

Agenda of Regular Meeting

The Board of Trustees Van Buren ISD

A Regular meeting of the Board of Trustees of Van Buren ISD will be held March 3, 2021, beginning at 4:00 PM in the Virtual
490 S Paw Paw Street
Lawrence, MI 49064.

The Board of Education meeting will be held *virtually* until further notice to comply with the *Michigan Safe Start Plan* and the Michigan Department of Health and Human Services Epidemic Order under MCL 333.2221.

The public is welcome to call into the Van Buren Intermediate School District Board of Education meetings by dialing the number below at no cost. If you require accommodations to access these meetings or would like to provide input or ask questions on any business that will come before the Van Buren Intermediate School District Board of Education at the meeting, please contact Jeff Mills at jmills@vbisd.org.

Public Phone Number: 1- 415-655-0001

Access code: 160 037 1670 **Please sure to include the access code.*

I. REGULAR MEETING

A. Consent Agenda - **(Roll Call Vote)**

1. Minutes

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The **regular meeting** of the Van Buren Intermediate School District Board of Education was held **virtually** on **February 3, 2021**, in the Board of Education office and called to order at **4:00 PM**. The following members were present via remote connection: Middaugh- Venice, FL; Weiss – South Haven, MI; Crandall, Winter Haven, FL, MI; Kent, Hartford, MI; and Sage, Gobles, MI. Absent: None.

Weiss moved to approve the Consent Agenda (*January 6, 2021 Minutes, January 25, 2021 Special Meeting Minutes; January 28, 2021 Special Meeting Minutes; Voucher Budget Summary, Imprest Summary, and Payroll Summary*). Supported by Middaugh. Roll call vote: Weiss – yes, Middaugh – yes, Kent – yes, Crandall – yes, and Sage – yes. The motion carried.

The Board reviewed the VBISD Reconfirmation of Extended COVID-19 Learning Plan and monthly percentages for January as shown in Attachment 1 and public comments were solicited. Department updates were provided to the Board by Superintendent Mills and department administrators.

Middaugh moved to approve the following resolution:

RESOLVED, the Board of Education approves the superintendent contract as negotiated and reviewed with Mr. Dave Manson with an effective date of March 1, 2021.

Crandall supported. Roll call vote. Middaugh – yes, Kent – yes, Crandall – yes, Weiss – yes, and Sage – yes. Motion carried.

Weiss moved to approve the following resolution:

RESOLVED, the Board approves the selling of vacation/sick days at full daily rate (total comp/230 days = daily rate) during the first pay period of March 2021.

Supported by Kent. Roll call vote. Weiss – yes, Middaugh – yes, Kent – yes, Crandall – yes, and Sage – yes. Motion carried.

Weiss moved to approved the following resolution:

RESOLVED that the Board of Education accept the resignation of Rebecca Longcore effective February 3, 2021.

Supported by Middaugh. Roll call vote. Middaugh – yes, Weiss – yes, Kent – yes, Crandall – yes, and Sage – yes. Motion carried.

Middaugh moved to approve the following resolution:

RESOLVED that the Board of Education approves one additional day per week of Speech & Language Pathology services.

Supported by Crandall. Roll call vote. Weiss – yes, Kent – yes, Middaugh – yes, Crandall – yes, and Sage – yes. Motion carried.

Weiss moved to approve the following resolution:

RESOLVED the Van Buren Intermediate School District Board of Education approves to cast vote for Ella Harrington, Covert Public Schools as the Region 6, 2021 MASB Board of Directors representative.

Supported by Kent. Roll Call Vote. Middaugh – yes, Crandall – yes, Kent – yes, Weiss – yes, and Sage – yes. Motion carried.

Weiss moved to approve the following resolution:

RESOLVED that the Board of Education employ the staff listed below:

<u>Mental Health Clinician:</u>	<u>Step:</u>	<u>Salary:</u>	<u>Start Date:</u>
Gregory Greenfield	MA+30 Step 7	\$57,016*	Feb. 8, 2021

**Salary will be prorated due to start date*

Supported by Middaugh. Roll call vote. Kent – yes, Middaugh – yes, Crandall – yes, Weiss – yes, and Sage – yes. Motion carried.

Kent moved to approved the following resolution:

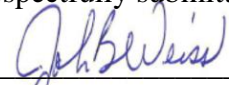
RESOLVED, that the Board of Education approve the following policies as presented for second reading:

Policy 2210	<i>Curriculum Development – Approved Courses – Revised</i>
Policy 2414	<i>Reproductive Health and Family Planning – Revised</i>
Policy 3362.01	<i>Threatening Behavior Toward Staff Members – Revised</i>
Policy 4162	<i>Controlled Substance and Alcohol Policy – Revised</i>
Policy 4362.01	<i>Threatening Behavior Toward Staff Members - Revised</i>
Policy 5200	<i>Attendance - Revised</i>
Policy 5335	<i>Care of Students with Chronic Health Conditions – New</i>
Policy 5610	<i>Emergency Removal Suspension and Expulsion of Students – Revised</i>
Policy 5611	<i>Due Process Rights - Revised</i>
Policy 6107	<i>Authorization to Accept/Distribute/Use Electronic Signatures - Revised</i>
Policy 6520	<i>Payroll Deductions – Revised</i>
Policy 8210	<i>School Calendar – Revised</i>
Policy 8462	<i>Student Abuse and Neglect - Revised</i>

Supported by Weiss. Roll Call Vote. Middaugh – yes, Crandall – yes, Weiss – yes, Kent – yes, and Sage – yes. Motion carried.

Meeting adjourned at 5:06 pm.

Respectfully submitted,



John Weiss, Secretary
Van Buren Intermediate School District
Board of Education, Lawrence, Michigan



Extended COVID-19 Learning Plan

To view the VBISD Extended Continuity Plan in its entirety, click [HERE](#)

Reconfirmation Meeting

Required 30 Days After Initial Plan Approval and Every Month Thereafter

Agenda:

- Reconfirm how instruction is going to be delivered during the 20/21 school year
- Public comments from parents and/or guardians on the Extended Learning Plan
- Review weekly 2-way interaction rates

Reconfirmation Meeting for February 2021

Reconfirm instructional delivery method:

Special Education Programs provide face-to-face instruction Monday through Thursday, and remotely on Fridays (select Fridays for the VBISD Early Childhood Program). Per parent request, a fully remote option will be available and programs and services for anything other than fully face-to-face are defined by Individual Contingency Learning Plans.

Students at VB Tech:

In order to maintain social distancing in classrooms and labs, students at Van Buren Tech will be following a hybrid schedule while we remain in Phase IV of the Governor's Safe Start Plan. The specific hybrid schedule being followed consists of two days of in-person instruction, one day of synchronous instruction, and two days of asynchronous instruction.

Reconfirm how instruction will be delivered for each grade level:

VBISD GSRP:

GSRP services are being provided face to face or hybrid only. The days and times of attendance align with the LEAs first grade schedule. All classrooms are providing 4 full days of instruction regardless of model. Remote instruction is provided if a classroom/school is required to close.

VBISD Special Education Early Childhood - 26 years:

Special Education Programs provide face-to-face instruction Monday through Thursday, and remotely on Fridays (select Fridays for the VBISD Early Childhood Program). Per parent request, a fully remote option will be available and programs and services for anything other than fully face-to-face are defined by Individual Contingency Learning Plans.

VB Tech (Grades 10 - 13):

Students at VB Tech:

In order to maintain social distancing in classrooms and labs, students at Van Buren Tech will be following a hybrid schedule while we remain in Phase IV of the Governor's Safe Start Plan. The specific hybrid schedule being followed consists of two days of in-person instruction, one day of synchronous instruction, and two days of asynchronous instruction.

Reconfirm whether or not the district is offering higher levels of in-person instruction for English language learners, special education students, or other special populations:

Document Public Comments:

Review Weekly 2-Way Interaction Rates

October 2020	All Students <i>(percentage of all students who received (2) 2-way interactions each week)</i>
Week 1	<i>(must be reported in percent form)</i> SPECIAL EDUCATION: <ul style="list-style-type: none">• BEC: 80.65%• BGLC: 85.29%• CTC: 89.83% VB TECH: 91.4%
Week 2	SPECIAL EDUCATION: <ul style="list-style-type: none">• BEC: 82.26%• BGLC: 85.44%• CTC: 89.83% VB TECH: 86.3%
Week 3	SPECIAL EDUCATION: <ul style="list-style-type: none">• BEC: 79.03%• BGLC: 86.27%• CTC: 84.75% VB TECH: 83.6%
Week 4	SPECIAL EDUCATION: <ul style="list-style-type: none">• BEC: 79.03%• BGLC: 76.7%• CTC: 71.43% VB TECH: 76.4%

Review Weekly 2-Way Interaction Rates

November 2020	All Students (percentage of all students who received two 2-way interactions each week)
Week 1	(must be reported in percent form) SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 84.1% • BGLC: 91.1% • CTC: 78.7% VB TECH: 79.6%
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Week 3	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 85.5% • BGLC: 72.6% • CTC: 70.5% VB TECH: 83.7%
Week 4	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 67.8% • BGLC: 75.5% • CTC: 73.8% VB TECH: 86.1%

Review Weekly 2-Way Interaction Rates

December 2020	All Students (percentage of all students who received two 2-way interactions each week)
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Week 2	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 75% • BGLC: 87.3% • CTC: 95.2% VB TECH: 88%
Week 3	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 77.8% • BGLC: 84.5% • CTC: 77.1% VB TECH: 78%
Week 4	Christmas Break - December 21, 2020 - January 3, 2021

Review Weekly 2-Way Interaction Rates

January 2021	All Students (percentage of all students who received two 2-way interactions each week)
Week 1	Christmas Break - December 21, 2020 - January 3, 2021
Week 2	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 90% • BGLC: 89% • CTC: 89% VB TECH: 89%
Week 3	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 80% • BGLC: 93% • CTC: 87% VB TECH: 90%
Week 4	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 87% • BGLC: 95% • CTC: 92% VB TECH: 84%

2. Voucher/Budget Composite & Cash Flow Summary Vouchers

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Van Buren Intermediate School District
January 2021

Imprest Fund Vouchers	\$ 465,214.91
Payroll Fund Vouchers	3,404,054.35
Purchasing Card Vouchers	48,708.81
EDUSTAFF ACH Payments	5,150.73
	\$ 3,923,128.80

Budget-to-Expenditure Comparison 20-21

Fund	Budget	Actual & Encumbered Expenses	Unencumbered Balance	Year-to-Date Variance
General	13,220,880	7,155,043	6,065,837	1,108,007
Special Education	34,489,773	17,064,867	17,424,906	4,491,241
Vocational Education	15,785,792	7,045,737	8,740,055	2,820,383
Food Service	92,010	93,115	(1,105)	(35,609)
Capital Projects	2,000,000	1,088,708	N/A	1,411,292

Cash Flow Summary

	Ending Balance 12/31/2020	Cash Receipts	Cash Disbursements	Ending Balance 1/31/2021
General	1,541,357	518,984	773,286	1,287,055
Special Education	130,447	2,014,308	1,769,672	375,083
Vocational Education	4,585,798	744,224	714,067	4,615,955
Student Activity Fund	33,110	91	225	32,976
Food Service	61,514	108	5,073	56,549
Capital Projects	427	120,462	120,154	735
	6,352,652	3,398,177	3,382,477 *	6,368,352

* The cash disbursements total includes amounts transferred electronically. Non-payroll related electronic transfers were made to other VBISD accounts. A listing of these transactions are available upon request. This statement is in accordance with Policy #6144.01

PAYROLL SUMMARY
February 2021

GENERAL	827,310.14
SPECIAL EDUCATION	1,961,660.59
VOCATIONAL EDUCATION	615,083.62
STUDENT ACTIVITY FUND	0.00
FOOD SERVICE FUND	0.00
TOTAL PAYROLL	<hr/> 3,404,054.35

IMPREST VOUCHER SUMMARY
February 2021

FUND NAME	CHECKS	PURCHASING CARDS	TRANSFERS/ INTEREST/FEES	TOTAL
General Fund	58,870.69	18,780.79	(2,182.62)	75,468.86
Special Education	213,322.60	14,911.80	5,464.68	233,699.08
Vocational Education	60,096.77	15,016.22	(2,877.32)	72,235.67
Capital Projects	128,207.64	0.00	0.00	128,207.64
Health Consortium	0.00	0.00	0.00	0.00
Student Activity Fund	0.00	0.00	(44.54)	(44.54)
Food Service Fund	4,357.01	0.00	0.00	4,357.01
TOTAL	464,854.71	48,708.81	360.20	513,923.72

B. Board/Superintendent Travel (**Roll Call Vote**)

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CONFERENCE ATTENDANCE*Superintendent/Board of Education***March 3, 2021*****Pre-Approval***

NAME	DATES	LOCATION	ESTIMATED COST
Mary Ann Middaugh	February 19-21, 2021	2021 MASB Winter Institute	\$90.00
John Weiss	March 1, 2021	MASB Virtual CBA Class	\$90.00
Mary Ann Middaugh	April 8-10, 2021	NSBA Conference 2021 (Virtual)	\$600.00
John Weiss	April 8-10, 2021	NSBA Conference 2021 (Virtual)	\$600.00

Post Approval

			COST
John Weiss	February 19-21, 2021	2021 MASB Winter Institute	\$270.00
Mary Ann Middaugh	February 19-21, 2021	2021 MASB Winter Institute	\$90.00
John Weiss	March 1, 2021	MASB Virtual CBA Class	\$90.00

Administrator Evaluation Guide Reference

- 1 - Leadership
- 2 - Level of Professional Awareness
- 3 - Professional Standards and Ethics
- 4 - Communication Skills
- 5 - Resourcefulness, Creativity, and Innovativeness
- 6 - Personality
- 7 - Demeanor, Appearance, and Style
- 8 - Professional Preparation
- 9 - Decision Maker
- 10-Planner and Organizer
- 11-Supervisor
- 12-Evaluator
- 13-Policy Implementer
- 14-Crisis Manager
- 15-Faculty and Staff Personnel
- 16-School Plant and Facilities
- 17-Student Personnel
- 18-Community Relations
- 19-Fiscal Management
- 20-Student Achievement



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Week 4	SPECIAL EDUCATION: <ul style="list-style-type: none"> • BEC: 87% • BGLC: 94% • CTC: 92% VB TECH: 91%

D. Public Comments
II. INFORMATIONAL ITEMS
A. Board Updates
B. Superintendent Update

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Date: March 3, 2021
To: Board of Education
From: David D. Manson, Superintendent
Jeffrey C. Mills, VBISD Administrator
Subject: SUPERINTENDENT UPDATE

Path Forward: (Community Relations, Staff Relations, Instructional Leadership)

I have been given the opportunity to sit on the steering committee for the Path Forward work in the State of Michigan. The committee is composed of leaders from many of the statewide educational organizations and was initially formulated in 2018 in response to Michigan's rating of "needs improvement." This committee attempts to develop solutions to problems for students with disabilities. Recently, the committee has reconvened and is considering multiple pathways for students to obtain a diploma other than the Michigan Merit Curriculum.

Cultural Understanding Committee: (Community Relations, Staff Relations, Instructional Leadership)

The VBISD Cultural Understanding Committee (CUC) has been focusing on Diversity, Equity and Inclusion throughout VBISD for approximately 3-4 years and would like to invite interested school board members to participate.

The following are several immediate action times that the committee is working on.

- Identifying and implementing new hiring strategies that focus on: a) recruiting diversity, b) examining interview committee make up, and 3) reviewing questions for bias
- Reviewing VBISD policies and practices to assure Diversity, Equity and Inclusion (DEI) tenets are infused throughout the organization
- Actively recruit members from diverse backgrounds into the CUC
- Considering whether the current structure and function of CUC needs to be maintained or altered

Mattawan Early Childhood Education Center (ECEC): (Community Relations, Staff Relations, Business & Finance, Instructional Leadership)

Several VBISD administrators recently had an opportunity to tour the new Mattawan Early Childhood Education Center which is slated to open for the start of the 2021-22 school year. While plans are not yet finalized, VBISD and Mattawan are currently discussing the possibility of opening a few different combinations of Great Start

Readiness Programs (GSRP), Head Start and Early Childhood Special Education Programs. We are excited about the opportunity this center will have for many of our youngest students.

