Prompt Payment Act.

§ 11.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work and clearly setting forth the amount due under the Application for Payment to each Subcontractor, and the amount due to the Construction Manager for Construction Manager's Fee, and Reimbursable Expenses, all of which shall be shown as single and separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for receiving the Construction Manager's Applications for Payment. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has been completed.

§ 11.1.5 Subject to other provisions of the Construction Documents, the amount of each progress payment shall be computed as follows:

- .I Take the Direct Cost of the Work completed during the period covering the Application for Payment as adjusted by Change Orders applicable to that period, if any, less retention of ten percent (10%) clearly setting forth the amount due to each Subcontractor for the applicable progress payment;

§ 11.1.6 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and confirmation of Owner's payments to Trade Contractors. Construction Manager shall ensure that each Subcontract provides that retention often percent (10%) shall be withheld by the Owner from each Subcontractor Application for Payment and paid as a part of Final Payment.

(Paragraphs deleted)

§ 11.1.7

§ 11.1.7.1

(Paragraphs deleted)

Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraphs deleted)

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner directly to the Construction Manager for the Direct Cost of the Work for any Work performed by the Construction Manager and to the Trade Contractors for the remaining Direct Cost of Work, and to the Construction Manager for its Construction Fee and Reimbursable Expenses when

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- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Warranty Work as provided in Article 12 of AJA Document A201-2017 as amended, and to satisfy other requirements.
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq.

(Paragraphs deleted)

§ 11.3 Interest

(Paragraphs deleted)

Interest on late payments shall accrue in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 The method of binding dispute resolution shall be by litigation in a court of competent jurisdiction located in Cook County, Illinois or within the federal district courts of the Northern District of Illinois.

(Paragraphs deleted)

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination for Convenience

§ 13.1.1 The Owner may terminate this Agreement upon not less than seven days' notice to the Construction Manager for the Owner's convenience and without cause at any time.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination..

§ 13.1.3 In the event of termination of this Agreement pursuant to Section 13.1.1 after the commencement of the Construction Phase, the Owner shall pay to the Construction Manager under Section 13.1.2 and Trade Contractors for **Work** performed by each entity respectively, an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- .1 Take the Direct Cost of the Work incurred by the Construction Manager or Trade Contractor to the date of termination;
- .2 Add the Construction Manger Fee payable for the current period up to the date of termination, as prorated up to the date of termination, under Articles 4 and 5;
- .3 Add the Reimbursable Costs incurred by the Construction Manager up to the date of termination; and
- .4 Subtract the aggregate of previous payments made by the Owner.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 13.1.3.1. Owner may in its sole discretion, elect to require Construction Manager to assign all Subcontracts back to the Owner. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving any of the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

(Paragraphs deleted)

§ 13.2 Termination for Cause. The Owner may terminate this Agreement for cause in accordance with Article 14 of the A201 2017 as amended General Conditions.

(Paragraphs deleted)

§ 13.3 Suspension. Owner may suspend the Work as provided in A201TM-2017 General Conditions as amended. If such suspension exceeds fifteen (15) days, the Owner and Construction Manager may mutually agree upon an equitable

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adjustment to Construction Manager's compensation to account for increased costs resulting from delay events exceeding 15 working days in duration.

§ 13.4 Force Majeure. Neither party shall be liable for failing to perform obligations arising under this Agreement to the extent such failure is caused by fire, flood, earthquake, hurricane or another natural disaster, an act of God, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, failure of electricity or telephone service, provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017 as amended.

§ 14.2 Successors and Assigns

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and construction Manger acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

(Paragraphs deleted)

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under 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.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$ 1,000,000.00) each accident, (\$) each employee, and (\$) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 **Construction Phase**

After the Owner approves the Control Estimate, the Owner and Construction Manager shall purchase and maintain insurance as set forth in AIA Document A134-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A134™-2019 Exhibit A, and elsewhere in the Contract Documents.

§ 14.4

(Paragraphs deleted)

The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred regarding such lien and any resulting litigation, including attorney's fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 14.5 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any and ensure that all Subcontractors pay their laborers not less than the established prevailing rate or wages. 820 ILCS 130/1 et seq. The prevailing wage rates are revised by the Department of Labor periodically and are available on its website. Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act. Owner shall not be required to make any payments without receipt of certified employee records required by 820 ILCS 130/5.

§ 14.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project. 775 ILCS 5/1-105.

§ 14.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, religion, color, ancestry age, sex, sexual orientation, pregnancy, order of protection status, physical or mental disability, handicap, marital status, national origin, military status, or unsatisfactory military discharge, nor otherwise commit an unfair labor practice. Construction Manager shall require that no Subcontractor discriminates as set forth in this Section.

§ 14.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 et seq.

§ 14.9 Construction Manager certifies that it is not barred from contracting because of bid rigging or bid rotation. 720 ILCS 5/33 E-11.

§ 14.10 Ownership and Use of Documents. Section 1.5 of A201-2017 General Conditions as amended shall apply to both the Preconstruction and Construction Phases.

§ 14.11 **Governing Law**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

§ 14.12 **Assignment**

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The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontracts to the Construction Manager as provided herein, 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.

§ 14.13 Compliance with FOIA

As an independent contractor of Owner, records in the possession of the Construction Manager related to this Agreement may be subject to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/5-1 et seq.; 5 ILCS 140/7(2). The Construction Manager shall immediately provide Owner with any such records requested by the Owner to timely respond to any FOIA request received by the Owner. The Owner will review all such records to determine whether FOIA exemptions apply before disclosing the records, such that information properly exempt as proprietary or prohibited from release by other laws or exempt for other reasons will not be released. If the Construction Manager refuses to provide a record that is the subject of a FOIA request to the Owner and the Attorney General or a court of competent jurisdiction subsequently requires the release of the record or penalizes the Owner in any way, the Construction Manager shall reimburse the Owner for all costs, including attorneys' fees, incurred by the Owner related to the FOIA request and records at issue.

§ 14.14 Taxes

The Owner is a tax-exempt organization. Federal excise tax does not apply to the Owner and State of Illinois Sales Tax does not apply. The amounts to be paid to the Construction Manager hereunder are inclusive of all other taxes that may be levied, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Construction Manager shall be responsible for any taxes levied or imposed upon the income or business privileges of the Construction Manager.