Market Van Buren Awards Program: (governance & board relations, stakeholder relations, educational leadership, operations & finance, employee relations)

I currently serve on the Board of Directors for Market Van Buren. Zach Morris is the Executive Director and is also on the Paw Paw Public Schools Board of Education. Market Van Buren is starting an awards programs (see attached flier). Bobby Anderson, Instructor, Polymer Technologies program will be working with students on creating the awards for these different categories of winners.

Proposed Oversight of Director of Instructional Services: (governance & board relations, operations & finance, educational leadership, employee relations, stakeholder relations)

With the new Superintendent taking charge on March 1, I will continue to provide oversight and evaluation of Cheryl-Marie Manson, Director of Instructional Services, so it is not in conflict with VBISD Board Policy 3120 (Employment of Professional Staff). Per a recommendation from our district attorneys, Thrun Law Firm, I have attached a proposed resolution for your review and input. I will go into more detail at the board meeting. If everyone feels comfortable after this discussion, then I will bring back for official approval at the April Board meeting.

Release of Governor's Budget: (governance & board relations, employee relations, operations and finance, educational leadership, stakeholder relations)

On Thursday, February 11 the Governor released her state budget proposal. Here are the highlights for the educational community:

- a. Per Pupil increase of \$164 at the minimum foundation - \$8,275 and a \$82 per pupil increase for districts at the maximum foundation - \$8,611.
- b. \$250 million one-time money for best practices to support student academic recovery, physical and mental health, and post-secondary readiness and transition. When you base this on 1.4 million K-12 students it comes out to \$179 per pupil.
- c. \$120 million to provide summer learning or after school opportunities for students. This equates to \$86 per pupil.
- d. \$200 million one-time money for declining enrollment to help districts stabilize budgets for 2021-22 school year. This equates to \$143 per pupil for loss of students based on formula.
- e. \$39 million to help mitigate the impact of COVID on students. This equates to \$28 per student.
- f. \$32 million for Great Start Readiness Program. This increases full-day preschooler from \$7,250 to \$8,275 for 38,000 four-year old students statewide. This is a \$1,025 per pupil increase for districts operating these programs.

g. \$2.9 million to help address the educator shortage and provide supports to current teachers. This equates to \$2 per pupil.

Remember this is the first proposal to start the conversation. The House and Senate will be putting together their proposals in the next few weeks. When you look at the potential “per pupil” increases for the programs listed above this equates to a lot of monies that districts will be working with this year and next year.

Contract Addendum
Modification to paragraphs 1 & 8 of Cheryl-Marie Manson’s Administrator Contract

1. Beginning March 1, 2021, Dave Manson, will serve as the Superintendent for the Van Buren ISD. Dave Manson is married to Cheryl-Marie Manson (“Administrator”), who currently serves as the ISD’s Director of Instructional Services.
2. Van Buren ISD Board Policy 3120 (Employment of Professional Staff), in part, states:
“Relatives of staff members may be employed by the Board, provided the staff member being employed is not placed in a position in which s/he would be supervised directly by the relative staff member.”
3. Jeffrey Mills, who has served as the ISD’s Superintendent through March 1, 2021, will continue his employment relationship with the ISD through May 31, 2021.
4. To comply with Board Policy 3120, Jeffrey Mills will complete the Administrator’s year-end performance evaluation for 2020-2021 and will be the supervisor and direct report for the Administrator through May 31, 2021. Thereafter, the Board’s Administrative Committee will serve as the Administrator’s direct report and will conduct the Administrator’s annual performance evaluation.

5. Paragraphs 1 & 8 of the Administrator’s Contract are modified as follows, effective June 1, 2021:

Paragraph 1: “Administrator shall perform the duties of Director of Instructional Services as prescribed by the Board and under the supervision and direction of the ~~Superintendent~~ **Board’s Administrative Committee**. Administrator acknowledges the ultimate authority of the Board ~~and the Superintendent~~ with respect to her responsibilities and directions related thereto. Administrator is subject to assignment and transfer to another administrative position of employment within the Agency at the discretion of the Board ~~or the Superintendent~~.

Paragraph 8: “Administrator’s performance shall be evaluated by Jeffrey Mills for the 2020-2021 school year and thereafter by the ~~Superintendent (or her designee)~~ **Board’s Administrative Committee** not less than annually.”

6. Consistent with paragraph 1 of the Administrator’s Contract and as reflected in the minutes of the Board of Education’s meeting on _____, 2021, the Board President and Board Secretary are authorized to sign this Addendum to the Administrator’s Contract which shall be in effect for as long as Dave Manson serves as the ISD’s Superintendent, or unless otherwise modified by the parties.
7. This signed Addendum shall be attached to the Administrator’s Contract.

Administrator

_____, 2021
Cheryl-Marie Manson

Van Buren ISD Board President

_____, 2021
Frances Sage

Van Buren ISD Board Secretary

_____, 2021
John Weiss



The Market Van Buren Awards were developed as a means to celebrate the hard-earned victories of Van Buren County businesses in 2020. The 2021 awards program will include two types of awards: investor awards and a community award.

Winners will be selected by a committee comprised of community leaders and Market Van Buren board members. Award finalists will be announced in May. Winners will be honored in June at an awards ceremony provided that such a gathering can be held safely.

Investor Awards

Investor awards will focus on celebrating the achievements of local businesses that not only overcame the challenges of 2020 but also have made investments to support economic development in their community. Nominations will be limited to Market Van Buren investors.

- Economic Pioneer of the Year Award
- Business Resiliency Leader of the Year
- Community Champion of the Year
- Business Innovator of the Year Award

Community Award

Starting a new business is always a challenge, but COVID-19 made it especially challenging; the community award will celebrate businesses for which 2020 was either their first or second year in operation. Nominations will be solicited publicly from February 1 to February 14.

- Best New Business of the Year Award

C. Department Updates
1. Human Resources Update

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MEMO

DATE: MARCH 3, 2021

TO: BOARD OF EDUCATION

FROM: HEATHER VISCO, HUMAN RESOURCES ADMINISTRATOR

RE: HUMAN RESOURCES UPDATE

Human Resources Update (1,2,3,4,5,8,9,10,13,15,18)

COVID-19 update

The Center for Disease Control and Prevention (CDC) has issued guidance on reopening schools. We attended a webinar hosted by Miller Johnson that outlined some of the mitigation measures and, as a district we have already implemented and followed layered mitigation strategies and monitoring community transmission. We will continue to monitor COVID in the county and our schools and make adjustments as needed or required by the CDC or State of Michigan.

Also, the State of Michigan released guidance on the second round of Hazard Pay grants for staff who were not included in the last round of grants. We will be dissecting the information and provide eligible staff with the information they need.

General update

In addition to the Hazard grant audits we completed, we were also required to participate in a Michigan Occupational Safety and Health Administration (MIOSHA) survey on injuries and the number of recordable incidents. After a follow-up call to confirm our report, the data was audited and accepted.

This month has consisted of several meetings with KRESA on implementing our new financial system, PowerSchool. We are excited about this change and hoping this will help us in streamlining processes and procedures throughout the district.

We also have created a central location for administrators to utilize resources for themselves and their staff regarding human resources functions such as onboarding and offboarding checklists, Family and Medical Leave Act (FMLA) FAQs, injury information, and other processes. We are constantly adding to this file as we receive feedback. Our goal is to help our administrators be fully equipped with the information and resources they need while streamlining processes.

Lastly, we have developed an exit interview survey for staff who leave the organization. This will allow us as an organization to gather data as to why employees leave. It's a quick survey that should only take about 10 minutes. We are hoping to provide some analytics on this moving forward.

MEMO

DATE: 3/3/2021
TO: BOARD OF EDUCATION
FROM: TOM RICHARDSON, BUSINESS DEVELOPMENT AND PARTNERSHIPS
RE: MARCH, 2021 - BOARD REPORT

MiSHCA Statewide Meeting (1,2,4,8,10,14,18,20)

On February 16th and 17th, I had the opportunity to meet with more than 37 Regional School Health Coordinators and Michigan State agency program leaders at the February statewide Michigan School Health Coordinator Association (MiSHCA) meeting. This year's priority issues revolved around supporting our local school districts with the roll out of the MICIP (Michigan Integrated Continuous Improvement Process) school improvement process in 2021 and building Statewide coalitions to support the "health, safety and wellness" of students throughout Michigan.

VBISD and Calhoun Hosts Regional HIV Training for Local School Districts (1,2,4,9,10,13,18,20)

On Thursday, February 11th, the VBISD, in partnership with Calhoun ISD, trained 58 local school district personnel in the mandatory HIV certification course.

Due to the great turnout and request for additional HIV trainings from partners around the State, Angela Blood (Calhoun) and I will be coordinating another regional/State HIV Certification training on March 17th.

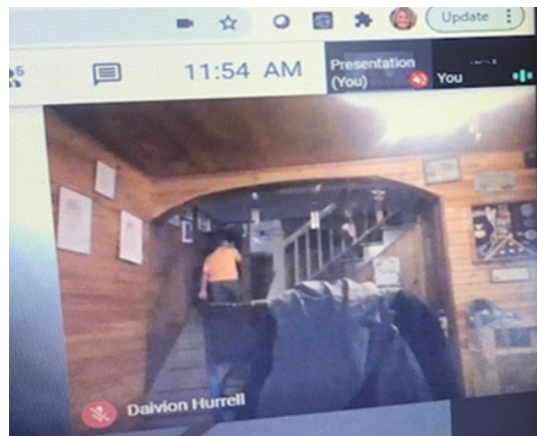
VBISD Project LEAN Team Continue to Lead the State During COVID (1,2,4,5,10,11,18,20)

The Project LEAN team continues to implement effective SNAP-Ed programming despite the COVID pandemic. In a monthly conversation with our State Program Managers, we were informed that the Project LEAN team was accounting for more than 65% of the State's "total" performance outcomes that includes the work of 37 other SNAP-Ed partners.

Please find below monthly highlights of the Project LEAN Program for January, 2021.



Pre-K students engaged in a Grow It Try It Like Lesson on Spinach - Virtually



A 4th grade student did a "virtual" demonstration on how walking up and down the stairs at home gets your body moving and is good, easy, exercise to do during COVID to stay active



A 4th grade student did a “virtual” demonstration on how walking up and down the stairs at home gets your body moving and is good, easy, exercise to do during COVID to stay active

SNAP-Ed Monthly Highlights – January, 2021

Project LEAN’s FY21 PSE Work

- 8 Partners conducted CX3 assessment
- 7 School buildings participated in CATCH PE/ Whole Child trainings

Project LEAN Quick Stats:

SNAP-Ed Classes Taught: 556 SNAP-Ed Classes Taught

SNAP-Ed Participants Engaged: 3,299 Participants

SNAP-ED Programming Sites: 40 Sites

Head Start Sites: 4 Sites

Community Meetings: 3 Meetings

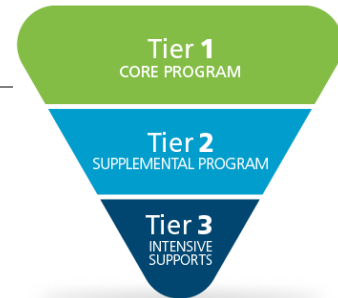
School Based/Parent Meetings: 12 meetings

Project LEAN's Programming "Quotes" and "Testimonials" of the Month

- ❖ "My students were sad when our lessons ended. They were ready for more! Have you considered a 2.0 class? We were so excited that we started working on making some changes with our food service providers. We kept a graph of foods served for breakfast and lunch and noticed a huge excess of added sugars and lack of protein and fresh fruits and vegetables. ADA does not currently limit added sugars in schools' food programs, but we hope to work with someone a little bigger than us to change that. We also talked about some of the foods (grains) that are made from whole wheat and are considered "healthy" but are loaded with sugar and these whole grain alternatives are not always what we see in the stores, so maybe it is not a good habit to eat them. (Super donuts, powdered sugar donuts, pastries, and juice). We checked the facts on the back and put the foods in our meals in order from healthiest to not so healthy. I was glad to see children choosing healthier foods over the sugary foods. Brittany was absolutely perfect and so forgiving and flexible when I missed two of our meet times!!!" - Kindergarten teacher
- ❖ "Can you come be my 4th grade teacher next year?" – 3rd grade student who was upset this was their last Project LEAN class and did not want it to end.
- ❖ Asking a student from what her favorite part of the "Who Grew My Soup Book" was, she responded with, "I didn't have a favorite part, but my Grandpa did because he loves soup."
- ❖ "Thank you again! I love this program. It's so nice for the kids to learn and then try something new! Thank you for being so flexible!" - 2nd grade teacher
- ❖ "Thank you so much for today! They have been nuts all day and you did a fantastic job keeping them entertained and on topic!" – Kindergarten Teacher
- ❖ "I love how enthusiastic you are, it's contagious!" - Teacher
- ❖ "Thanks for sharing this, Ms. M. We enjoyed Project LEAN today, especially the yoga poses. Very calming and fun with the kiddos. When your puppets came out a few holdout kids came right over to join us. They loved the talking bread and dairy ones." – Early Childhood Teacher
- ❖ "I can't believe they all tried all of the food you brought, even my picky eaters!" - GSRP Teacher
- ❖ "My students thoroughly enjoyed these sessions and it gave us many talking points throughout the past few weeks. They LOVED your personality and enthusiasm. You did SO WELL at remembering their names and facts they shared from week to week. You made a positive and lasting impression." - Teacher
- ❖ "I taught my parents about healthy and unhealthy fats after our last class." - 5th grade student
- ❖ "You are the first 'teacher' other than myself that the students have really engaged with this year. I'm so glad you were able to get them out of their shells and participating!" – Classroom Teacher

MEMO

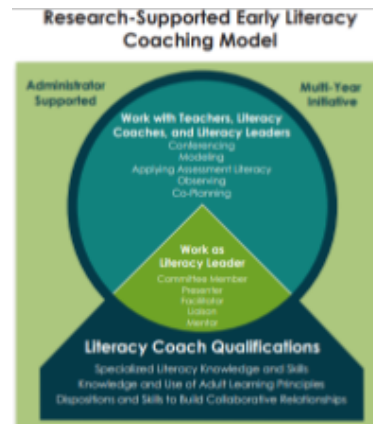
DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: CHERYL-MARIE A. MANSON
RE: INSTRUCTIONAL SERVICES UPDATE



Early Literacy (Leadership, Communication Skills, Planner & Organizer, Student Achievement)

As part of our [Instructional Services Update](#) at meetings with various stakeholders this month, we are discussing how to maximize utilization of the Coaching Services offered by our Early Literacy Coach/Consultants.

Research suggests that teacher change in one area of practice requires fourteen to twenty hours of professional learning. It is very important for our schools to understand that change takes time and that improvement in teacher practice is not a “quick fix” or a “one and done.”



Additionally, combined results of an analysis of 60 studies focused on Professional Development show that when there is BOTH a coaching component and a measure of teacher practice and/or student achievement as measured by a standardized assessment, results show the following:

- A change in teacher practice larger than the instructional difference between novice and veteran teachers
- A change in student achievement similar to the difference between student achievement of first-year teachers and student achievement of teachers who have taught between five and ten years

Michigan Integrated Continuous Improvement Plan (MICIP) (*Leadership, Policy*)

Implementer, Communication Skills, Planner & Organizer, Student Achievement)

Schools have begun working with district improvement teams and have identified a MICIP Facilitator for each district. We have been answering questions relative to the platform of MICIP as well as questions around the continuous improvement process. In addition, we have worked with the technology department to ensure that schools have access to MiStrategy Bank and many strategies have been pre populated into the strategy bank in order to ease the workload of our locals.

We have started meeting with the district team to implement the process of continuous improvement at VBISD. This month, we will be focusing on data from various programs to begin to narrow down our district wide goals.

Mental Health Supports (*Leadership, Professional Standards & Ethics, Communication Skills, Resourcefulness, Creativity and Innovativeness, Student Achievement*)

During the month of February, our clinicians worked hard to provide quality services to both staff and students within our local districts. Many of our clinicians have recently provided professional learning to local educators in regards to taking care of themselves during this critical time. Assisting staff with ideas on how to both care for their own needs while working together to support colleagues, students, and families has also been an area of focus.



We have seen an increase in the severity of student referrals coming through, with many expressing suicidal ideation, including a serious plan in place. This intensity has brought our department to focus on creating a protocol and develop training, in collaboration with community partners, on how to respond to youth expressing thoughts of suicide while we work to keep them safe.

In recognition of the work that Instructional Services has done with Social Emotional

Wellbeing and the 31n grant, we were recently asked to present our model at the 31n State Mental Health Subcommittee Meeting as a



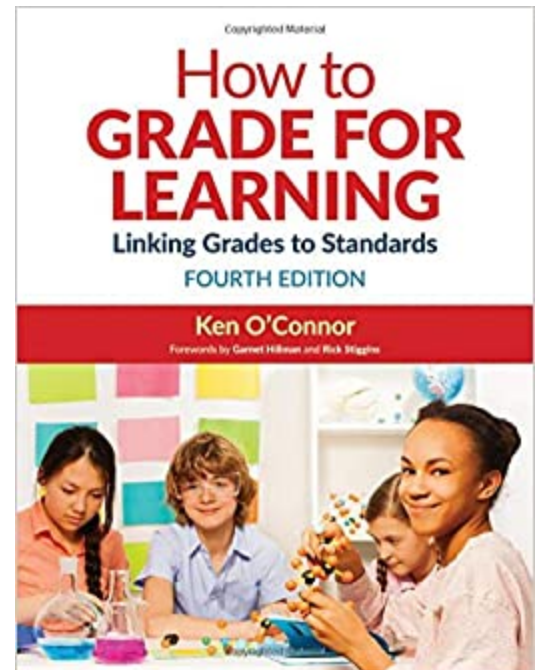
model for other districts to consider when aligning these initiatives. We received great feedback on our model, specifically on the impact we are having as we work to focus both on creating healthier school systems and on increasing direct services offered to students.

In addition to the work we are doing inside our schools, we continue to work closely with Van Buren Community Mental Health to discuss various ways to streamline services and better meet the needs of our youth experiencing Mental Health challenges within Van Buren County. Our department also continues to work on increasing Mental Health Awareness, and recently hosted Van Buren's 2nd Youth Mental Health First Aid training.

Multi-Tiered Systems of Support (MTSS) (Leadership, Communication Skills, Planner & Organizer, Student Achievement)

As part of our MTSS consultation, we continue to meet with building principals and leadership teams to encourage and support their current journey during pandemic learning. As a reminder, one of our goals was to begin shifting schools' perspectives on their grading practices. To that end, we have been hosting a book study around the book *Grading for Learning*. The conversation regarding how we provide feedback and adopting a grading system to better reflect students' knowledge of the essential standards will be our focus for the upcoming months and April MTSS Training.

In January, we also launched our MTSS Interviews. These interviews are created to share the hard work and creative solutions of our local district educators. On YouTube you can find our [current playlist of these interviews](#)



VBISD Improvement Team (Leadership, Communication Skills, Planner & Organizer, Student Achievement)

On February 24, the VBISD Improvement Team held their second meeting. As a new team,

we are taking time to learn the process and protocols in order to create a common goal by the end of this year. At this last meeting, we walked through the Wellman and Lipton Protocol for data discussions. Our discussions were diverse as leaders from various departments brought a variety of data to represent their work. We look forward to continuing this conversation in March with the intent to find trends that lean towards a goal for us to begin to plan action steps towards.

Resources

[Upcoming Trainings](#)

[February 2021 Newsletter](#)

[MTSS Bite Size Video Playlist](#)

[MTSS Interviews](#)

[GTD with Google Playlist](#)

MEMO

DATE: MARCH 3, 2021
TO: BOARD UPDATES
FROM: TONDA BOOTHBY
RE: ESSA/ESL/TITLE III/MIGRANT EDUCATION

Interpreter Training

(Leadership, Plan, Supervise, Community Relations)

As the Instructional Services program has been working toward increasing equity, Cheryl-Marie Manson brought up the idea of having training for Spanish speaking interpreters. Sarita Collins, who works for our English Learner Program as well as our Migrant Program, has been an interpreter for many years, and in 2019 she attended national interpreter training in Silver Springs, Maryland, to become a certified trainer. While many staff are asked to translate for Spanish speaking families – both staff who work for the VBISD and local school district staff – they are not typically trained on what are appropriate translating procedures.

Cheryl-Marie and her staff are promoting training in April for interested Spanish speakers at the VBISD and local districts to attend a series of workshops to gain more insight on the translation process and tips to providing good translating experiences. Sarita is developing the curriculum, tips of the trade and, most importantly, the instruction for this training.

Region 13 Science Olympiad

(Leadership, Plan/Organize, Supervise, Fiscal Management, Community Relations)

The Region 13 Science Olympiad tournament will be held from 4:00 p.m. until 6:00 p.m. on Tuesday, Wednesday and Thursday, March 2-4, 2021. Most of the events for the middle and high school teams will be done online. The “build” events for the high school teams were cancelled but those for the middle school - Helicopter, Mission Possible and Mousetrap Vehicle – will be conducted with a video of how well the item worked or flew and a conversation online or by phone about the practice log. One exceptional feature of this year’s competition is that we have numerous event supervisors who volunteered to help our region even though they live hundreds of miles away. Another benefit for this year has been working with Tonya Snyder and the Science Olympiad coaches in Berrien County to share the tournament events and supervision roles.

Van Buren County is represented this year by Hartford Middle School and High School, Mattawan High School, Paw Paw High School and South Haven High School. White Pigeon Community Schools, which is part of our region and brought 5 teams totaling 75 students to compete last year, is returning with another five teams this year. Half of the teams competing at the tournament are expected to win an invitation to the State competition which will also be virtual this year.

Improving Recruitment Practices for Migrant Education Program

(Leadership, Plan/Organize, Supervise, Fiscal Management, Community Relations)

Our Migrant Education Program is preparing for recruiting this year by participating in a series of Identification and Recruitment meetings conducted by the Identification and Recruitment Consortium (IDRC) through monthly webinars. This training presents some recruitment scenarios that are not the typical situations represented by most of our migrant families. The scenarios promote more discussion and explanations to support what is acceptable evidence or what is needed to qualify migrant families or out of school youth. Because this training takes place online, sessions are recorded so they can be accessed later and we can use them for recruiter training later this spring.











We have also been assembling information regarding support and essential services such as health clinics, schools, etc., for migrant families who move into counties in which we are recruiting for the statewide recruitment program. Our numbers dropped significantly with so many families choosing to not return to Michigan when there was no child care nor school-based options for migrant summer programs, so we want to promote our program and migrant education in Michigan as much as possible. We will also use some of the marketing strategies from the IDRC.



MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: KATY HOLVERSTOTT
RE: SPECIAL EDUCATION UPDATE

Instructional Model Change Leadership, Level of Professional Awareness, Decision Maker, Planner & Organizer, Crisis Manager, Faculty & Staff Personnel, Community Relations, Student Achievement

Consistent with other school districts across Van Buren County, information collected regarding community spread, staff and parent input, and state and national research indicates that it is safe to return to 4 days of in-person instruction. Below is a graphic representation of this model.

Model	Monday	Tuesday	Wednesday	Thursday	Friday
Hybrid Model					
Fully Remote Model					

 = In-person  = Remote

As illustrated above, a fully remote model will continue to be provided to families at their request.

This schedule change will begin on Monday, March 1, 2021. This applies to all programs, including the Behavioral Education Center, the Bert Goens Learning Center, the Community-based Transition Center, and the Early Childhood Special Education Programs, including Papermaking and Vocational Alliance.

Information will continue to be collected and the safety of our students and staff will be monitored. The goal is to provide a consistent schedule for the remainder of the school year; however, if safety is at risk, it may be determined that another change in the schedule is needed.

Summer Programming Leadership, Level of Professional Awareness, Professional Standards & Ethics, Decision Maker, Planner & Organizer, Faculty & Staff Personnel, School Plant & Facilities, Community Relations, Fiscal Management, Student Achievement

Given the closings and interruptions in instruction due to COVID, summer programming is being designed for each of the VBISD Special Education Programs, including the Behavioral Education Center, the Bert Goens Learning Center, the Community-based Transition Center, and the Early Childhood Special Education Programs.

Additional days of instruction will be offered to all students who do not typically participate in a summer program and additional hours per day will be provided for students who regularly participate in summer programs.

During the summer program, instruction will focus on content standards, social-emotional learning, and community-based instruction, as permitted. Surveys to gauge parent interest and staff availability are currently being collected.

Anna Austin: New Regional Supervisor of Special Education for Paw Paw Public Schools Decision Maker, Planner & Organizer, Supervisor, Faculty & Staff Personnel, Community Relations

Anna Austin, formerly the Assistant Principal at the Bert Goens Learning Center, was selected by a large interview committee, including several local district representatives, to be the Regional Supervisor of Special Education for Paw Paw Public Schools. To the right is a picture of Anna featured in the Paw Paw Parent Connection.

Paw Paw is one of four local school districts who have elected to have a full time regional supervisor. Across the county, our regional supervisors wear many hats, but primary roles include (a) hiring, supervising, and supporting VBISD ancillary staff, (b) monitoring and assisting the district in preventing and correcting compliance issues associated with special education, and (c) performing ongoing analysis of regional needs to improve effectiveness and efficiency. For more details about this important role, click on [Regional Supervisor Priorities](#).



Equity and Ableism Leadership, Level of Professional Awareness, Professional Standards & Ethics, Communication Skills, Planner & Organizer, Supervisor, Faculty & Staff Personnel, Community Relations, Student Achievement

Equity, anti-discrimination, and anti-racism are terms that have been more widely discussed this school year due to national and local issues and as a part of formal professional learning (e.g., Dr. Anthony Muhammad's presentation on January 18, 2021). As we grapple with these issues and their impact across the organization, we acknowledge that more learning is needed.

Given this, VBISD Special Education Department will focus professional learning around these concepts for the 2021-2022 school year. This will include formal department provided professional learning, the annual Behavior Conference, as well as regional and program meetings.

Specific learning objectives are under construction, but there is a consensus to learn more about a form of discrimination called ableism, its assumptions and consequences.

Ableism is defined as the the discrimination against people with disabilities based on the belief that typical abilities are superior. Ableism is rooted in the assumption that disabled people require "fixing" and defines people by their disability. Like racism and sexism, ableism classifies entire groups of people as "less than," and includes harmful stereotypes, misconceptions, and generalizations of people with disabilities. (Source: <https://www.accessliving.org/newsroom/blog/ableism-101/>)



Like other forms of discrimination, ableism is a collection of biases that are woven into our culture and can be hidden from view even from educators committed to the wellbeing of people with disabilities. The best way to minimize its impact in the classroom is to acknowledge it, find hidden sources of it, and change behaviors and practices that inadvertently promote it.

To make the most of our learning, the Special Education Department is committed to partnering with VBISD Instructional Services as well as our special education colleagues at Allegan Area Educational Service Agency.

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: ROBERT SMITH, DIRECTOR
RE: CAREER & TECHNICAL EDUCATION BOARD UPDATE

DECA COMPETITION (1,4,18,20)



Five students from Van Buren Tech's Marketing/Entrepreneurship program recently attended the District 3 Virtual DECA competition. A total of 313 students from 15 Southwest Michigan schools competed in 24 events. Each event consisted of a written exam and a role-play presentation.

Trevor P (*South Haven*) earned a medal for high role-play score in the Entrepreneurship Series Event and will be advancing to the state DECA competition. The following two students are both listed as first alternates to the state competition. **Xitlalli A** (*Bloomingtondale*) competed in the Retail Merchandising Event and **Sharon L** (*Bloomingtondale*) competed in the Apparel & Accessories Marketing Event.



DECA is a student-run organization that prepares emerging leaders and entrepreneurs for careers in marketing, finance, hospitality, and management. DECA enhances the preparation for college and careers by providing co-curricular programs that integrate into classroom instruction, apply learning, connect to business and promote competition

BUILDING RENOVATION PROJECTS (1,9,10,11,16,19)

In addition to the recent Main Street Hallway project, over the past several years Van Buren Tech has undergone a variety of building improvement projects, including a design facelift, the replacement of existing boilers, a roof replacement, and bathroom and classroom upgrades. In order to keep Van Buren Tech on the cutting edge of Career & Technical Education, plans are in the process to continue updating the building and equipment on a consistent basis. Some of the current, larger, renovation projects include:

- 2021-22 School Year: Repavement of VB Tech Parking Lots; Completion of Main St. Restaurant & School Store areas
- 2022-23 School Year: Renovation of Cosmetology Lab
- 2023-24 School Year: Renovation of Welding Lab
- 2024-25 School Year: Renovation of Kitchen Area

COMMITTEE UPDATES (1,11,15)

Participation in committees at VB Tech continues to be an excellent way for staff to be directly involved in the continuous growth of the building. Committee work is structured in a way that the groups meet individually on a monthly basis to assess progress toward goals established at the beginning of the school year and modify action plans as needed. This year's progress toward previously reported committee goals is as follows:

- **School Improvement:** Realigning goals to Michigan Integrated Continuous Improvement Process (MICIP) and are working with Cheryl-Marie Manson to implement an Appreciative Inquiry process to lead the growth process.
- **School Safety:** Creating a school-wide safety system. Staff will be trained on the new Catapult EMS system in April
- **Culture/Climate:** Coordinated several events (virtual staff mix & mingle; Superbowl square challenge, Halloween costume contest, bagel/donut Fridays) to build and strengthen relationships throughout the building.
- **Scholarship:** Expanded scholarship opportunities, revised existing application materials/processes, and continued to explore additional fundraising and granting opportunities for VB Tech Cluster Scholarships
- **Marketing:** Updated VB Tech marketing materials such as our program brochure, website content, email signatures, swag, newsletters, social media

COMPETENCIES & CREDENTIALS (1,2,13)

With the signing of the **Strengthening Career & Technical Education for the 21st Century Act** (Perkins V) in July, 2018, the Federal government placed a greater emphasis on students completing Career & Technical Education (CTE) programs with an industry recognized credential. As a result, the Michigan Office of Career & Technical Education has created a “grassroots” initiative via a series of **“Career Pathway Grants”** to promote statewide collaborative work among administrators, teachers, and business/industry representatives to identify credentials that would enhance a student’s chances of being employed in an industry related to their CTE coursework. Moving forward, state-approved CTE programs will be evaluated, in part, by the percentage of students obtaining approved credentials. In an attempt to help facilitate this process, a portion of the Career Pathways Grant also focuses on converting existing curriculum standards/segments into competencies that better align to the state-approved credentials. At this point, the state has selected five “Classification of Instruction Program (CIP) codes to undergo this transformation, with the intent of continuously identifying additional programs until all have been completed. Administration and teachers at VB Tech are actively participating in this transformative work.

LEGISLATIVE WORK (1,2,3,8,13)

In February, I was approached by the statewide **Career Education Planning District** (CEPD) Executive Board regarding a position on the Board as a co-legislative liaison. In this position, I will be working closely with legislators, lobbyists, and our statewide CEPD council regarding bills and legislative items impacting Career & Technical Education. Some of the items currently being discussed include Added Cost funding, Early/Middle College CTE programs, 61C Equipment grants, Michigan Merit Curriculum flexibility language, and alternative teacher certification for CTE teachers. I have already met with Matt Kurta, our VBISD lobbyist from Karoub Associates to share ideas and develop some tentative action plans.

CALENDAR EVENTS

March 2	Virtual Staff Meeting
March 3	Virtual Administrative Assistants Meeting
March 3	Virtual School Board Meeting
March 8 - 11	8th Grade Visits
March 17	Regional Counselors Meeting
March 18	Principals Meeting
March 31	ECCE Virtual Career Fair Presentation

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: BARBARA MATTHEWS
RE: FINANCE & OPERATIONS DEPARTMENT UPDATE

Budget Amendment (5, 10, 19)

The budgets for the General, Special Education and Vocational Education Funds were reviewed and adjusted this past month. A summary of the significant changes in various sections of the budgets is provided. The amended budgets are presented in this Board packet under the action items.

Summary of Significant Changes made to 2020-21 Budgets

The proposed changes to the 2020-21 budgets are predominately a result of reflecting the wage increases that occurred from contract settlements with the union groups, an accumulation of changes that occur from everyday operations, and adjusting estimates to more accurately reflect actual revenues and expenditures.

The following table describes those changes that were out of the norm and/or had a significant impact on the budget.