§ 14.15 Indemnification

To the extent permitted by law, the Construction Manager agrees to indemnify, hold harmless, and release the Owner and its Board members, officers, agents, employees, and designees (collectively, the "Indemnitees") from all losses, claims, liabilities, injuries, damages and expenses, including attorney's fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person, including death, or property (including, but not limited to anyone or more of the Indemnitees) arising out of or occurring in connection with the errors, omissions or negligent acts of the Construction Manager, the Trade Contractors, Subcontractors, their employees, or agents or by the negligent breach of this Agreement, or with the wrongful acts committed intentionally by or at the direction of the Construction Manager, the Trade Contractors, Subcontractors, their employees, or agents, or any liability or penalty incurred by the Owner resulting from the Construction Manager's, the Trade Contractors, Subcontractors, their employees, or agents violation of any applicable federal, state or local law, statute, ordinance, code, rule or regulation.

Only to the extent necessary to prevent this provision from being void under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01, et seq., and particularly Section 1 thereof entitled "Indemnification of person from person's own negligence", this indemnity agreement shall not require the Construction Manager to indemnify an Indemnitee against that party's own negligence.

§ 14.16 Criminal Background

The Construction Manager understands that its work, in whole or in part, will be performed on public school property where there may be direct, daily contact with school students. The Construction Manager further understands and acknowledges that the State of Illinois requires that all employees of vendors, licensees, the Construction Managers or others having direct, daily contact with students are subject to a criminal background check and may not be listed on the State Sex Offender Registry. Prior to allowing any of its employees who will be performing the scope of work access to school property, the Construction Manager, at its expense, agrees to provide the Owner with the following:

1. Evidence that each employee, agent, contractor or other person performing work on school property under this Agreement was subjected to a criminal background check in conformity with 105 ILCS 5/10-21.9; that said persons are not listed on said Registry; and said persons have no criminal convictions for the offenses listed under 105 ILCS 5/10-21.9; and
2. The Construction Manager will provide the Owner, upon request, a copy of the criminal background check conducted on each such person.

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The Construction Manager will require all Trade Contractors and Subcontractors to comply with this Section and provide all required information described above to the Construction Manager, who will make such information available to the Owner.

In the event the Construction Manager fails to comply with the provisions of this paragraph and 105 ILCS 5/10-21.9, and as a result a suit or claim is instituted by a student for harm caused by an employee of the Construction Manager, or caused by an employee of a subcontractor to the Construction Manager, then in that event, the Construction Manager agrees to fully defend and indemnify, including reimbursement of attorney's fees and costs, the Owner against any such claims.

§ 14.17 Time Limits

The Owner and Construction Manager shall commence all causes of action against the other arising out of or related to this Agreement within the time period specified by applicable law. The Owner and Construction Manager agree that the time periods specified by applicable laws shall not commence until the date on which the Owner signs the Certificate of Substantial Completion.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A134H'--2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- .2 AIA Document A134™-2019, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Other Exhibits:
(Check all boxes that apply.)

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.6 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

Inil

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General Conditions of the Contract for Construction

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

« [Master Agreement for various projects utilizing a Construction Manager. Individual projects and the terms for those projects will be attached to this Master Agreement as exhibits.](#) »
« »

THE OWNER:
(Name, legal status and address)

« »

THE ARCHITECT:
(Name, legal status and address)

« »« »
« »

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

~~The Contract Documents consist of the Invitation to Bid, Instruction to Bidders, Bid Form, Agreement between Owner and Contractor, as amended, (hereinafter the Agreement), Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Schedules, Specifications, and addenda issued prior to execution of the Contract, other documents listed in the Agreement, as amended, and Modifications issued after execution of the Contract. A Modification is 1) a written amendment of the Contract signed by both parties, 2) a Change Order, 3) a Construction Change Directive, 4) an Architect's Supplemental Instruction, or 5) a written order for a minor change in the work issued by the Architect. 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, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.~~

§ 1.1.1.1

~~The Agreement, as amended, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if signed by Contractor and the authorized representative of Owner's Board of Education. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein. Any reference to any Contract Document shall mean the document as amended and/or supplemented for this Project.~~

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract ~~as amended~~ 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 ~~written Modification signed by Contractor, approved by Owner's Board of Education, and signed by the representative of Owner's Board of Education who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications.~~ The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.2.1

~~To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Education. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract grounds for termination of the Contract.~~

§ 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 Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents.

"Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractors and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. The Construction Documents shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. Figured dimensions shall be followed in preference to measurements by scale. All shall be checked against field measurements of existing conditions to be taken by the Contractor.

§ 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~~ Construction Documents

~~Instruments of Service~~ Construction Documents 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 Construction Documents~~ Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 ~~Initial Decision Maker~~ Project Manual

~~The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

§ 1.1.9 Product

The term "product" as used in the Contract Documents includes materials, systems, and equipment.

§ 1.1.10 Provide

Where the term "provide" appears, it shall be taken and interpreted to mean, "The Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and complete"

§ 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. During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless he shall have obtained an interpretation in

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writing from the Architect as to what shall govern before the submission of his Proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The Contractor shall have the right to appeal the Architect's decisions to the Owner. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents, 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.

§ 1.2.1.2 The specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "The Contractor shall" or "conforming to the requirements of" is intentional; omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the drawings. Words in singular shall include a plural whenever applicable, or the context so indicates.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 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.

§ 1.2.3.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) The Agreement, 2) Addenda, with those of later date having precedence over those of earlier date, 3) The Supplementary Conditions, 4) The General Conditions of the Contract for Construction, 5) Drawings and Specifications.

§ 1.2.4 Relation of Specifications and Drawings

The Subcontractor will base their bids on a reasonable interpretation for the greater quantity and quality of work. The Architect will make a reasonable interpretation of the appropriate work based on the information reasonably inferable within the contract documents. Subcontractors will provide information as to their understanding of the work requirements during the bid. The Owner will make the final decision based on the submitted information.

§ 1.2.5 Materials, Equipment and Processes

The Contractor, and all subcontractors, upon award of the work, will inspect the areas to receive equipment. Equipment will be modified to allow servicing of the equipment within the specified space. Equipment modifications required after the equipment is installed to allow servicing will be at the expense of the Contractor. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) days of receipt. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contractor Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details

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may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

§ 1.2.6 Standards and Requirements

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Agreement and until Final Completion, pursuant to the terms of the Agreement between Owner and Architect.