Type	Description	Net increase (decrease)
GENERAL FUND		
Local sources	Decrease in workshop registration fees	\$246,500
State Sources	Increase in Safety Grants	\$276,400
	Increase in Early Literacy Teacher Coaches Grant	\$147,100
	Increase in Mental Health and Support Services Grant	\$126,400
Federal Sources	Decrease in Summer Migrant Grant	\$(517,200)
	Decrease in HIL Grant	\$(297,900)
	Increase for Project Aware Grant	\$266,500
Instruction-Basic Needs	Increase in GSRP programming	\$206,000
Support Services-Pupil	Increase in staffing for mental health and support services	\$202,000
Support Services-Instructional Staff	Decrease in HIL Program	\$(296,000)
Support Services-General Administration	Increase due to change in Superintendent	\$138,000
SPECIAL EDUCATION FUND		
Local Sources	Decrease in Estimated Property Tax Collections	\$(221,200)
Federal Sources	Increase in anticipated use of federal grants	\$284,000
Other Financing Sources	Increase in Financing for School Buses	\$541,925
VOCATIONAL EDUCATION FUND		
Local Sources	Decrease in Estimated Property Tax Collections	\$(130,000)
	Decrease in Interest Earned	\$(75,000)
	Decrease in Construction Trades House Sales	\$(60,000)

Type	Description	Net Increase (Decrease)
	VOCATIONAL EDUCATION FUND (cont.)	
State Sources	Decrease for Elimination of 61b Regional Grants	\$(1,701,400)
Support Services- Instructional Staff	Increase for Instructional Coach Position	\$107,000
Outgoing Transfers and Other Transactions	Decrease in Payments to Other Schools under 61B Grant	\$(1,596,500)

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: DAMIAN KOOB
RE: TECHNOLOGY SERVICES UPDATE

Michigan Education Technology Leaders (METL) (Leadership, Professional Standards and Ethics, Communication Skills, Planner and Organizer, Professional Preparation)

The Michigan Education Technology Leaders (METL) are essentially the State's ISD/RESA/ESA Technology Directors/Leaders. We meet once a month to gather information from the various state organizations regarding education and technology to disseminate back to our local districts. We also have various committees and taskforces that look into specific issues within the State's educational processes. Here are a few of the discussion items that we talked about as a group at our February 18, 2021 meeting:

- MiConnect - SB690 Remaining funds to be issued to ISDs since they are looking spend the entire \$25M of the MiConnect grant.
- State Education Network (SEN) – This network has grown substantially with the ability to offer Internet Access to Districts for a great cost savings and is now in the process of reviewing RFPs for growth.
- MiDataHub - Clarifications with the MICIP process on who owns the data. The clarification that this group wants to ensure Districts is that each District owns their data that is stored in the Datahub and is in full control of how that data is used...not the DataHub group.

METL Data Governance Task Force (Leadership, Communication Skills, Professional Preparation, Planner and Organizer)

I've previously reported on my involvement with the Data Governance Task Force and wanted to highlight a couple items that we are working on with his group. The purpose of this group is to provide a published document to be used as guidance on data security and stewardship for Superintendents, Technology departments, and Business departments for all K-12 School Districts. Data Governance is the people, processes and tools to manage and protect data in order to guarantee the data is understandable, correct, complete, trustworthy, secure and discoverable.

Much of what we are focusing on in this document are the guidelines to ensure privacy, security, and accuracy of data and who is responsible for each. Many institutions have developed similar guidelines and policies, but the read is quite extensive and not easy to follow. We want to make sure that this guidance is suited for our K-12 administrators and partners. We have a working draft of the document now, but hope to have a publishable by the end of June 2021. I appreciate the Board's support in the activities that myself and my team do to assist other Districts in our county and throughout the State.

MEMO

DATE: MARCH 3, 2021

TO: BOARD OF EDUCATION

FROM: LISE BLACK, EARLY CARE & EDUCATION ADMINISTRATOR

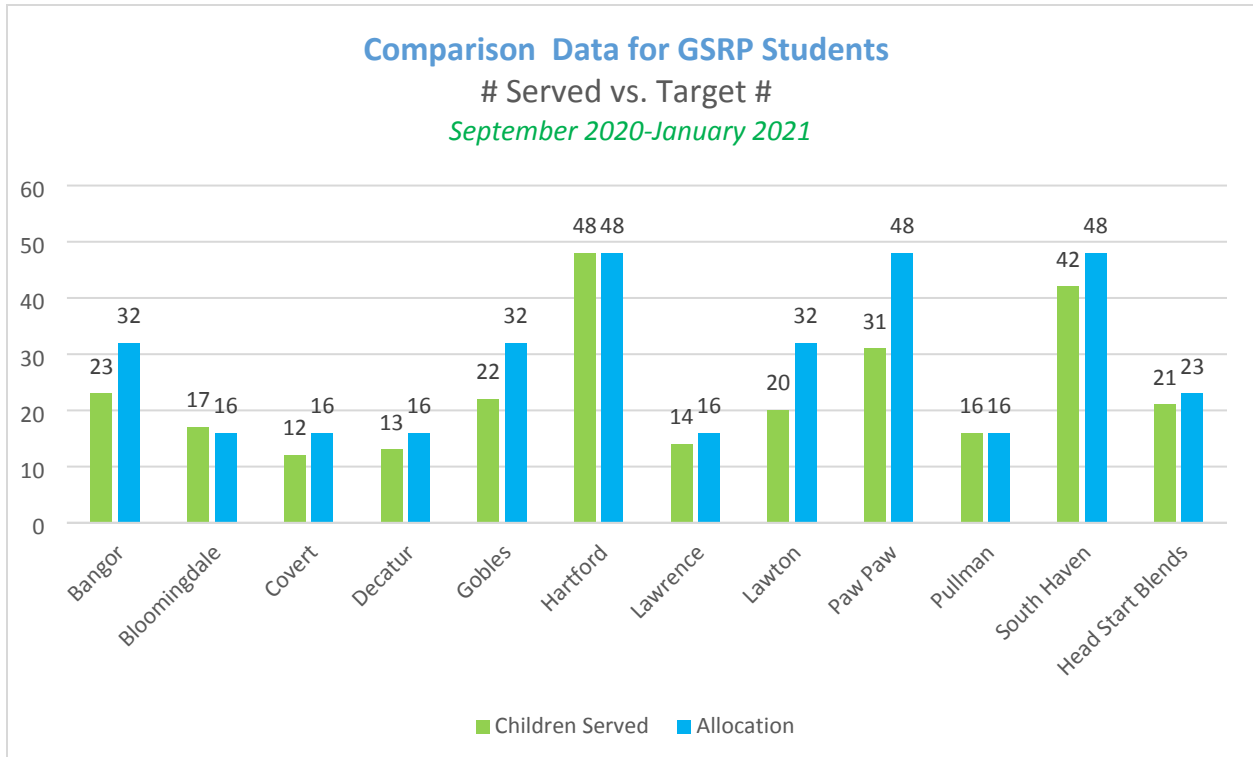
RE: EARLY CARE AND EDUCATION UPDATE

Great Start Readiness Program (GSRP) (preschool for at-risk children) (1, 17,)

We recently submitted our second of three annual student enrollment reports to the state. This second reporting period is where we receive our official count for funding. We reported having filled 76.5% of our allocation, but due to this year's legislated exception for COVID, we will receive our full funding.

The chart below depicts the total number of students served against our target. The numbers are a bit higher (78.3% of goal) as it includes students that left the program prior to the second reporting period. We have also received 8 new enrollees in February and will continue taking applications through spring break.

In reviewing the data, the districts with the lowest enrollment include Lawton, Paw Paw, and Gobles. As we plan for next year's recruitment, we will be giving consideration for additional strategies for those areas.



Great Start Collaborative /Family Links Home Visiting Program (2, 9, 10, 18)

SEE ATTACHMENT: 2020 HOME VISITING NEEDS ASSESSMENT VBC

Late in the summer, VBISD was awarded a small grant to complete a Home Visiting Needs Assessment for our county. This was part of Michigan’s work on creating a new strategic plan for early childhood. Sherry Bennett took the lead on coordinating the project, using a step by step process defined by the lead agency for the work, Michigan Home Visiting Initiative.

Four different home visiting programs, including the VBISD’s Family Links submitted program data including demographics and perception data. We held two focus groups that included parents that were currently or had previously been served in home visiting programs.

The information in the report is valuable for our Great Start Collaborative annual work plan and Trusted Advisor Grant work on care coordination. We do expect to undertake a complete update of our Van Buren Early Childhood Strategic Plan in 2021-2022 and will be including this information as a guide for decision making around the home visiting portions of the plan.

2020 HOME VISITING NEEDS ASSESSMENT

VAN BUREN COUNTY



KEY DEMOGRAPHICS & CULTURAL CHARACTERISTICS

75,677
TOTAL POPULATION

777
BIRTHS PER YEAR

6%
UNDER 5 YEARS

5%
FOREIGN BORN



9% SPEAK A LANGUAGE OTHER THAN ENGLISH IN THEIR HOME

92%
HAVE HEALTH INSURANCE

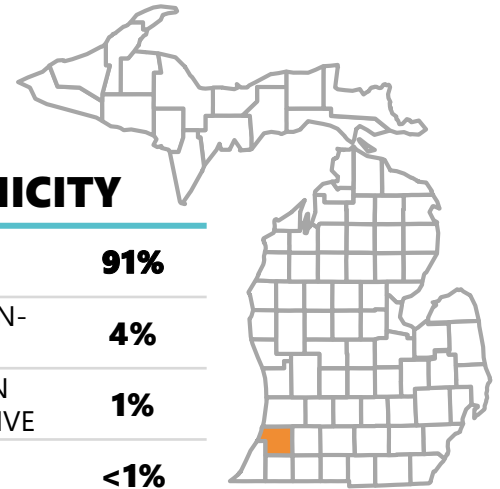
74% OF HOUSEHOLDS HAVE INTERNET ACCESS

87% OF ADULTS 25+ ARE HIGH SCHOOL GRADS



RACE/ETHNICITY

WHITE	91%
BLACK OR AFRICAN-AMERICAN	4%
AMERICAN INDIAN AND ALASKA NATIVE	1%
ASIAN	<1%
NATIVE HAWAIIAN	<1%
MULTIRACIAL	3%
HISPANIC OR LATINO	12%
WHITE, NOT HISPANIC OR LATINO	81%



VAN BUREN COUNTY

\$52,351
MEDIAN HOUSEHOLD INCOME

OUTCOMES IMPACTED BY HOME VISITING

COUNTY PRIORITIES

MATERNAL HEALTH

CHILD HEALTH

CHILD DEVELOPMENT & SCHOOL READINESS

POSITIVE PARENTING PRACTICES

CHILD MALTREATMENT

FAMILY ECONOMIC SELF-SUFFICIENCY

LINKAGES AND REFERRALS

JUVENILE DELINQUENCY, FAMILY VIOLENCE, AND CRIME



Unplanned Retention Rates for Kindergarten Students in Van Buren districts was 8.93% in 2018-19 compared with the lower state rate of 6.35%. Graduation Dropout rates in 8 out of the 11 Van Buren school districts are above the state's rate of 8.36%. Three districts have significantly higher rates.



In Van Buren County 5,503 children (31%) live in a household headed by a single parent. These households are more at risk for negative outcomes in health, mental illness, and unhealthy behaviors.

315 children, ages 0-5, in Van Buren ISD districts were eligible for special education services in 2018-19. Parents of children with special needs have added risk factors from stressors such as social isolation, increased medical services and costs, therapy needs, and additional concerns about school readiness for their child.

Van Buren County's rates of child abuse and neglect are concerning; the rate of children ages 0-8 who are substantiated victims of abuse or neglect is higher than the state average.

COMMUNITY CONDITIONS IMPACTING FAMILIES

HOMELESSNESS AMONG CHILDREN



% of children ages 0-4 who experienced homelessness during the school year

COUNTY 5.0%

MI 4.6%

! The county rate for homelessness is **higher** than Michigan's rate.

HOUSEHOLDS RECEIVING PUBLIC ASSISTANCE



% of households receiving supplemental security income or other public assistance

COUNTY 34.5%

MI 28.6%

! The county rate for receiving public assistance is **higher** than the rate in Michigan.

NO HIGH SCHOOL DIPLOMA



% of persons 16-19 years of age not enrolled in school with no high school diploma

COUNTY 5.5%

MI 3.2%

! The county rate of persons without a high school diploma is **higher** than Michigan.

NO HEALTH INSURANCE



% of persons without health insurance, under age 65 years

COUNTY 8.2%

MI 6.4%

! The county rate for no health insurance is **higher** than the rate in Michigan.

UNEMPLOYMENT



% of unemployed persons 16 years of age or older within the civilian labor force

COUNTY 5.8%

MI 4.6%

! The county rate for unemployment is **higher** than the rate in Michigan.

INCOME INEQUALITY



A measurement of how far the wealth or income distribution differs from being equal (Gini Coefficient).

COUNTY 0.40

MI 0.50

perfect equality ————— perfect inequality

! The county measure of income inequality is **lower** than in Michigan.

FAMILIES LIVING IN POVERTY



% population living below 100% of the federal poverty level

COUNTY 12.8%

MI 14.4%

! The county rate for poverty is **lower** than the poverty rate in Michigan.

CHILDREN EXPERIENCING POVERTY



% of children ages 0-17 who live below the poverty threshold

COUNTY 23.2%

MI 19.3%

! The county rate for children experiencing poverty is **higher** than Michigan's rate.

CHILDHOOD FOOD INSECURITY



% of children experiencing food insecurity (lack of access, at times, to enough food)

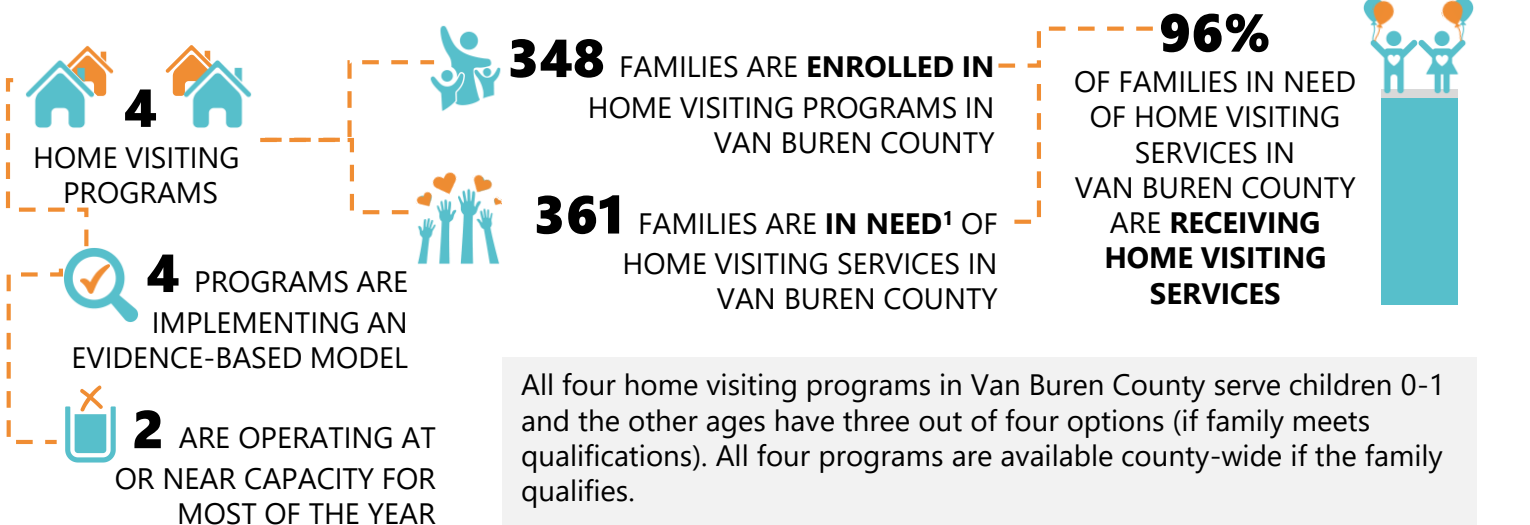
COUNTY 16.3%

MI 15.9%

! The county rate for childhood food insecurity is **higher** than Michigan's rate.

EXISTING HOME VISITING PROGRAMS

Home visiting programs sit at the intersection of families and communities. They provide critical linkages between families and community service systems. Van Buren County identified the reach and quality of services for families that partner with home visiting and identified strengths and gaps in the service network. Some patterns of reach and quality for home visiting clients and the service delivery network were noted during the assessment, and ideas for strengthening the service delivery network are described below.



WELL CONNECTED SERVICES

There are three primary home visiting programs in Van Buren County: Parents as Teachers, Early Head Start and MIHP. These programs make great efforts to know about and connect families to other services. They participate in a wide community-based early childhood collaborative where information is shared, and staff connections made.



GAPS IN THE SERVICE NETWORK

Referrals to home visiting services are a challenge especially from the medical community. Different criteria and lack of referral protocols of frontline medical staff impede referrals. Referrals rely on personal knowledge of staff rather than system protocols and drop off when there is staff change. Most medical services are provided to families outside the county, especially prenatal care.

PATTERNS IN ORGANIZATIONS MEETING NEEDS OF CLIENTS

MIHP has a medical/health-based focus and seems to stay within that network, making and receiving referrals primarily to health services and WIC. Early Head Start and Parents as Teachers have stronger social service, basic needs, and educational connections as they both have program requirements about meeting family needs.



PATTERNS IN QUALITY OF SERVICES PROVIDED

Service quality in Van Buren County is considered high or somewhat high by the home visiting programs. The low number of programs and services available in this rural county as well as service deserts in certain areas of the county are concerning. Transportation issues are barriers to getting needed services.

STRENGTHENING THE SERVICE DELIVERY NETWORK

Identified areas of improvement include: organizational protocols that support referrals to home visiting that are not solely based on personal relationships; improving medical referrals to home visiting especially from OB/birthing hospitals; expanding the income requirements of families to qualify for services; and having a "one stop shop" for all families of young children to allow organizations to refer families to early childhood services without knowing all the referral criteria.

¹Number of families likely to be eligible for MIECHV services based on the criteria: Number of families with children under the age of 6 living below 100% of the poverty line + number of families in poverty with a child under the age of 1 and no other children under the age of 6; AND belongs to one or more of the following at-risk sub-populations: Mothers with low education (high school diploma or less), young mothers under the age of 21, and/or families with an infant (child under the age of 1). Data Source: ACS 2017 1-Yr PUMS Data

FAMILY PERSPECTIVES ON HOME VISITING

Van Buren County asked parents who have previously participated in a Home Visiting program in their county to take part in a focus group to share their experiences with home visiting and other community services. Focus group participants were asked to describe the risks and opportunities families face in their communities; the outcomes they're concerned about and what facilitates wellbeing; strengths and opportunities to improve home visiting programs; and strengths and opportunities to improve the service delivery system. Van Buren County completed 2 focus groups with a total of 8 participants, 8 of which were served by home visiting programs in their community.



STRENGTHS

- Easy to access services because they come to our home.
- There is no judgement, and the home visitor is warm, friendly, helpful and concerned.
- Services are not formal or stiff feeling, like the one-on-one interaction.
- They provide support for parents; they show that they have difficulties too sometimes and make you feel like you are not alone. Home visitor cares about both children and parents.
- Bilingual home visitors.
- Easy to contact or reschedule visits when the day doesn't go as planned or we forgot about a visit.
- Coming to the home makes it easier, because you don't have the difficulty of transporting all the kids and their stuff.
- Home visitors are quick to respond to parents' concerns. Parents don't have to wait on the doctor's office or feel too rushed to ask questions.
- The home visitor helps see where their development should be, especially when parents don't know.
- Sometimes everything is ok and it's nice when home visitors can reassure the parent.
- Home visitors offer many options or resources if there is a need for child or parent. They don't assume one size fits all. They are a great connection to the wider community.



OPPORTUNITIES TO IMPROVE

- Many people don't know about home visiting, need more advertising. More advertising especially at doctor's offices and if Doctors recommend home visiting.
- Word of mouth is a good way to learn about home visiting, but what if you don't know anyone who knows about home visiting? Where would you find out?
- Maybe get current home visiting parents to share with other parents they know. Tell families it's okay to let them into your home because HV can help.
- Improve social media presence. It's easier for parents to share a resource, event or even the home visiting service with other parents when its on social media.
- Stigma that home visiting is for low-income people.
- The confusing rules and things you must do to qualify for some services.
- Too many restrictions so some people don't get services, doesn't seem fair.
- Parents can be leery of home visiting because they don't know what it is about at first.
- People may not believe it will help their child. They may believe that they already know it all.
- Parents may fear judgement, or it's like a CPS call, or that the home visit is a burden on families' time.
- Limited availability when both parents are working. Can there be evening and weekend visits?
- The relationship between parents and the home visitor is key, so things that can build that relationship are all important.
- Sometimes the paperwork is overwhelming at the beginning.



OUTCOMES OF HOME VISITING

- Home visitors help families find and access other needed services.
- Gets kids ready for school.
- Brings the community closer by letting them know there are people out there to help and that someone is there for them.
- Home visiting is especially helpful for families that are isolated, including parents with children having medical problems or special needs. Adult interaction can be helpful.
- Helps screen for things like substance use, depression, and domestic violence, but doesn't make parent feel like they are being judged. Especially if the questions seem routine rather than targeted because family is low income.
- Love achieving goals and seeing child make progress on milestones.



OTHER KEY TAKEAWAYS

- Many families don't realize that their children are behind or struggling, especially Spanish only or bilingual families. They assume the English the child speaks is fine as they don't have anything to compare it to.
- Very important to have bilingual home visitors.
- Even if the home visitor and the parent don't speak the same language home visiting is good, because the HV teaches the parent/child by showing not telling.
- Virtual visits are hard, but better than no support. The child doesn't get as much out of it, but parents are able to ask questions. Home visitors have been great about giving parents ideas on what to do with children to support learning from home.
- Home visitors are very good at communicating to parents in a way they can understand.
- Our county has fewer resources than bigger counties like diaper pantries, multiple food pantries, clothing or school supplies giveaways. Even if we have something it is often limited.
- Families don't see Early On as a separate program from their home visiting program.

COMMUNITY READINESS TO EXPAND HOME VISITING

New or expanded programs and services are most successful in communities that are clear about their readiness to provide a supportive context. Home Visiting partners were convened to discuss the five dimensions of readiness to expand home visiting and identified both community strengths and weaknesses. For each of these domains, the community partners scored each dimension as a 0 (no readiness), 1 (limited readiness), 2 (moderate readiness), 3 (significant readiness), or 4 (full readiness).

COMMUNITY KNOWLEDGE OF FAMILY NEEDS

MODERATE READINESS

4
3
2
1

The Great Start Parent Coalition plays a key role in gathering input from families, and the community respects parent voice. However, partners do not consistently report back to the community on how they were informed by parent input. Also, both providers and parents find navigating various programs difficult.

COMMUNITY PURSUIT OF EQUITY

SIGNIFICANT READINESS

4
3
2
1

Early childhood programs have pursued professional development in cultural understanding in the past years, and programs have prioritized hiring bilingual staff to support Spanish speaking families. However, there is not a broader, community wide strategy to pursue equity. Additionally, the training requirements of home visiting programs make it difficult to hire staff from marginalized communities.

COMMUNITY KNOWLEDGE OF HOME VISITING

MODERATE READINESS

4
3
2
1

The community has excellent home visiting programs and an information document that describes each program that is available. However, community partners find making referrals to home visiting confusing because of varied eligibility requirements. Additionally, there is some stigma connected with home visiting programs in the community as they can be associated with being poor or associated with child protective services.

COMMUNITY LEADERSHIP

MODERATE READINESS

4
3
2
1

Leaders within some partner organizations recognize the value of home visiting programs. However, many community leaders do not recognize the long term educational and economic impact of home visiting, and they tend to focus on K-12 education.

COMMUNITY CLIMATE

MODERATE READINESS

4
3
2
1

Services for families work well together and are mutually supportive, and families report positive experiences with home visiting. However, the community at large does not understand how to make early childhood a priority, and many services for families are only available during hours when parents are working.

COMMUNITY RESOURCES

LIMITED READINESS

4
3
2
1

Federal, state, and local funds are used to support HV, and community partners provide in-kind support. However, HV staff are paid less than staff in other settings with similar education and experience. This is driven by home visiting programs being underfunded, and funding levels staying stable or declining rather than increasing at pace with annual increases in cost.

NEED & CAPACITY TO EXPAND HOME VISITING

Van Buren County has need and capacity to expand evidence-based home visiting. There are additional families that can be served, including those in poverty. Three out of the four programs stated they were not at capacity for most of the year. Current programs could fill some of that need, but referrals are lacking.

This process engaged families to participate as partners and leaders by working with the supervisors of each qualifying home visiting program to identify parents to participate in virtual focus groups.

Thank you to the parents and community partners who engaged in the assessment process.

Data collected by Van Buren ISD-Great Start Collaborative with assistance from MPHI-CHC. For more information about this assessment, contact Van Buren ISD-Great Start Collaborative. This program is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$7,799,696 with 0% financed with non-governmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by HRSA, HHS, or the U.S. Government. For more information, please visit [HRSA.gov](https://www.hrsa.gov).

III. ACTION ITEMS

A. Approval for Amendment to General Appropriations for 2020-21 (**Roll Call Vote**)

65

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: BARBARA MATTHEWS
DIRECTOR OF FINANCE AND OPERATIONS
RE: **AMENDMENT TO THE 2020-21 GENERAL APPROPRIATIONS**

The revisions to the 2020-21 VBISD budgets for the General, Special Education and Vocational Education Funds are attached for your review. The budget revisions are necessary due to changes that have occurred from the original budget approved last June. The following summary provides the total projected revenues, expenses and other financing sources and uses for the 2020-21 fiscal year for each of the funds.

	REVENUE (Including Other Financing Sources)	EXPENSES (Including Other Financing Uses)
General Fund	13,137,911	13,325,062
Special Education Fund	35,373,693	35,162,437
Vocational Education Fund	12,155,203	14,438,643

Recommend the following resolution be passed:

RESOLVED, that the general appropriations for the General, Special Education, and Vocational Education Funds of the Van Buren Intermediate School District for the 2020-21 school year are amended as shown on the following attachments.

**GENERAL FUND
DETAIL BUDGET PROJECTION
FOR THE FISCAL YEAR ENDING JUNE 30, 2021**

REVENUES	ACTUAL 2017-18	ACTUAL 2018-19	ACTUAL 2019-20	ORIGINAL BUDGET 2020-21	PROPOSED BUDGET 2020-21
<i>Local Sources</i>	780,111	813,440	1,104,581	1,046,079	889,943
<i>Non-Educational Entity Sources</i>	4,774	4,789	4,967	4,968	3,867
<i>State Sources</i>	4,914,866	5,118,261	6,075,509	5,727,941	6,207,659
<i>Federal Sources</i>	2,493,871	2,991,895	2,696,021	3,511,313	2,980,790
<i>Incoming Transfers and Other Transactions</i>	472,048	516,887	859,353	942,652	1,023,154
TOTAL REVENUES	8,665,670	9,445,272	10,740,431	11,232,953	11,105,413
EXPENDITURES					
<i>Instruction</i>					
<i>Basic Program</i>	730,644	1,026,108	1,271,293	1,269,167	1,468,409
<i>Added Needs</i>	1,055,575	1,117,080	1,089,505	1,075,240	1,058,792
<i>Adult Continuing Education</i>	66,480	70,597	57,461	93,973	80,887
<i>Supporting Services</i>					
<i>Pupil</i>	1,222,007	1,228,264	1,464,310	1,780,172	1,989,253
<i>Instructional Staff</i>	1,703,442	2,143,177	2,697,846	2,936,208	2,686,855
<i>General Administration</i>	489,202	458,900	462,305	511,082	634,289
<i>School Administraton</i>	7,000	10,000	13,000	13,000	15,000
<i>Business</i>	971,768	964,585	1,035,450	1,040,726	1,085,496
<i>Operations and Maintenance</i>	631,247	623,407	644,216	688,203	685,351
<i>Transportation</i>	114,559	136,472	149,754	158,045	80,000
<i>Central</i>	1,640,934	1,787,339	2,233,578	2,302,556	2,277,504
<i>Community Services</i>	332,298	305,650	321,592	350,137	322,004
<i>Facilities Construction and Improvements</i>	8,590	35,376	26,778	54,000	54,000
<i>Outgoing Transfers and Other Transactions</i>	1,386,782	1,159,730	1,273,491	918,371	857,222
TOTAL EXPENDITURES	10,360,528	11,066,685	12,740,579	13,190,880	13,295,062
EXCESS OF REVENUES OVER EXPENDITURES	(1,694,858)	(1,621,413)	(2,000,148)	(1,957,927)	(2,189,649)
OTHER FINANCING SOURCES (USES)					
<i>Proceeds from Sales of Capital Assets</i>	0	0	0	0	0
<i>Transfer In</i>	1,935,468	1,890,437	1,971,025	2,032,498	2,032,498
<i>Transfers out</i>	0	(207)	(120,363)	(30,000)	(30,000)
TOTAL OTHER FINANCING SOURCES (USES)	1,935,468	1,890,230	1,850,662	2,002,498	2,002,498
NET CHANGE IN FUND BALANCE	240,610	268,817	(149,486)	44,571	(187,151)
FUND BALANCE, JULY 1	1,816,915	2,057,525	2,333,603 *	2,184,117	2,184,117
FUND BALANCE, JUNE 30	2,057,525	2,326,342	2,184,117	2,228,688	1,996,966

* Fund Balance restated due to adoption of GASB Statement 84

**SPECIAL EDUCATION FUND
DETAIL BUDGET PROJECTION
FOR THE FISCAL YEAR ENDING JUNE 30, 2021**

REVENUES	ACTUAL 2017-18	ACTUAL 2018-19	ACTUAL 2019-20	ORIGINAL BUDGET 2020-21	PROPOSED BUDGET 2020-21
<i>Local Sources</i>	14,195,061	15,131,194	15,232,511	19,180,034	18,876,242
<i>Non-Educational Entity Sources</i>	42,251	42,304	44,023	44,023	34,275
<i>State Sources</i>	10,147,002	10,041,375	10,009,961	10,209,895	10,267,619
<i>Federal Sources</i>	3,152,537	3,603,136	4,121,195	5,179,303	5,463,532
<i>Incoming Transfers and Other Transactions</i>	293,318	142,841	273,199	239,800	115,100
TOTAL REVENUES	27,830,169	28,960,850	29,680,889	34,853,055	34,756,768
EXPENDITURES					
<i>Instruction</i>					
<i>Added Needs</i>	9,282,311	8,719,342	8,597,060	9,926,976	10,370,179
<i>Supporting Services</i>					
<i>Pupil</i>	9,454,318	9,786,861	10,230,460	11,018,674	11,012,279
<i>Instructional Staff</i>	2,939,906	3,065,977	3,152,973	3,208,502	3,116,759
<i>Business</i>	15,038	23,928	50,590	20,000	32,717
<i>Operations and Maintenance</i>	940,983	924,575	946,797	1,098,689	1,237,376
<i>Transportation</i>	3,348,095	2,919,292	2,322,619	3,036,023	3,136,471
<i>Central</i>	224,002	206,179	224,935	250,224	259,542
<i>Community Services</i>	35,763	44,214	25,762	31,687	39,238
<i>Facilities Construction and Improvements</i>	331,552	283,311	1,475,956	1,710,000	1,740,000
<i>Outgoing Transfers and Other Transactions</i>	1,084,748	1,093,647	1,031,570	3,035,000	3,045,987
TOTAL EXPENDITURES	27,656,716	27,067,326	28,058,722	33,335,775	33,990,548
EXCESS OF REVENUES OVER EXPENDITURES	173,453	1,893,524	1,622,167	1,517,280	766,220
OTHER FINANCING SOURCES (USES)					
<i>Proceeds from Sales of Capital Assets</i>	27,935	9,114	10,440	0	2,000
<i>Transfer In</i>	76,502	72,361	132,189	73,000	614,925
<i>Transfers out</i>	(1,023,068)	(991,937)	(1,088,825)	(1,153,998)	(1,171,889)
TOTAL OTHER FINANCING SOURCES (USES)	(918,631)	(910,462)	(946,196)	(1,080,998)	(554,964)
NET CHANGE IN FUND BALANCE	(745,178)	983,062	675,971	436,282	211,256
FUND BALANCE, JULY 1	5,220,764	4,475,586	5,460,038 *	6,136,009	6,136,009
FUND BALANCE, JUNE 30	4,475,586	5,458,648	6,136,009	6,572,291	6,347,265