§ 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. The descriptive headings of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions following them.

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

~~§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service Construction Documents, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service Construction Documents, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service Construction Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' any reserved rights.~~

~~§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized-granted a limited license to use and reproduce the Instruments of Service Construction Documents provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service Construction Documents on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants copyright holder.~~

§ 1.6 Notice

~~§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.~~

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service Construction Documents or any other information or documentation in digital form. The parties will use AIA Document E203™-

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2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the public school district identified in the Contract Documents. The Board of education, by majority vote, is the only representative of the Owner having the power to enter into or amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price or agree to an extension to the date of Substantial or Final Completion. The Board will act as soon as possible to avoid undue delays. The Board shall designate authorized representatives to act on its behalf for day-to-day operations under the Contract and shall implement procedures and policies to expedite the approval of changes in the contract .

Owner's Board of Education hereby delegates to the Superintendent of Schools or designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed \$25,000.00, or will not increase the dates for Substantial or Final Completion by more than one hundred eighty (180) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Education; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated. It shall be further understood that this Contract is not written for the benefit of third parties. 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.

§ 2.1.3 The Owner shall require the Contractor and the Architect to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 2.1.4 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 ~~If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner.~~ ~~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. Other than the metes and bounds noted in the legal description of the site.~~ ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements. The Owner agrees to hire or otherwise fund investigations as necessary to verify the location of utilities, known and unknown, to facilitate the work.~~

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control

and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 All contract document information will be issued in electronic format. Contractor shall be entitled to distribute the contract documents in electronic format. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct defective Work, 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 or the Construction 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 restriction or derogation of the Owner's rights under Article 14 hereof."

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may immediately without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including, but not limited to, attorney's fees, compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such Change Order shall be deemed signed by the Contractor for the purposes stated in Section 7.2.1 even if the Contractor fails to physically sign such Change Order. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, at the Owner's option, the excess shall be deducted from any payment thereafter due or shall be paid by the Contractor immediately upon demand of the Owner. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner 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, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Additional Rights The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, and submittals approved pursuant to section 3.12.

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

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§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

§ 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. The Contractor represents and warrants by submission of a Proposal that he has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work. The Contractor shall not be entitled to any additional time or compensation for Contractor's failure to visit the site, or for any additional Work caused by the Contractor's fault, by improper construction, or by Contractor's failure to visit the site or to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.1.1 It shall be the duty of the Contractor to verify all dimensions given on the Drawings, and to report any error or inconsistency to the Architect before commencing work.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Owner and the Architect any errors, omissions, or inconsistencies in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions or revised Construction Documents from the Architect. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents, unless the Contractor recognized or should have recognized such error, inconsistency, or omission, and failed to report it to the Architect, in which case the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and the Contractor shall bear all attributable costs for correction. The Contractor agrees to release and hold harmless the Owner for errors, inconsistencies or omissions in the Contract Document. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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§ 3.2.2.1 The Owner does not guarantee the exactness of grades, elevations, dimensions, existing conditions, or locations given on any drawings issued by the Architect or the work installed by other contractors. The Contractor shall, therefore, satisfy himself as to the accuracy of all grades, elevations, existing conditions, dimensions and locations. In all cases of interconnection of the Contractor's work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Upon identifying a conflict or error, Contractor shall notify the Owner and Architect of such conflict or error in a reasonable timeframe. If the CM and/or Contractor is negligent in notifying the owner and design team in a reasonable time. Any errors due to the Contractor's failure to so verify all such grades, elevations, existing conditions, locations or dimensions that Contractor should reasonably have identified shall be promptly rectified by him without extra cost to the Owner.

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§ 3.2.3 Neither the Owner nor the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. However, Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs the obligations in Sections 3.2.2 and 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless the Contractor recognized or should have recognized the error, inconsistency, omission, or difference and failed to report it. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines Contractor should have reasonably identified during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. Upon identifying a conflict or error, Contractor shall notify the Owner and Architect of such conflict or error in a reasonable timeframe. If the CM and/or Contractor is negligent in notifying the owner and design team in a reasonable time. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

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§ 3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.7 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed.

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§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. The Contractor shall be responsible for any damages to property or injuries to persons, or to any other harm, caused by the Contractor's, a Subcontractor's, or a Sub-subcontractor's employees. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense. Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

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

§ 3.3.4 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required of or performed by persons other than the Contractor.

§ 3.3.5 The Contractor shall properly and efficiently coordinate all portions of the Work performed by all trades and Subcontractors. The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration 3.3.6

§ 3.3.6 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

§ 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions hereunder, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

§ 3.4.2.3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full time supervision of the approved superintendent described in Section 3.9.3. The Contractor shall be responsible for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Contractor, any of its Subcontractors, or claiming by, through or under the Contractor, and for any damages, losses, costs, and expenses resulting from such acts or omissions. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area,

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shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's or Subcontractors' direct or indirect supervision and Owner's students or employees and the general public. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Repeated removal of Contractor's or Subcontractor's forces, or one serious infraction, shall constitute a substantial breach of the Agreement justifying the immediate termination by Owner pursuant to Article 14. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NONCOMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4 Including, but not limited to, the specific requirements of Article 10, Contractor, all Subcontractors, Sub-subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

§ 3.4.5 Contractor shall not send to any school building or school property any employee or agent who will have direct, daily contact with students and who would be prohibited from being employed by the District due to a conviction of a crime listed in 105 ILCS 5/10-21.9 or who is listed in the Illinois Sex Offender Registry or the Illinois Murderer and Violent Offender Against Youth Registry. Contractor shall make every employee who will be sent to any school building or school property and who will have direct, daily contact with students available to the District for submitting to a fingerprint-based criminal history records check pursuant to 105 ILCS 5/10-21.9. The check shall occur before any employee or agent is sent to any school building or school property. Contractor will reimburse the District for the costs of the checks. The District must provide a copy of the report to the individual employee but is not authorized to release it to Contractor.

The Contractor will require all Trade Contractors and Subcontractors to comply with this Section and provide all required information described above to the Contractor, who will make such information available to the Owner.

In the event the Contractor fails to comply with the provisions of this paragraph and 105 ILCS 5/10-21.9, and as a result a suit or claim is instituted by a student for harm caused by an employee of the Contractor, or caused by an employee of a subcontractor to the Contractor, then in that event, the Contractor agrees to fully defend and indemnify, including reimbursement of attorney's fees and costs, the Owner against any such claims.

§ 3.4.6 Illinois Department of Labor Requirements and Prevailing Wage Act

§ 3.4.6.1 Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Contractor shall ensure that any Subcontractors shall comply with the Illinois Prevailing Wage Act. Contractor and Subcontractors shall include in Bids the cost for the current prevailing wage. The prevailing wage rates are revised by the Department of Labor periodically and are available on its website. As changes are made in these prevailing wages, the Contractor and Subcontractors performing work on the project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements are the obligation of the Contractor and Subcontractors.

§ 3.4.6.2 To the extent that there are any violations of the Prevailing Wage Act and any demands are made upon the Owner, Contractor or Architect by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing work on the project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner, Contractor and Architect free and harmless from all costs incurred, directly or indirectly, by the Owner, Contractor or Architect in responding to and complying with demands made by the Department of Labor, or an aggrieved employee and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner, Contractor and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§ 3.4.6.3 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workman, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

§ 3.4.6.4 The Contractor and each Subcontractor shall submit certified payrolls to the Department of Labor's electronic database and maintain certified payrolls in accordance with the Illinois Prevailing Wage Act.

§ 3.4.6.5 Upon 2 business days' notice, the Contractor and each Subcontractor shall make available for inspection the records identified in the Prevailing Wage Act to the Owner in charge of the project, its officers and agents, and to the Director of Labor and his deputies and agents. Upon 2 business days' notice, the Contractor and each Subcontractor shall make such records available at all reasonable hours at a location within this State.

§ 3.4.7 The Contractor shall comply with the non-discrimination federal, state and local laws, including without limitation the Equal Employment Opportunities Act, the American with Disabilities Act and Illinois Human Rights Act. The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigation and complaint process available through the Department and the Commission; and (vii) protection against retaliation as provided by Section 6-101 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105(A)(4) of the Human Rights Act, 775 ILCS 5/2-105(A)(4). The Contractor agrees to fully comply with the requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., including but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder. The provisions of Section 14.2 are included in this Amendment pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Contractor shall be required to comply with these provisions only if and to the extent they are applicable under the law.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The warranty will not be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedure and advises the Architect of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the Owner's sole discretion. Inability or refusal of the Subcontractor or supplier responsible for the defective work to correct such work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from the applicable Work's Final Substantial Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be

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free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.5.3 Unless an alternative guaranty is specified in a particular division of the Specifications that is longer in duration than one year, the Work shall be guaranteed by the Contractor against defect in material and workmanship for a period of one year from the date of ~~Final~~Substantial Completion.

§ 3.5.4 Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents.

§ 3.6 Taxes

Retail sales tax will not be included in the bid amount. The Owner is exempted by Section 3 of the Illinois Use Tax Act from paying any of the taxes imposed by the Act and sales to Owner are exempt by Section 2 from any of the taxes imposed by the Act. The Department of Revenue of the State of Illinois has declared that sales of materials to construction contractors for conversion into real estate for schools, governmental bodies, agencies and instrumentalities are not taxable retail sales. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. ~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 ~~The Contractor shall secure all permits, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received, except the Owner will obtain approvals from the Illinois State Board of Education. The Owner shall pay for all permits, licenses and inspections. A local building permit is not required; however, licenses, bonds and utility or engineering permits may be required. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.~~

§ 3.7.1.1 All cash deposits, bonds, fees, inspections, licenses, or permit fees shall be paid for by the Contractor.

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

§ 3.7.3 ~~If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the Architect and Owner in writing to be addressed by the Architect and Owner. If the Contractor performs Work when contractor knows or reasonably should have known knowing it to be contrary to any 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 damages, losses, costs, and expenses ~~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 notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect

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determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 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 the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made 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. Important communications by the superintendent shall be confirmed in writing. Other communications by the superintendent shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor's selection of a superintendent must be approved by Owner, and Contractor shall not replace the superintendent without Owner's consent and until a replacement has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-Subcontractors and their employees. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

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§ 3.9.4 The superintendent shall provide an on-site construction office, either in a construction trailer provided by the Contractor or in a room in the building set aside by the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's ~~information approval~~ a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. The Owner's or Architect's silence to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Architect's or Owner's silence to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

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

§ 3.10.3 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to the Owner and Architect.

~~§ 3.10.4 At the time of each Application for Payment, the Contractor shall provide to the Owner and the Architect an update on the project schedule and a written status report, which includes a description of the progress of the Work and, if progress is behind schedule, the Contractor's plan to recover the original schedule. Contractor shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.~~

§ 3.10.5 The Contractor shall hold meetings at least weekly (or at such intervals as are otherwise acceptable to the Owner) at the site. The Contractor shall provide the subcontractors, Architect and the Owner with a schedule. The Contractor shall require subcontractors currently working at the site(s) to have a representative present for such meetings.

§ 3.10.6 Within thirty (30) days of the award of the Contract, the Contractor shall provide a written report to the Architect and the Owner that includes a list of the Contractor's suppliers, a list of materials and equipment to be purchased from suppliers and fabricators, the time required for fabrication, and the scheduled delivery dates for materials and equipment. Copies of the Contractor's purchase orders shall be delivered to the Architect and the Owner as soon as possible after receipt by the Contractor.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field

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changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. ~~These, along with all operating manuals for all equipment, shall be available to the Architect at all times and delivered to the Architect for submittal to the Owner after completion of the Work but before the final Application for Payment. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~

§ 3.12 Shop Drawings, Product Data and Samples

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

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 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 how the Contractor proposes to conform to ~~the information given and the design concept expressed in~~ the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and ~~coordinated-verified that~~ the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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, except for any such errors or omissions which are within Architect's statutory or contractual design responsibility.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of