* Fund Balance restated for adoption of GASB Statement 84

**VOCATIONAL EDUCATION FUND
DETAIL BUDGET PROJECTION
FOR THE FISCAL YEAR ENDING JUNE 30, 2021**

REVENUES	ACTUAL 2017-18	ACTUAL 2018-19	ACTUAL 2019-20	ORIGINAL BUDGET 2020-21	PROPOSED BUDGET 2020-21
<i>Local Sources</i>	9,803,060	10,171,480	10,578,213	10,680,114	10,363,325
<i>Non-Educational Entity Sources</i>	31,691	31,731	33,020	33,021	25,709
<i>State Sources</i>	2,971,188	2,977,659	3,014,427	2,994,774	1,290,493
<i>Federal Sources</i>	134,241	144,151	146,527	145,987	139,676
<i>Incoming Transfers and Other Transactions</i>	336,455	314,010	322,567	305,000	305,000
TOTAL REVENUES	13,276,635	13,639,031	14,094,754	14,158,896	12,124,203
EXPENDITURES					
<i>Instruction</i>					
<i>Added Needs</i>	6,120,425	5,781,003	5,754,198	7,147,723	7,190,676
<i>Supporting Services</i>					
<i>Pupil</i>	1,168,856	1,159,422	1,189,294	1,436,855	1,441,243
<i>Instructional Staff</i>	650,249	668,207	627,801	610,714	728,810
<i>School Administration</i>	549,473	560,901	592,239	623,396	623,396
<i>Business</i>	64,386	60,870	66,196	69,799	76,699
<i>Operations and Maintenance</i>	868,300	856,600	781,085	973,869	967,070
<i>Transportation</i>	7,500	7,492	4,518	17,451	17,451
<i>Central</i>	52,038	43,594	37,643	62,950	88,039
<i>Community Services</i>	25,033	31,310	34,807	47,068	47,068
<i>Facilities Construction and Improvements</i>	575,103	480,721	342,958	251,500	310,191
<i>Outgoing Transfers and Other Transactions</i>	1,415,904	1,737,387	1,599,680	1,596,467	0
TOTAL EXPENDITURES	11,497,267	11,387,507	11,030,419	12,837,792	11,490,643
EXCESS OF REVENUES OVER EXPENDITURES	1,779,368	2,251,524	3,064,335	1,321,104	633,560
OTHER FINANCING SOURCES (USES)					
<i>Proceeds from Sales of Capital Assets</i>	6,700	3,579	0	4,000	1,000
<i>Transfer In</i>	0	0	61,112	30,000	30,000
<i>Transfers out</i>	(986,502)	(1,021,153)	(2,866,763)	(2,948,000)	(2,948,000)
TOTAL OTHER FINANCING SOURCES (USES)	(979,802)	(1,017,574)	(2,805,651)	(2,914,000)	(2,917,000)
NET CHANGE IN FUND BALANCE	799,566	1,233,950	258,684	(1,592,896)	(2,283,440)
FUND BALANCE, JULY 1	7,180,060	7,979,626	9,221,202 *	9,479,886	9,479,886
FUND BALANCE, JUNE 30	7,979,626	9,213,576	9,479,886	7,886,990	7,196,446

* Fund Balance Restated for Adoption of GASB Statement 84

B. Approval of Amendment to 2020-2021 Authorized Signatures for
Distribution of District Funds (**Roll Call Vote**)

70

MEMO

DATE: **MARCH 3, 2021**
TO: **BOARD OF EDUCATION**
FROM: **DAVE MANSON, SUPERINTENDENT**
RE: **APPROVAL OF AMENDMENT OF 2020-21 AUTHORIZED
SIGNATURES FOR DISTRIBUTION OF DISTRICT FUNDS**

The School Code requires that the Board of Education designate the person(s) authorized to sign checks for distribution of ISD funds and electronic transactions using the automatic clearing house (ACH) system as outlined in Board Policy 6144.01. As the new superintendent for Van Buren Intermediate School District, it is recommended the following resolution be passed:

RESOLVED, effective March 1, 2021, the following employee be added as an authorized signatory to sign checks written on accounts of the Van Buren Intermediate School District and electronic means using the automatic clearing house (ACH) system as outlined in Board Policy 6144.01.

David D. Manson

C. Approval of Contract Documents for the Learning Center Renovations and Addition (**Roll Call Vote**)

72

Date: March 3, 2021
To: Board of Education
From: Dave Manson, Superintendent
Subject: Approval of resolution to approve contract documents for the Learning Center Renovations / Addition

As you aware, based on a successful vote on March 10, 2020 for a new .9 special education millage for five years, a team from VBISD has been working with the architects C2AE out of Grand Rapids, and Owen Ames Kimball (OAK) based in Grand Rapids/Kalamazoo to provide architectural plans and oversight for proposed renovations and addition to this facility.

Attached for your review are the documents to continue to move ahead with this project. C2AE provided us a number of years ago with overview of opportunities for this site and has invested a significant amount of time reviewing options with our team. OAK we are currently using on the Health Department / Main Street project. At this time the projected cost for this work is around \$4 – \$4.5 million.

Therefore, I recommend that the board of education approve the following:

RESOLVED; the Board of Education authorizes the Superintendent, Dave Manson, or his designee to sign appropriate documents and entered into the attached agreements as presented.



AIA Document A132™ – 2019 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the day of in the year
(In words, indicate day, month, and year.)

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

Bert Goens Learning Center
701 S. Paw Paw St.
Lawrence, MI 49064

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

Van Buren Intermediate School District
490 South Paw Paw St.
Lawrence, MI 49009

THE CONTRACTOR:
(Name, legal status, and address)

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

§ A.2.1.2 Waivers of Subrogation

The Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any terms in the General Conditions or any other Contract Documents are contrary to the aforementioned, such terms shall be deemed void and unenforceable.

§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

§ A.2.3.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. The term "temporary building", as used in this section shall not include job trailers of any party

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
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§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s, Construction Manager’s, and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
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§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.3.4 The Insurance required by Section 2 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work, but not incorporated into permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance for owned or rented machinery, tools or equipment.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss may be purchased at the Owner's option and at the Owner's cost.
- § A.2.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § A.2.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § A.2.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § A.2.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- § A.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- § A.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including

construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.1.1 On all insurance contracts under which the Contractor is obligated to have its insurance company name the Owner as additional insured, the Contractor shall require such insurance company to add to the policy the following clause: "The insurance afforded to the Additional Insured is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the insurance company's liability under this policy shall not be reduced by the existence of such other insurance".

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

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§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$ 2,000,000) each occurrence, and in the aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor 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 insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, 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.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6

§ A.3.2.7 docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11

§ A.3.2.12

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per

Init.

claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property shall be provided by the Contractor at the Contractor's own expense for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are delivered to the site.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

§ A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds and reasonably acceptable to the Owner in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100% of Contract value
Performance Bond	100% of Contract value

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ A.3.4.1 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.

§ A.3.4.2 The Construction Manager shall obtain copies of the Performance and Payment Bond required by the Agreement from the Contractor prior to the Contractor beginning performance pursuant to the Agreement. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to the Contractor beginning performance pursuant to the Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

 **AIA[®] Document A232™ – 2019****General Conditions of the Contract for Construction, Construction Manager as Adviser Edition****for the following PROJECT:***(Name, and location or address)*

Bert Goens Learning Center 701 S. Paw Paw St.
Lawrence, MI 49064

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

Owen-Ames-Kimball Co.
300 Ionia Ave NW
Grand Rapids, MI 49503

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

Van Buren Intermediate School District 490 South Paw Paw St.
Lawrence, MI 49064

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

C2AE
648 Monroe Ave. NW Suite 210
Grand Rapids, MI 49503

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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) 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, other information furnished by the Owner in anticipation of receiving bids or proposals, Owner-accepted portions of the Contractor's bid or proposal, and portions of addenda relating to bidding or proposal requirements, but do not include sample forms. The Contractor's execution of the Owner/Contractor Agreement, the Architect's execution of the Owner/Architect Agreement, and the Construction Manager's execution of the Owner/Construction Manager Agreement shall each constitute their acceptance of all terms herein related to the respective parties.

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

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

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

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

§ 1.1.8 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.

§ 1.1.9 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's

consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. 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.

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

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

§ 1.1.13 Where materials, systems, and equipment items are referred to in the singular, such reference shall not serve to limit the quantity required. The Contractor shall furnish quantities as required by the Contract Documents to complete the Work. Unless specifically limited in the Contract Documents, the word "furnish", "install", and "provide", or any combination thereof mean to furnish and incorporate into the Work, including all necessary labor, materials, and equipment and other items required to perform the Work indicated.

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where responsibility for particular Work is required of the Contractor, the Contractor shall not be released from that responsibility by reason of the specification or drawing which establishes the responsibility. Thus, the Contractor shall be responsible for all Work required of it even through that responsibility may be shown only in that portion of the documents typically pertaining to another contractor or trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

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

- .1 Where requirements specifically set forth in the applicable Agreement are in conflict with other Contract Documents, including but not limited to these General Conditions, the Agreement shall govern.
- .2 In all other instances, the conflict shall be resolved by complying with the provision that is most favorable to the Owner (as determined by the Owner in the Owner's sole discretion).
- .3 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Contract Documents, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Owner, with the assistance of the Architect and Construction Manager, will decide which Subcontractor(s) shall furnish the same.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 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, or by courier.

§ 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 Not Used

§ 1.8 Not Used

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to matters requiring the Owner's approval or authorization subject to parameters of authority established by Owner's board of education. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Paragraph deleted

§ 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

§ 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, with notice immediately provided to Owner, 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. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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

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

§ 2.3.5 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. Taking into account the Contractor's experience and expertise, and exercise of professional caution, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.6 Upon specific written request of the Contractor, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Contracts with other Contractors alone shall not constitute sufficient Owner control for purposes of this section.

§ 2.3.7 Unless otherwise provided in the Contract Documents, the Contractor shall receive at least one copy of the Contract Documents in pdf format (or other format reasonably approved by the Owner) for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner or the Owner's designee (or immediately in the case of a threat to the safety of persons or property) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, including any claim against the Contractor's Performance Bond, correct such default or neglect. In the event the Owner directs another entity to perform the Contractor's Work pursuant to this section, that other entity shall charge the Contractor all costs for labor, material, and equipment plus administrative. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. In the event the Owner directs another entity to perform the Contractor's Work pursuant to this section, that other entity shall charge the Contractor all costs for labor, material, and equipment plus administrative costs, profit, and overhead. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor.

If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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

This Section 2.5 allows the Owner to withhold payments from a non-performing Contractor irrespective of the termination procedure identified in Section 14.2, and the Owner may pursue either remedy, or both.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. 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, the Construction Manager, and the 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. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's

proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall immediately notify the Construction Manager of delays of other contractors that could impact timely coordination and completion of the Work.

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.4.4 The Contractor, Construction Manager, and Architect each respectively agree that neither they nor their subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this contract.

§ 3.4.5 Asbestos-Free Produce Installation

§ 3.4.5.1 It is hereby understood and agreed that no product and/or material containing asbestos including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any combination of these materials that have been chemically treated and/or altered shall be installed or introduced into the Work by the contractor or his employees, agents, subcontractors, or other individuals or entities over whom the Contractor has control. If applicable, the Contractor shall be required to provide signed verification statement ensuring that all products or materials installed or introduced into the work all be asbestos-free.

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

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

§ 3.5 Warranty

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

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

2. The Work and all materials and equipment incorporated into the work will be free from all defects, including any defects in workmanship or materials;
3. The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;
4. The Work and all materials and equipment incorporated into the Work will be merchantable; and
5. The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind of quality of materials and equipment. Work, materials, or equipment not conforming to these requirements may be considered defective. Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy-two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract. The Contractor shall, at the time of final completion of the Work and as a condition precedent to final payment to the Contractor, assign to the Owner all manufacturers' warranties related to the materials and labor used in the Work. The Contractor further agrees to perform the Work in such a manner as to preserve any and all such manufacturers' warranties and deliver to the Owner the warranties, project manuals, operating procedures, and other materials related to each of the building systems and materials included in the Contractor's Work and as required by the Specifications.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall also pay all state and federal taxes levied on its business income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall hold the Owner harmless from same.

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

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

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

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

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written and dated notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Owner and the Architect, in consultation with the Construction Manager, determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Contractor disputes the determination or

recommendation, the Contractor shall proceed as provided in Article 15. The requirements of Section 2 of 1998 PA 57, as amended, are hereby incorporated into this document. The Contractor shall be alert to any indication or evidence of existing underground or concealed utilities or structures not shown on the Contract Documents and shall immediately notify the Owner of discovery of such evidence. If the Contractor encounters such utilities or structures, it shall cease operations immediately to minimize damage and shall notify the Owner and Architect. The Contractor shall bear the cost of damage resulting from its failure to exercise reasonable care in its construction activity or from continuing operations without notifying the Owner.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent and any other personnel shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove the superintendent and any other personnel from the Project whose performance is not satisfactory to the Owner and to replace such superintendent or other personnel with another who is satisfactory to the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. The Owner and/or Construction Manager may reply within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review.

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, 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. In no event shall the Contractor's Construction Schedule be extended due to action or inaction of the Contractor, except with prior written approval of the Owner within the Owner's sole discretion. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 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 Construction Manager's, Architect's, and Owner's approval which shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) for a reasonable time to review submittals and (3) shall provide for expeditious and practical execution of the Work. If the Contractor fails to submit a submittal schedule, 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 participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent approved schedules and the most recent work schedule submitted by the contractor to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule. In no event shall the Contractor's construction schedule be extended due to action or inaction of the Contractor, except with the prior written approval of the Owner within the Owner's sole discretion.

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

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

§ 3.10.7 The Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever the Work (or part thereof) becomes available, or at such other times as the Owner and/or Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of the Construction Manager or any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required at its own expense, to bring its part of the work up to the proper schedule. In the event that the Contractor does not take such action necessary to bring its part of the work up to schedule, as determined by the Construction Manager, then the Owner may supplement the Contractor's forces or take other action permitted under Section 2.4. The Contractor shall be responsible for any and all costs of performing or completing the Work and shall pay any such sums within ten (10) days of an invoice. If not paid within ten (10) days, the amount will be withheld from the Contractor's future payments and paid to the relevant parties. If the amount withheld from payments then or thereafter due Contractor are insufficient to cover such costs, the Owner may bill those costs to the Contractor, and the Contractor shall pay any such sums within ten (10) days of any invoice. Exercise of such rights shall in no way limit or

jeopardize the Owner's right to any other remedy, including but not limited to a claim against the Performance Bond of the Contractor.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data, and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate 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 and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

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

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

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

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

Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. 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, the Architect, and the Construction Manager 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. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 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 Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment which are to be used for the Project or carry out the Work shall be stored at the Project site(s). Protection of such materials and equipment shall be the sole responsibility of the Contractor.

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

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, 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, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor and its Subcontractors shall keep the premises and surrounding area free from accumulation of waste materials 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, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

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

§ 3.16 Access to Work

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or in any way related to performance of the Work or the duties or obligations of this Agreement or the failure of the Contractor or the Work to conform with the Contract Documents, caused in whole or in part by any acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts of any of them may be liable. The Contractor's indemnification responsibility shall be to the fullest degree of the contractor's fault, on a comparative basis (or the fault of any others for whom the Contractor is responsible), and the Contractor shall not be obligated to indemnify a party for that party's sole negligence. The Contractor shall be responsible to the Owner, Construction Manager, Architect, Architect's consultants and agents and employees of any of them from and against all amounts the Contractor or otherwise obtain indemnification from the Contractor provided under the terms of this Section 3.18. Such obligation shall not be construed to negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person set forth in this section. To the fullest extent permitted by law, the Contractor shall indemnify the Owner and save the Owner harmless against all loss by fines, penalties or corrective measures resulting from negligent or wrongful acts or omissions by the Contractor, its Subcontractors, agents, employees or assigns, with respect to the violation of safety requirements of this Contract, including reasonably attorney fees.