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the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.12.11 ~~The Contractor shall submit complete drawings, data and samples to the Architect at least fifteen (15) days prior within a reasonable time prior to the date the Contractor needs the reviewed submittals and samples returned. The Contractor shall be prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) a reasonable number of days of after the award of Subcontract(s). Once samples of all key items are received, the Architect will finalize color selections.~~

§ 3.12.12 ~~The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. In the event that additional review of submittals are required due to Contractor submission error, the The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals. The Owner will compensate the Contractor for time required to research and correct materials rejected based on the Architect's incomplete specifications.~~

§ 3.12.13 ~~The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer.~~

§ 3.13 Use of Site

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

§ 3.13.1 ~~Only material and equipment which is to be used directly in the construction of this Project shall be brought to and stored on the job site by the Contractor. After equipment is no longer needed on this Project, it shall be promptly removed from the job site. Protection of all construction materials and equipment stored at the Job Site is the sole responsibility of the Contractor.~~

§ 3.13.2 ~~The Contractor and its subcontractors, and their respective employees, agents, and consultants, shall not enter any part or portion of the building work sites when students are present without the Owner's written authorization.~~

§ 3.13.3 ~~The Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.~~

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Construction Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents and Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

§ 3.14.3 Only tradespersons skilled and experienced in cutting and patching shall perform such work.

§ 3.15 Cleaning Up

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

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

§ 3.15.3 All exterior and interior work shall be cleaned using specific materials as recommended for surfaces to be cleaned. Damage to any surfaces due to improper cleaning methods of materials shall be made good by Contractor, at no cost to the Owner.

§ 3.15.4 Building(s) shall be left broom clean.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof including, but not limited to, attorney's fees, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, except to the extent of Contractor's fault, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor waives any right of contribution against and shall indemnify, defend and hold harmless the Owner, Owner's Representative, the Architect, and each of their board members, agents, consultants and employees from and against all claims, damages, losses and expenses (including but not limited to personal injury, property damage (real and personal) and loss of use of property), including but not limited to attorneys' fees, court costs and expert witness fees arising out of, relating to, resulting from or in

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connection with (1) any act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, or (2) any breach of the Contract Documents. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in the Contract Documents. Further, the Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, keep and save harmless and defend the School Indemnitees. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In any and all claims by an employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification and defense obligations in the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Contractor and every Subcontractor agree to assume the entire liability for all personal injury claims suffered by their own employees allegedly injured on the Project and waive any limitation of liability defense based on workers' compensation acts, or interpretations thereof, against claims by Owner for indemnification or contribution, and further agree to indemnify and defend Owner and its board members, agents and employees and consultants (Indemnitees) from and against all such claims, damages, losses and expenses, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitee's own negligence, and further agree to pay any contribution appropriate for Contractor's and Subcontractors' own negligence. Contractor shall ensure that this provision is inserted in every contract between Contractor and Subcontractors. If such provision is not contained within a Subcontractor contract, or if a Subcontractor's insurance does not cover or is insufficient to pay such claims, Contractor shall assume all Subcontractor liability for such indemnification defense of or contribution to Owner. In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 "Claims, damages, losses and expenses" as these words are used in the Contract Documents shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees, court costs, expert witness fees and costs incurred in defense of the claim or in bringing an action to enforce the provisions of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity cost, etc. incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 Contractor's indemnity obligations shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under federal or state law or the law of other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or Contractor's employees' method of execution of the Work.

§ 3.18.5 To the extent prohibited by the Construction Contract Indemnification for Negligence Act, 740 ILCS 3511, the indemnification obligations of Contractor under the Contract Documents shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees, arising out of their own negligence.

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

§ 3.19 If the work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner, the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade. In case the progress of the work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the 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.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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§ 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 ~~DELETED: the Contractor Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may shall notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14 day period shall constitute notice of no reasonable objection.~~

§ 5.2.2 ~~DELETED. The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. All contracts between the Contractor and subcontractors shall be made in writing, shall be assignable to the Owner, and shall contain the following sentence: "The Owner is an intended third party beneficiary of this subcontract."~~

§ 5.2.3 ~~DELETED. If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, 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 ~~DELETED. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected without written approval of the Owner. The Contractor further acknowledges and agrees that after award of the Contract to the Contractor, any savings on changes to contracts with subcontractors or substitute subcontractors will be for the benefit of the Owner and will not be used for the benefit of the Contractor or to increase the Contractor's profit on the Project. The foregoing benefit to the Owner shall include any adjustment in the amount of the price of a contract to less than the quoted price of the subcontractor upon which the Contractor's fixed bid price or Contract Sum was based. Further, if a manufacturer or supplier of any machinery or equipment, including but not limited to heating and air conditioning units or systems, changes specifications or offers incentives, discounts or lower prices after award of the Contract to the Contractor, those savings will inure to the benefit of the Owner and not the Contractor, subcontractor, manufacturer or supplier, if the Owner or Architect makes reasonable objection to such substitution.~~

§ 5.2.5 Each subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums or Guaranteed Maximum Price shall be allowed for failure to so inspect or investigate.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement,

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copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in amount commensurate with the Work to be performed by the Subcontractor. The Contractor shall be responsible for any and all Subcontractors working under him and shall carry insurance for all Subcontractors or ensure that they are carrying it for themselves so as to relieve the Owner, Architect and Architect's Consultants of any and all liability.

§ 5.3.2 The Owner and Architect assume no responsibility for overlapping or omission of parts of the Work by various Subcontractors in their Contracts with the Contractor.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for ~~any unperformed portion of a portion of~~ the Work is reassigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by either in accordance with Article 14 or abandonment of the Project by the Contractor 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; and
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds relating to the Contract; and
- .3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

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.

§ 5.4.2~~3~~ Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.3 Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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

schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 ~~It shall be the responsibility of the Contractor to assist the Owner in reviewing and coordinating the and scheduling of work performed by any of the Owner's separate contractors.~~ The Contractor shall afford the Owner and Separate Contractors reasonable site access and opportunity for introduction and storage or staging 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. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's separate contractors. Contractor shall review Owner's contract with Owner's separate contractors and become familiar with the requirements and scope of services contained therein.

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

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

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect-Owner~~ will allocate the cost among those responsible.

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, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order,

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Construction Change Directive, or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may at its option refuse the extension of time and have the Contractor perform the work within the original schedule provided all reasonable costs for completing the work including overtime and acceleration costs are included in the Change Order.

§ 7.1.5 If a proposal for additional work is requested by the Owner from the Contractor which involves additional time, at the Owner's option, the Owner may extend the completion date for that portion of the work included in the change, without extending the Contract Time for the remainder of the work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, and bond and insurance costs.

§ 7.1.7 For any adjustments to the Contract Sum based on other than the unit price method, overhead, profit, and general conditions combined shall be calculated at the following percentages of the cost attributable to the change in the work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors five percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent of the amount due the Sub-subcontractor.
- .5 Costs to which overhead, profit, and general conditions is to be applied shall be determined in accordance with Sub-Sections 7.3.6.1 through 7.3.6.5.
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

§ 7.1.8 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by:

- .1 A complete itemization of costs including labor, material.
- .2 Subcontractor's, Sub-subcontractor's and material suppliers for their portions of the work itemized to include labor, material.
- .3 Labor costs shall be indicated hourly wage and fringe benefits. Labor hours shall be provided for each phase of the work.
- .4 Material costs shall include unit costs and units required where applicable.

§ 7.1.9 The Contractor understands that change orders to the contract which increase or decrease the cost by \$10,000 or more, or the time of completion by 30 days or more, will require written documentation by the Owner that the changes:

- .1 were not reasonably foreseeable at the time the contract was signed;

.2 were not within the contemplation of the contract as signed; and

.3 are in the best interest of the district or region and authorized by law.

§ 7.1.10 The Contractor shall provide written notice to the Architect and the Owner if overtime labor rates are included in the computation of the cost of a proposed Change Order or Construction Change Directive.

§ 7.1.11 In the event that the Contractor and the Owner do not reach agreement on a Change Order or a Construction Change Directive, the Owner may, in its discretion, delete the labor, materials and equipment that are the subject of the Change Order or the Construction Change Directive from the Work to be performed under the Contract Documents. The Owner shall receive credit from the Contractor for the labor, materials, and equipment, including Contractor overhead and profit attributable to the deleted work. The Owner may complete the deleted work through another contractor or subcontractor.

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 **Actual** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 **Actual** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 **Actual** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 **Actual** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

- .5 Actual Costs of supervision and field office personnel directly attributable to the change. Cost of supervision, unless directly attributable to change, will not be allowable as an itemized cost for any additions (or credited for deletions) unless a change in the Contract Time is made.

Overtime when specifically authorized by the Owner shall be paid for by the Owner on the basis of a premium payment only, plus the cost of insurance and taxes based on the premium payment. Overhead and profit will not be paid by the Owner for overtime. Field tickets must be signed by the Architect for verification of overtime hours.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order. Upon resolution of exact scope, Contract Sum change, and Contract Time change, a Change Order shall be prepared incorporating the Construction Change Directive.

§ 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 computed in accordance with Section 7.3.7 actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change. Also, if the amount of either the credit or the addition is in dispute, the amount of the other, non-disputed item may not be included in Applications for Payment. Overhead and profit will be included in credits to the same extent they are included in additions.

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

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

§ 7.3.11 Change Orders that result in a net decrease in or credit to the Contract Sum must include a credit to the Owner for the Contractor's overhead and profit as described in Section 7.1.7.

§ 7.4 Minor Changes in the Work

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

§ 7.5 Substitutions

After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of those specified in the Contract Documents will be considered only under one or more of the following conditions:

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- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products, through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- .5 When it is clearly seen, in the judgment of the Architect and with the Owner's approval, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.

Substitution requests shall be written, timely, and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

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-Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the first business day after Contractor's receipt of the written Notice to Proceed. The Notice to Proceed shall not be issued by Architect until the Agreement (or Amendment Number 1, if Contractor is a Construction Manager at Risk) has been signed by the Contractor, approved by Owner's Board of Education, signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of his responsibility to comply with Article 11, 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. The date of Final Completion is the date certified by the Architect in accordance with Article 9. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur ~~not more than 30 days within a reasonable amount of time~~ after the date of Substantial Completion.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean working day, excluding weekends and legal holidays. 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 stipulates confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions

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documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner or by other causes which the Architect and Owner determine, in their sole discretion, may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine, pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 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.

§ 8.3.4 Notwithstanding other provisions in this Contract, Contractor shall not be entitled to any recovery of damages arising out of any event or delay caused within Contractor's control and/or for "Acts of God", including without limitation adverse weather conditions, which prevents such early completion of the Work.

§ 8.3.5 Where a delay occurs that is beyond the Contractor's control and when the delay is not reasonably unacceptable, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the Owner's submission date for the Board of Education's review and approval of such payment at the next Board of Education meeting or, if the Owner's Board of Education approves otherwise, before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

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

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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 has not been invoiced by a ~~does not intend to pay a~~ Subcontractor or supplier, unless Contractor has self-performed the Work, such Work has been performed by others whom the Contractor intends to pay. However, this Section will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the Subcontract.

§ 9.3.1.3 No interest will be paid upon retention.

§ 9.3.1.4 Contractor shall submit all payment requests to the Architect for all work completed during the previous time period. Requests submitted late will not be processed until the following month. Contractor shall include the Contractor's waiver of lien for the full amount and partial subcontractor waivers of lien in the amounts of the previous payment request.

§ 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. Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. The Owner shall have no responsibility or liability to the Contractor for the safekeeping of materials and equipment stored at the site or off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 The Contractor shall submit his application for payment as outlined in Section 9.3 on the first of the month, and the Owner will make payment accordingly promptly after receipt of the Architect's Certificate. Each partial payment request shall be made monthly and Contractor shall request payment of ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the work less the aggregate of previous payments in each case. The Owner reserves the right to reduce retainage prior to substantial completion. Retainage shall not be reduced below 10% until all closeout documents as required in the Instruments of Service have been received, reviewed and approved by the Architect.

§ 9.3.5 Before each certificate for payment is issued, the Contractor shall furnish to the Architect a complete statement of the amounts due to Subcontractors, parties supplying material, and for his own materials and labor, on AIA Document G702 and G702A "Application and Certificate for Payment."

§ 9.3.6 A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of Subcontractors and suppliers who were included in the immediate preceding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers.