§ 3.18.2 In addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify and save harmless the Owner, Construction Manager and Architect from and against the payment of the following:

All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax

withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under this Contract;

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

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

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

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

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

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

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or more frequently, as agreed with the Owner or required by law, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Subject to the Owner/Architect Agreement, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, will guard the Owner against defects and deficiencies in the work, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

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

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

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect, except as may be required under 1937 PA306 and/or 1980 PA 299, 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 except as provided herein or in their respective agreements with the Owner, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Except as identified in their respective Agreements with the Owner, neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Construction Manager will schedule and coordinate the work of all Contractors on the Project, including the Contractors' use of the site. The Construction Manager will keep the Contractors informed of the Project Construction Schedule to enable the Contractors to plan and perform the Work in a timely manner.

§ 4.2.6 **Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager 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 Construction Manager 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 other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

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

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager. However, should the Construction Manager or Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, they shall immediately notify the Owner of the same to determine an appropriate corrective course of action or notify the Contractor of the same to correct the irregularities.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or 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.

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

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

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

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

§ 4.2.17 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 Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.19 Interpretations 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 the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations so rendered in good faith and without negligence.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish supplies, materials or equipment, including those fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager will notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. The Contractor shall remain, in all instances, jointly and severally liable to the Owner for all acts or omissions of its Subcontract. All contractual agreements with additional persons or entities serving as a subcontractor shall incorporate the Contract Documents, expressly identify the Owner as a third-party beneficiary, give the Owner all rights against the Subcontractor that it would have against the Contractor, and state that the Owner shall enjoy all third-party beneficiary rights not prohibited by law.

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

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

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

§ 5.3 Subcontractual Relations

By appropriate 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, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction

Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted as negotiated by the parties.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, 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.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and 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 or other Contractors' 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 Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities 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, Construction Manager, Separate Contractors, or other Contractors as provided in Section 10.2.5. Should a claim be made that the Contractor wrongfully delayed or caused damage to the Work or property of another contractor, the Contractor shall promptly settle the dispute with such other contractor. If a separate contractor sues the Construction Manager or Owner on account of any delay or damage alleged to have been caused by the Contractor, the Construction Manager (on the Owner's behalf) will notify the Contractor who shall defend such proceedings at the Contractor's sole expense. If any judgement or award against the Construction Manager or Owner for all costs, including attorney's fees and court costs, which either the Owner or Construction Manager may have incurred.

(Paragraph deleted)

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 allocate the cost among those responsible. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

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

§ 7.2 Change Orders

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

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

§ 7.2.3 The Contractor's agreement on any Change Order will constitute its final settlement of all matters relating to the direct and indirect costs associated with such change and any and all related adjustments to the Contract Sum and the Contract Time.

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager 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 Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.7

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect 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 Construction Manager 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 Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. All work shall be completed in sufficient time to allow for clean-up and preparation for Owner move-in prior to the date of Substantial Completion.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Provided the Contractor submits a written request for an extension not more than fourteen days after the occurrence that gives rise to the delay, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by fire, government-declared emergencies, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation, binding dispute resolution as applicable; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time may be extended by Change Order. Failure of the Contractor to submit a timely request for an extension shall irrevocably

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

(Paragraph deleted)

§ 8.4 Delay Damage Claims

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit a schedule of values allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or 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 fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, 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, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders. A Contractor's request for payment of sums related to work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner and the Construction Manager for approval to include such material costs in its next progress payment. The Contractor's request shall include the following information:

1. A list of the fabricated materials consigned to the Project (which shall be clearly identified, giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site).
2. Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
3. A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibility to complete the Work.
4. Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.
5. Cost incurred by the Owner, Construction Manager, and Architect to inspect material in off-site storage shall be paid by the Contractor.
6. Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
7. When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace at its own expense, unless covered under builder's risk policy.

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

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Construction Manager and Owner of the

Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

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

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors. As between the Owner and Contractor, the failure of the Architect or Construction Manager to notify the Contractor or the Owner of a withheld certification does not render such withholding ineffective, and the Owner shall have no obligation to pay a Contractor for uncertified amounts or amounts for which no Certificate for Payment has been issued. If the Contractor does not receive notice of withheld certification, it shall proceed as provided in Section 9.7.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

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

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect, in writing, together with the Certification to which the qualification pertains.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the

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Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied, or the Contractor is in breach of the Agreement;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other 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 failure to carry out the Work in accordance with the Contract Documents or;
- .8 the Work not having progressed to the extent set forth in the Application for payment; or
- .9 representations of the Contractor are untrue.

§ 9.5.2 When 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 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or 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 Construction Manager, and both will reflect such payment on the next Certificate for Payment.

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

§ 9.6 Progress Payments

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

§ 9.6.1.1 The Owner may, in its sole discretion, choose to make payments to Contractors through the Construction Manager. More particularly, the Owner may distribute funds to the Construction Manager for the Construction Manager to then provide payment to each respective and applicable Contractor. The Owner may discontinue this practice at any time in its sole discretion.

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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, Construction Manager 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 Owner may, in its sole discretion, after providing Contractor with ten (10) days prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project due to nonpayment such that, in the Owner's determination, progress of the Project and the Project's schedule are jeopardized. All payments made pursuant to this section shall be considered the same as if paid directly to the Contractor and shall constitute partial payment of the Contract Sum. In the event the Contractor disagrees with the amount proposed to be paid to one or more Subcontractors, material men, laborers or claimants, the Contractor shall provide a bond in the amount the Contractor believes the Owner will overpay, within ten (10) days of receipt of notice, or be barred from making any claim that the amount of the direct payment was incorrect. Payment under this provision shall not jeopardize any other remedy available to the Owner.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the 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 immediately. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Notwithstanding Sections 9.8.1 and 9.8.2 as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive list of items to be complete or corrected (a "punch list"). The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is complete. The Contractor shall proceed with the work in such a manner as reasonably directed and shall cooperate with the Owner to limit interruptions.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (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) an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, and (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release executed by the Contractor on a form provided by the Construction Manager; (8) all close-out documents and warranties have been provided in a reasonable and acceptable manner, and (9), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts 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 actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, 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 through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner.

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(Paragraphs deleted)

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

§ 9.10.6 All architectural costs incurred after the specified Final Completion date resulting from the Contractor's failure to complete the Work as agreed shall be paid by the Contractor to the Owner prior to the authorization of final

payment. Charges to the Contractor shall be made at such times and in such amounts as the Architect invoices the Owner under the current rate schedule in effect at the time of service, for services provided in connection with the Work. The architectural costs incurred after the final completion date will be deducted from the Contractor's progress payment or final payment as applicable.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall take all reasonable safety precautions with respect to its Work and the work of others, shall comply with all standard industry safety measures and shall comply with all applicable laws, ordinances, rules regulations and orders of any public authority and all other requirements of the Contract Documents, including those applicable to the safety of persons or property. The Contractor shall be responsible for the safety of all the Contractor's employees and the safety of all the Contractor's Subcontractors, suppliers, and their employees. The Contractor shall report in writing to the Construction Manager any injury to any of Contractor's or its Subcontractors' employees at the site within one (1) day after the occurrence of such injury. The Contractor acknowledges receiving, or having access to an opportunity to review health and safety information about the Project site(s), including any applicable asbestos management plan and any other environmental information if deems necessary to perform the work.

§ 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. The Contractor shall be solely and fully responsible for any and all damage claims and for defense of all actions against the Owner relating to such explosives, hazardous materials and/or unusual methods.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. 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, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of

them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of others for whose acts the Owner 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.

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

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

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

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials 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, Construction Manager and Architect of the condition.

§ 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, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately to address shutdown, delay, and start-up.

§ 10.3.3

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

§ 10.3.5 The Contractor shall 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.

(Paragraph deleted)

§ 10.3.

§ 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. Nothing in this section will be construed as relieving Contractor from the cost and responsibilities for emergencies covered hereby.

§ 10.5 Notification of Utility Companies

§ 10.5.1 At least five (5) working days prior to the start of work in areas which may involve existing utility lines, the Contractor shall notify MISS DIG notification system of the planned work (and, if applicable, any other Registered Utility Protection Service of the utility company possibly affected by the planned work).

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

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

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit A of this Agreement. 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, Construction Manager and Construction Manager's consultants, and the 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.

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

§ 11.1.4 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 directly to the Owner, and separately to the Construction Manager, 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 On all insurance contracts under which the Contractor is obligated to have its insurance company name the Owner as additional insured, the Contractor shall require such insurance company to add to the policy the following clause: "The insurance afforded to the Additional Insured is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the insurance company's liability under this policy shall not be reduced by the existence of such other insurance."

§ 11.2 Owner's 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 both the Contractor and the Construction Manager, separately and 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 directly to the Contractor, and separately to the Construction Manager, 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 The Owner is not waiving any rights its insurer(s) may have to subrogation.

§ 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, Architect, and Construction Manager 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 Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, 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.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request, with the Owner's consent, to see such Work and it shall be uncovered by the Contractor. At the time Owner's consent is sought as described herein, the Architect and/or Construction Manager shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. If such Work is 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 Construction Manager or 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 Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If any portion of the Work is determined by the Owner, Construction Manager or Architect, either during performance of the Work or during any applicable warranty period, to be defective or not in compliance with the contract requirements, the Construction Manager or Owner shall notify the Contractor in writing that such Work is rejected. Thereupon, the Contractor shall immediately replace and/or correct such Work by making the same comply strictly with all the requirements therefor. The Contractor shall bear all costs of correcting such rejected Work, including work of other Subcontractors and including compensation for the Architect's and Construction Manager's additional services and

any delay or related damage to the Owner made necessary thereby. The Construction Manager shall have the right to charge the Contractor for any compensation payable for the Architect's or Construction Manager's additional services required by the Contractor's rejected Work and deduct the payment from the next payment due the Contractor.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner or Construction Manager to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Construction Manager shall give such notice promptly after discovery of the condition. During that "correction period," if the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner, Construction Manager 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, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 The Contractor shall respond within 24 hours, to correct Work deficiencies and/or punch list items. Failure to correct Work deficiencies and/or punch list items in a timely fashion shall be a material breach, and the Owner may terminate the Contract immediately without following the procedure identified in Section 14.2. As used in this Section 12.2.6, "timely" means the Contractor shall begin correction within three (3) days of receiving the punch list or notice of work deficiency, and correction will be completed in a commercially reasonable time in accordance with the direction of the Construction Manager. Whether or not the Contract is terminated, if the Contractor fails to make corrections in a timely fashion, such Work may be corrected by the Owner, in its sole discretion, at the Contractor's expense and the Contract Sum may be adjusted by backcharge accordingly. The Contractor shall promptly notify the Construction Manager, in writing, when the Work deficiencies and/or punch list items are completed. Upon the review of the Work by the Construction Manager after such notification by the Contractor, if Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse any cost incurred by the Owner, including the Construction Manager's and Architect's fees for reinspection of the Work. Failure to pay such costs within ten (10) days of receipt of a demand regarding the same shall permit the Owner to withhold such amounts from the Contractor's contract.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written deductive Change Order, specifically

referencing that it addresses nonconforming work, acceptable to the Owner's authorized representative, and signed by all parties. Acceptance of nonconforming Work may only occur pursuant to such written Change Order.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Michigan in all respects, except that claims and causes of action brought by the Owner shall not be deemed untimely if filed within six (6) years of substantial completion of the entire (and all) Project(s).

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.3.3 Written Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by national overnight courier service providing a tracking system and proof of delivery to, the last business address known to the party giving notice. Any written notice delivered with a written acknowledgement of receipt shall be deemed duly served, regardless of method. However, providing notice in other ways not specifically listed in this Section 13.3 may be duly served, if proved, but shall not be "deemed" duly served in the absence of proof of receipt.

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

§ 13.4 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 Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of 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 Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

§ 13.5 Interest

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

§ 13.6 TIME LIMITS ON CLAIMS

§ 13.6.1 The Owner shall commence all claims and causes of action in accordance with the Section 13.1 and Section 13.6.2, regardless of any other time frames identified in this Agreement. The Contractor shall commence all claims and causes of action in accordance with Section 15.1, other provisions of this Agreement and in accordance with Michigan law.

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

§ 13.7 SURETY NOTICE AND PRIOR APPROVAL

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

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

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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days for reasons within the Owner's control and 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, which may include 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 Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents subject to justifiable withholding of payment as described herein or in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor 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, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and direct costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days, for reasons within the Owner's control and through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons 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, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. The Contractor may not terminate the Contract unless it has submitted claims for the delays and sought an extension of time for each delay.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, 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, three days' written notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption 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 this Contract.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract including but not limited to additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. The Contractor shall not knowingly

(as "knowingly" is defined in the Federal False Claims Act, 31 USC 3729, et seq.) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim by the Contractor, the Claim shall be accompanied by an affidavit sworn to before a notary representative of the Contractor, which states that: "The Claim submitted herewith complies with subparagraph 15.1.1 of the General Conditions, as amended, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent claim." Claims of the Owner shall be governed by the relevant Michigan statutory limitations period.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the 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 Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to timely and properly initiate a claim shall be an irrevocable waiver of such claim. Claims by the Owner shall be governed by the applicable statute of limitations period, except as such time frame may be longer in accordance with Section 13.1 and Section 13.6

§ 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.

§ 15.1.5 Claims for Additional Cost. 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. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Project delay shall not be a basis for a Claim for additional cost. Delay claims against the Owner may be remedied only through an extension of time per Section 8.4.2

§ 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.

(Paragraphs deleted)
(deleted)

§ 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 interpretation. The Architect will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial interpretation shall be required as a condition precedent to mediation or litigation of any Claim brought by the Contractor against the Owner. If an initial interpretation has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and 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 interpret the Claim. Within ten (10) days of a written request, the Contractor shall make available to the Owner or its representative all of its books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its subcontractors, regardless of tier, and materialmen to do the same.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will, based on its interpretation, either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial interpretation approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial interpretation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, 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 subject to the parties' agreed upon dispute resolution process.

§ 15.2.6 Regardless of any other time frames identified herein, claims and causes of action brought by the Owner shall be governed in accordance with the statute of limitations periods under Michigan law, except for such longer periods of time as may be permitted in Section 13.1 and Section 13.6

§ 15.2.6.1

§ 15.2.7 In the event of a Claim against the Contractor, the Owner, Architect or Initial Decision Maker may, but are not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner, Architect or Initial Decision Maker may, but are not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8

§ 15.3 Mediation

§ 15.3.1 Except as stated in this Agreement or otherwise agreed in writing by the parties, claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the commencement of the parties' agreed upon dispute resolution proceedings but, in such event, mediation shall proceed in advance of such proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3

§ 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

(Paragraphs deleted)

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 The Owner, at its sole discretion, may consolidate an arbitration (if the parties mutually agree in writing to arbitrate) and/or a mediation conducted under this Agreement with any other arbitration and/or mediation to which it is a party provided that (1) the arbitration 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 The Owner, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration (if the parties mutually agree in writing to arbitrate) and/or mediation, as applicable, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration and/or mediation, as applicable involving an additional person or entity shall not constitute consent to arbitration and/or mediation of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 Contractor further agrees to include similar dispute resolution provisions in all agreements with the independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar dispute resolution provisions in all agreements with subcontractors, all subconsultants, suppliers or fabricators so retained, thereby providing for a consistent method of dispute resolution between the parties to those agreements. Subject to the other limitations periods identified in these General Conditions which are understood to govern over this sentence, no demand for mediation shall be made after the date when the applicable statutes of limitation would bar legal or equitable proceedings. During the pendency of any mediation, all applicable limitations period shall be tolled until the conclusion of that process. The Owner reserves the right in its discretion to require consolidation of joinder of any mediation arising out of or relating to this Agreement with another mediation involving a person or entity not a party to this Agreement in any event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort. In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provisions applicable to the parties shall be deemed to be void and nonexistent in the event Owner, in its discretion determines the Contractor should become party to that dispute by joinder or otherwise. Any mediation hearings shall be held in the general location where the Project is located, unless another location is mutually agreed upon.



AIA[®] Document C132[™] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

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

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

Van Buren Intermediate School District
490 South Paw Paw St.
Lawrence, Michigan 49064

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

Owen-Ames-Kimball Co.
300 Ionia Ave NW
Grand Rapids, MI 49503

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

Bert Goens Learning Center
701 S. Paw Paw St.
Lawrence, MI 49064

Project includes improvements to their existing facility. Main portion of the project includes reworking the existing entrance, canopy, demolition of a section of the building and an addition.