§ 9.3.7 Upon giving ten (10) days notice in writing to the Contractor, the full contract retainage may be reinstated and the retention restored to the basis established in Section 9.3.4 if the manner of completion of the work and its progress do not remain satisfactory to the Owner, or if any surety of Contractor withholds its consent.

§ 9.3.8 All material necessary for the construction of this Project, delivered upon the premises, shall not be removed from the premises without written consent of the Owner.

§ 9.3.9 The Contractor's request for final payment shall include: (1) the Contractor's Final Lien Waiver in the full amount of the contract; and (2) final lien waivers in the full amount of their contracts from all subcontractors and suppliers for which final lien waivers have not previously been submitted.

§ 9.4 Certificates for Payment

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work, determined that, in the Architect's professional opinion, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Construction Documents and Contract Documents, that the Architect has critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, and that in the Architect's opinion the Contractor is entitled to payment in the amount certified. The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld. The Owner shall advise the Contractor in writing concerning any reasons based on the contract documents to withhold the processing of payments.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- .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; or
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

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

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

§ 9.5.4 Notwithstanding any provision contained within this Article if the Work has not attained Substantial Completion subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section. If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 The Owner shall not be required to make payment unless in its own independent judgment it accepts the Architect's Certificate.

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.5~~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~~6~~ Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both,

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under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8-7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

1. deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
2. issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled. If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and the Construction Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than five inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign and issue Owner's a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the

Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment shall be sufficient to increase the total payments to 95 percent of the contract sum, less such amounts as the Architect shall determine for incomplete work and unsettled claims.

§ 9.9 Partial Occupancy or Use

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

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

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. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

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

The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 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.

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

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall at its sole cost and expense 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

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10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 All Construction documents pertaining to this Work, and the joint and several phases of construction hereby contemplated, are to be governed, at all times, by applicable provisions of the Federal Law.

§ 10.2.10 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

§ 10.2.11 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.1.1 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the Projects site(s) except to the extent such Hazardous Materials: (1) are necessary for the prosecution of the Work; (2) are required pursuant to the Contract Documents; and (3) have been approved in writing by the Owner. Any Hazardous Materials allowed to be used on the Project site(s) shall be used, stored, and disposed of in writing as directed in writing by the Owner. Any Hazardous Materials allowed to be used in the Project site(s) shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus hazardous Materials, as well as, any other Hazardous Materials that have been placed, released, or discharged on the Project site(s) by the Contractor or any of its employees, agents, suppliers, or subcontractors, shall be removed from the Project site(s) at the earlier of (1) completion of the Work requiring the use of such Hazardous Materials; (2) the completion of the Work as a whole; or (3) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site(s). The Contractor shall provide the Owner with copies of all warning labels on products that the Contractor or any of its subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right to Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such

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cleaning or servicing shall be collected and removed from the Project site(s) in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, that relate to any Hazardous Materials on the Project site(s). Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by the Owner), and hold the Owner harmless from any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing and remedying the effect of any Hazardous Materials on, under, from, or about the Project site(s), arising out of or relating to, directly or indirectly, the Contractor's or its subcontractor's failures to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of transportation Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and all substances, materials, or wastes that are or become regulated under federal, state, or local law.

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or comparable rating service. The comprehensive general liability, property damage, auto liability, and umbrella liability insurance policy shall name the District, its Board, Board members, employees, and agents, and the Architect and Architect's consultants as an additional insured on a primary noncontributory basis with a waiver of subrogation in favor of the District (the waiver of subrogation shall also apply to the workers' compensation insurance). The Contractor shall provide the District with certificates of insurance and/or copies of policies reasonably acceptable to the District evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement. The failure to provide acceptable insurance shall be deemed a breach of this Agreement entitling the District to terminate this Agreement immediately. All policies of insurance shall provide by endorsement that no coverage may be canceled, terminated, or reduced by the insuring company without the insuring company having first given at least 30 days prior written notice to the District by certified mail, return receipt requested. The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Owner requires that the bond surety be licensed to do business in Illinois must carry a BEST RATING of A+ and that the Owner has no objection to the bond surety.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall deliver the required bonds to the Owner not later than ten days following the date of notification of the Award of Contract or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney. Such bonds shall be on the appropriate form provided by the American Institute of Architects and shall bear the same date as, or a date subsequent to, the date of the Contract.

§ 11.1.6 The failure of the Contractor to supply the required bonds within 10 days after the prescribed Agreement forms are presented for signature, or if the bonding company finds that the Contractor is NOT bondable, shall constitute a default, and the Owner may award the Contract to the next responsible low bidder.

§ 11.1.7 If at any time the Owner becomes dissatisfied with any Surety or Sureties then upon the Bonds, or for any other reason such Bonds shall cease to be adequate security for the Owner, the Contractor shall, within five (5) days after notice to do so, substitute acceptable Bonds in such forms and sum and signed by such other Sureties as may be satisfactory to the Owner. No further payments shall be deemed due nor shall be made until the new Sureties shall have qualified.

§ 11.1.8 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the Surety and Contractor are each responsible to make full payment to the Owner for any and all additional services of

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the Architect as which are required as a result of the Contractor's default and in protecting the Owner's right under the Agreement with the Contractor.

§ 11.1.9 The Contractor must within ten (10) days after the execution of this Agreement furnish a Performance Bond agreeing to pay not less than the prevailing wage for work to be performed in accordance with the Contract and the laws of the State of Illinois, and agreeing to pay all sums of money due for labor, materials, apparatus, fixtures or machinery and transportation with respect thereto, as in said Payment Bond provided, each dated the same day as the Agreement, in the forms prescribed by the Owner and each in an amount equal to the Contract Sum with a corporate Surety or Sureties acceptable to the Owner authorized to do business in the State of Illinois. These Bonds shall be maintained by the Contractor and shall remain in full force and effect until final acceptance of the work by the Owner or sixty (60) days following the date of Final Payment, whichever occurs later. The Contractor shall agree and shall cause the Surety to agree to be bound by each and every provision of the Contract Documents.

§ 11.1.10 In the event the Surety will make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt or if it shall file a voluntary petition in bankruptcy or shall in the opinion of the Owner be insolvent, the Contractor shall agree forthwith upon request of the Owner to furnish and maintain other corporate Surety with respect to such bonds satisfactory to the Owner.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 Notwithstanding any other provision in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, or its insurance carrier or any self-insured risk pool of which it is a member, may have against the Architect, Contractor or Subcontractor of any tier, or any of their employees, agents, consultants, officers and directors. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the

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

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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

§ 11.6 Additional Insurance Requirements

The Contractor is responsible for determining that subcontractors are adequately insured against claims arising out of or relating to the Work. The premium cost and charges for such insurance shall be paid by each subcontractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in

accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at the Contractor's sole expense, after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents and pay all attorney's fees and expenses related thereto, immediately upon demand.

§ 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 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.7 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

~~This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in the same county as the Project, or the federal district court for the Northern District of Illinois. The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

§ 13.2 Successors and Assigns

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

~~**§ 13.2.2** The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Notwithstanding any other term or provision in this Article 13 to the contrary,

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in the event that any testing or inspection of the Work or any part thereof reveals defects in materials or workmanship, then the Contractor shall remedy such defects and shall bear all costs and expenses associated with such testing which is related to determining whether such defects have been properly remedied.

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

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

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

§ 13.5 Interest

Interest shall accrue in accordance with the Local Government Prompt Payment Act (50 ILCS 505). (All references to interest payments throughout the contract documents are hereby voided. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Regulations

§ 13.6.1 The Contractor and/or Subcontractor warrant/s that s/he is familiar with and s/he shall comply with Federal, State and local laws, statutes, ordinances, rules and regulations, Board of Education Rules and Policies, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the contract including without limitation Workmen's Compensation Laws, minimum salary and wage statutes and regulations, laws with respect to permits and licenses and fees in connection therewith, laws regarding maximum working hours, and, without limitation, such other laws and regulations as are specifically described below. Additionally, Contractor and subcontractor warrant that s/he shall comply with any amendments to such Federal, State and local laws, statutes, ordinances, rules and regulations that are enacted thereafter during the performance of the Work and under this Contract. To the extent that there are any violations of any of the applicable laws, rules, regulations and/or court orders/decrees mentioned herein, Contractor and Subcontractor shall be responsible for indemnifying and holding both the Owner and Architect free and harmless from all costs, fees and expenses incurred, directly or indirectly and including without limitation attorneys' fees, by the Owner of the Architect in responding to and complying with demands made by any of the governmental departments/agencies and/or the courts, or an aggrieved employee or person and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to any compliance with the applicable laws, rules and regulations referenced herein. No plea of misunderstanding or ignorance thereof will be considered.

§ 13.6.1.1 Whenever required or upon the request of the Architect or Owner, the Contractor or subcontractor shall furnish the Architect and the Owner with satisfactory proof of compliance with said Federal, State and local laws, statutes, ordinances, rules, regulations, orders, and decrees.

§ 13.6.2 Prior to entering this Agreement, Contractor shall certify to the Owner that the Contractor is in compliance with Illinois law and not barred from bidding on the Contract as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the Criminal Code of 1961 (720 ILCS 5/33E).

§ 13.6.3 Upon Owner's request, Contractor shall provide, at its costs, evidence to the Owner that its employees are physically fit to perform the duties required to complete the Project and are free from communicable diseases in compliance with Section 24-5 of the Illinois School Code, 105 ILCS 5/24-5.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days after the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if he submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if he fails to make prompt payment to Subcontractors or for materials or labor or otherwise breaches his obligations under any subcontract with a Subcontractor; or if a mechanic's or material man's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or if he otherwise violates any provision of the Contract Documents; then the Owner, without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, the Owner may, after giving the Contractor and the surety under the Performance Bond and under the Labor and Material Payment Bond described in Section 11.5, seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days after the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Owner-Contractor Agreement pursuant to this Section 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity. The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .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.

§ 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 all costs to the Owner of completing the Work, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination. If such costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner immediately upon the Owner's demand. The costs to the Owner of completing the work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount, if any, to be paid to the Contractor shall be certified by the Architect, upon application, in the manner provided in Section 9.4, and this obligation for payment shall survive the termination of the Contract. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 The Owner may, upon seven (7) days written notice to the Contractor, terminate the Agreement between the Owner and Contractor without cause. Upon written request and submittal of the appropriate documentation as required by the Owner, the Owner shall pay the Contractor for all work performed by the Contractor to the date of termination that has been approved by the Owner. The Owner may, upon the Contractor executing such a confirmatory assignments as the Owner shall request, accept and assume all of the Contractor's obligations under all subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that the Contractor has incurred in good faith in connection with the Work. Upon receipt of notice of termination, the Contractor shall cease all operations on the date specified by the Owner, terminate subcontracts not assumed by the Owner, make no further orders of materials or equipment, complete work not terminated (if any), and provide such reports as may be requested by the Owner and the Architect as to the status of the Work and the Work remaining to be completed. The Owner's right to terminate the Contract under this Section shall be in addition to, and not in limitation of, its rights to stop the Work without terminating the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Education has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties to the Contract seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

~~DELETED. The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

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§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given within seven (7) calendar days after the event giving rise to the claim. The Contractor's claim shall include an estimate of cost and of probable effect of the delay on the progress of the Work. In the case of a continuing delay only one claim is necessary. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a

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response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect 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.

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

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

§ 15.2.7 ~~6~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 ~~7~~ 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, 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 15.4 Arbitration~~

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be~~

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made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

~~§ 15.4.4 Consolidation or Joinder~~

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

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

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

ARTICLE 16 LIMIT TO AVOID INCORPORATION OF RESPONSIBILITY BY REFERENCE

Where any specification which is incorporated herein by reference, through the words "and/or as directed by the Architect," or phrases having a similar effect appear to give the Architect the right to direct something other than that specified, the Architect has in fact no such right to except as it may be established in specific instances in portions of this Instruments of Service other than in said specifications.

ARTICLE 17 INCORPORATION OF CONTRACT TERMS WITH SUBCONTRACTORS

Contractor agrees that it will be responsible to incorporate all of the terms and conditions herein, including all amendments to this Contract, with any and all of the Subcontractors as well as any Subcontractors retained by Subcontractors. Contractor acknowledges that it is the Owner's intent that all of the terms and conditions herein, including all amendments to this Contract, will be adhered to by the Contractor and all Subcontractors performing any Work in this project.