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

C2AE
648 Monroe Ave. NW Suite 210
Grand Rapids, MI 49503

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.

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

Init.

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ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

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

As expressly approved by the Owner in writing after advice and input from the Architect, Construction Manager, and any others deemed appropriate by the Owner

§ 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.)

Project is located at the Bert Goens Learning Center. Project consists of a demolition phase to the exiting building, an addition, renovation to the entrance and a canopy.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

A fixed sum to be established by the Owner as a condition of this Agreement"

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

.1 Design phase milestone dates, if any:

Init.

/

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive bidding with multiple prime bidders in accordance with the Revised School Code and other applicable laws.

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

TBD

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

TBD

(Paragraph deleted)

§ 1.1.7.

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

TBD

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

Mr. David Manson
Van Buren Intermediate School District
409 South Paw Paw St.
Lawrence, Michigan 49064

§ 1.1.10 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:

Init.

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

NA

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

.1 Land Surveyor:

TBD

.2 Geotechnical Engineer:

TBD

.3 Civil Engineer:

TBD

.4 Contractors, as defined in Section 1.4:

TBD

.5 Separate Contractors, as defined in Section 1.4:

TBD

.6 Other, if any:

(List any other consultants retained by the Owner.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

Mr. Tom Stanek
Director of Kalamazoo Operations
161 East Michigan Suite 102
Kalamazoo, Michigan 49007

Init.

§ 1.1.13 The Construction Manager's staffing plan as required under Section 3.3.3 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

TBD

§ 1.1.14 The Construction Manager's consultants retained under Basic Services, if any:
(List name, legal status, address, and other contact information of any consultants.)

§ 1.1.15 The Construction Manager's consultants retained under Supplemental Services:

NA

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

TBD

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

§ 1.3 – Intentionally deleted

§ 1.3

§ 1.3.1 – Intentionally deleted

§ 1.3.1

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect. Specifically, the Construction Manager is not responsible to administer contracts for Asbestos or hazardous materials abatement.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, the Contractors, and the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate Contractors. The Construction

Init.

Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

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

§ 2.8 The Construction Manager shall maintain the following insurance of types and amounts set forth below, as required by law, or as set forth in any Certificate of Insurance provided by the Construction Manager, whichever is greater.

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

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

§ 2.8.3 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 such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.8.1 and 2.8.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The Construction Manager shall provide excess or umbrella coverage with a policy limit of not less than Ten Million _____ Dollars (\$ 10,000,000 _____)

§ 2.8.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, and One Million (\$ 1,000,000) policy limit.

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

§ 2.8.6 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause all general liability insurance policies, including the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for 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.

§ 2.8.7 Insurances required or otherwise provided by the Construction Manager shall either be (i) occurrence-based and maintained in force during the life of the Project and for a period of no less than twelve (12) months after the relevant date of Substantial Completion of the Project, or (ii) claims-made and maintained in force during the life of

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the Project and for a period of no less than seven (7) years after the relevant date of Substantial Completion of the Project.

2.8.8 At or before execution of this Agreement, the Construction Manager shall provide certificates of insurance to the Owner that evidence the Construction Manager's insurances (i) comply with the requirements in this Section 2.8, (ii) are primary and non-contributory, and (iii) may not be, non-renewed, or eliminated without at least thirty (3) days' prior written notice to the Owner.

§ 2.9 The Construction Manager shall assist the Owner, Architect, and other Project participants in establishing building information modeling and digital data protocols for the Project

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager shall be, responsible for managing and maintaining the centralized electronic document management system.

§ 2.11 The Construction Manager shall retain all Project related documents and information it receives, for a period of at least six (6) years following final completion of the Project, during which period, the Owner and Architect shall have access to the documents and information. The Construction manager shall notify the Owner in writing at least ninety (90) days before disposing of any referenced records for any reason and at any time, to afford the Owner sufficient notice to take possession of such records if required or desired. The Construction Manager shall transmit the documents and information to the Owner upon the Owner's request.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Agreement AIA Document A232-2019, as modified, and any other Contract Document, unless such services are expressly designated as Additional Services. Basic Services shall include, but not limited to, usual and customary construction coordination, scheduling, constructability review, cost estimating, and allocation and supervision of construction activities among the Contractors. Construction Managers obligations do not extend to responsibilities or duties related to Asbestos containing materials.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review analyze and assist in the development of the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work. The Construction Manager shall periodically update the Construction Management Plan, for the Owner's approval, over the course of the Project.

§ 3.2.4 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that affect the Project's timely completion.

§ 3.2.5 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner. The Construction manager shall provide the current Project construction schedule for each set of bidding documents.

§ 3.2.6 Based on the preliminary design, design criteria and other information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and 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, including but not limited to the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents.

§ 3.2.7 The Construction Manager shall review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, 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; sequencing for phased construction; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Such reviews do not alter the Architects responsibility for its design.

§ 3.2.8 The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, with the Owner's approval and as necessary and coordinate resolution, , of any such impacts.

§ 3.2.9 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 further development of the design, bidding or negotiating, price escalation, and market conditions. 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 Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.2.10 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that the design, or details, adversely affect cost, scope, schedule, constructability, or quality of the Project.

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

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

§ 3.2.13 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.14 The Construction Manager shall make recommendations about, expedite, and coordinate the ordering and delivery of products, materials, and equipment in support of the schedule, including those that must be ordered in advance of construction.

§ 3.2.15 The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the Project.

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

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

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

§ 3.2.19 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall develop the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall develop and submit a list of prospective bidders to whom copies of the invitation to bid are to be sent for the Architect's review and the Owner's approval. Additionally, the Construction Manager acknowledges that its Basic Services include assisting and advising the Owner with respect to compliance with the competitive bidding requirements of MCL 380.1267 and MCL 380.1274.

§ 3.2.21 After the Owner receives the bids, the Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.22 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors. As part of its assistance, the Construction Manager shall verify that the Contracts for Construction have been modified to conform with this Agreement and the Agreement between the Owner and Architect, including but not limited to with respect to dispute resolution procedures, permit requirements, bond requirements, insurance requirements (including naming the Owner as "additional insured"), indemnification, and an acknowledgement of the supremacy of Michigan law. The Construction Manager should include modified drafts of the Contract for Construction and General Conditions in the Bidding Documents.

§ 3.2.23 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.24

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified for the Project.

§ 3.3.2 The Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the later of the date the Architect issues the final Certificate for Payment or 30 days after final payment to all Contractors is due.

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents. Construction Manager's obligations do not extend to responsibilities and duties relating to asbestos containing materials.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect, including measures to restore the Project schedule.

§ 3.3.6 The Construction Manager shall schedule and conduct progress and construction meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

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

§ 3.3.8 The Construction Manager shall coordinate all tests and inspections related to Construction Manager's prescribed scope of work and required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

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

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

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and include them in the Construction Manager's progress reports.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

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

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

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

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractors are 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 Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

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

§ 3.3.13 The Construction Manager shall obtain and review the safety programs developed by each Contractor solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations for any additional safety measures to be considered in the Work of the Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall advise the Contractor of safety violations and shall verify the correction of such violations if observed by the Construction Manager in light of its experience and expertise in Michigan school construction. The Construction Manager will report safety violations to the Owner if not reasonably, timely, and properly corrected in the field. Such duties and responsibilities of the Construction Managers shall in no way waive, limit or excuse the Contractor's full duty and liability with regard to safety. The Construction Manager's obligations do not extend to responsibilities and duties relating to asbestos containing materials.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents using the best efforts consistent with the standards of the

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construction industry for a construction manager-advisor and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Subject to the authority of the Owner, the Construction Manager shall reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent authorized by law and provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Except as otherwise provided in this Agreement, the Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted and approved by the Owner, prepare Change Orders and/ or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. The Construction Manager shall contemporaneously review all changes and potential changes in the Work with the Owner and Architect for reason, cost, cause, and responsibility.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims,

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, with the Owner's approval and as necessary, and coordinate resolution, of any such impacts.

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

§ 3.3.21.1

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

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports;
- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and
- .13 Any other items the Owner may require;

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

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

§ 3.3.22 The Construction Manager shall make available, at the Project site, the Contract Documents, including Drawings, Specifications, addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make available all such records be in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

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

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

§ 3.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with that Contractor, prepare for the Architect and Owner a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager

shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 When the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractors. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall perform an inspection to confirm the completion of the Work of the Contractors and make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting any final inspection.

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

§ 3.3.28 The Construction Manager shall coordinate receipt, and delivery to the Owner, of other items provided by the Contractors, such as keys, manuals, record drawings maintenance stocks. . The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the Contractors' compliance with the requirements of the Contract Documents.

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

§ 3.3.30 Prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner and Architect to review the facility operations and performance.

3.3.31 As part of Basic Services, the Construction Manager shall be prepared to serve, and shall serve when requested by the Owner, as a witness in connection with any public hearing, arbitration proceeding, mediation, legal proceeding or administrative law proceeding, but only if (a) the public hearing is a public hearing of the Owner (b) the Construction Manager is a party fo the applicable arbitration, legal, mediation, or administrative proceeding, and/or (c) the Construction Manager's services are at issue in the applicable arbitration, legal, mediation, or administrative proceeding.

§ 3.3.32 To the extent required by law or as required by the Owner, the Construction Manager shall require each Contractor for each separately bid portion of the Work to obtain and maintain a performance bond and payment bond in an amount covering the Contractor in a form and with a surety acceptable to the Owner in connection with its obligations thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any work at the Project site.

§ 3.3.33 The Construction Manager shall assist the Owner and the Architects in the planning and sequencing of construction activities in order to accommodate necessary Work during occupancy of the Project area in a manner acceptable to the Owner. The Construction Manager acknowledges and agrees that the Owner needs and will be using the Project area or portions thereof for its educational purposes during construction. The Construction Manager will perform its work and will coordinate and manage the work of the Contractors so as not to interfere with the Owner's use of the Project area for educational purposes, including but not limited to controlling and managing noise levels, safety, dirt, dust, debris, convenient access, etc. The Construction Manager's obligations do not extend to responsibilities and duties relating to asbestos containing services.

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 Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager’s responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. *(Designate the Construction Manager’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Construction Manager 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>(Construction Manager, Owner or not provided)</i>
§ 4.1.1.1 Measured drawings	NA
§ 4.1.1.2 Tenant-related services	NA
§ 4.1.1.3 Commissioning	Basic Service to the extent set forth in Section 3.3.24
§ 4.1.1.4 Development of a commissioning plan	Basic Service
§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3	NA
§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination	NA
§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance	NA
§ 4.1.1.8 Assistance with site selection	NA
§ 4.1.1.9 Assistance with selection of the Architect	NA
§ 4.1.1.10 Furnish land survey	NA
§ 4.1.1.11 Furnish geotechnical engineering services	NA
§ 4.1.1.12 Provide insurance advice	NA
§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies	NA
§ 4.1.1.14 Stakeholder relationships management	NA
§ 4.1.1.15 Owner moving coordination	Basic Services
§ 4.1.1.16 Coordination of Owner’s Separate Contractors	Basic Service, exclude asbestos and hazardous materials contractors
§ 4.1.1.17 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1

§ 4.1.2.2

§ 4.1.3

§ 4.2 Construction Manager’s Additional Services

§ 4.2.1 The Construction Manager may provide Additional Services after execution of this Agreement if done so in compliance with the first paragraph of Section 4.1.1 without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any properly authorized Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.2.2 The following Additional Services, shall be provided if there has been compliance with the first paragraph of Section 4.1.

- .1 Services necessitated by a significant change in the Initial Information, 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, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered Additional Services;
- .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner, acknowledging the Owner's obligations under the Open Meetings Act; .4
- .5
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto; , or the Construction Manager's services are at issue;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .8

§ 4.2.3 The Construction Phase, the Construction Manager shall provide the following Additional Services, there is compliance with the first paragraph of Section 4.1.1:

:

- .1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.
- .2 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after timeframe established in Section 3.3.2 may be compensated as Additional Services to the extent the Construction Manager's services are affected, the Construction Manager incurs additional cost in providing those Construction Phase Services and there has been compliance with the first paragraph of Section 4.1.1..

§ 4.2.5

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment; systems; and site requirements subject to the Owner's status as a public body and acknowledging that the Owner is not a construction professional.

§ 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 parties acknowledge the Owner's fixed limit of construction cost for this project.

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

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Agreement Between Owner and Architect,. The Owner shall provide the Construction Manager with a copy of the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project subject to parameters of authority set by the Owner.. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services subject to the Owner's status as a public body. The Construction Manager shall timely prepare and submit to the Owner all recommendations, documents, or other matters for which Owner's approval is required.

§ 5.6 As necessary for the Project, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and 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. Upon Owner's request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.

§ 5.7 As necessary for the Project, 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. Upon Owner's request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.

§ 5.8

§ 5.9

§ 5.10 The Construction Manager shall coordinate the services of the Owner's consultants with those services provided by or on behalf of, the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants when not designated as the responsibility of others, including as the responsibility of the Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager timely requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

§ 5.12 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. Beyond those required of the Basic Services of the Construction Manager.

§ 5.13 The Owner shall provide prompt notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. Should said fault or defect remain unresolved after a reasonable amount of time, the Owner shall give to the Construction Manager written notice of those unresolved issues. Failure of the Owner to provide notice shall not relieve the Construction Manager of its responsibilities. Further, the Owner does not assume any duty of inspection by the inclusion of this section. The Construction Manager shall provide the Architect and the Owner prompt written notice if it becomes aware of any fault or defect in the Project, the Contract Documents, including errors, omissions, or inconsistencies in the Architect's Instruments of Service, or any fault or defect in the Construction Manager's services.

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

§ 5.15 The Owner may communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Construction Manager 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 Construction Manager of the substance of any direct communications between the with the Contractors and the Construction Manager's consultants that may affect the Construction Manager's services.

§ 5.16 Before executing the Contracts for Construction, the Construction Manager shall assist the owner in coordinating the Construction Manager's duties and responsibilities set forth in the Contracts for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

§ 5.18

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this cost estimating or budget tracking under this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. For purposes of calculating fees or other costs determined on a percentage of the Cost of the Work, the Cost of the Work does not include the compensation of the Architect or the Architect's consultants, compensation of the Construction Manager or the Construction Manager's consultants, compensation of any other Owner-hired consultants, work for which the Construction Manager is not providing services (for example, technology improvements, bus purchases, plan/review fees, Owner-purchased equipment), the costs of the land, rights-of-way, financing, or unused contingencies ; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is referenced in Initial Information, and has been, or must be, established as a fixed limit of construction cost as a condition of this Agreement . Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's proposed, established, or approved 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 Construction Manager. The foregoing statement does not waive the fixed limit of construction cost.

§ 6.3 If 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.

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

§ 6.5 If the fixed limit of the Cost of the Work identified in Owner's budget is exceeded by the sum of the lowest bona fide bid(s) or negotiated proposal(s) plus the Construction Manager's estimate of other elements of cost for the Project, Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or otherwise, the Construction Manager shall cooperate with the Owner and Architect to develop the necessary revisions, update the cost estimate, obtain additional bids and take other necessary steps and provide related services that are necessary to bring the Cost of Work within the Owner's established fixed limits. The Construction Manager will perform the services described in Sections 6.4 and 6.6 without additional compensation.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by Michigan law, but in no case shall a claim or cause of action by the Owner be deemed untimely if filed within six (6) years of Substantial Completion of the overall Project. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend.

§ 8.1.4 To the extent permitted by law, the Construction Manager and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This waiver is applicable, without limitation. There are no consequential damages within the contemplation of the parties.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with

applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager shall initially endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement, except that either party may, if in good faith declare a mediation impasse and proceed with litigation after one full business day of mediation that fails to resolve the dispute at issue. A request for mediation shall be made in writing, delivered to the other party to 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. During the pendency of any mediation, the parties agree that the applicable claims that are subject to the mediation process or that are related to claims subject to that process, shall be tolled.

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the Owner and Construction Manager 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

§ 8.3.1

§ 8.3.1.1

§ 8.3.2

§ 8.3.3

§ 8.3.4

§ 8.3.4.1

§ 8.3.4.2

§ 8.3.4.3

§ 8.4

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make undisputed payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services for this reason, the Construction Manager shall give seven days'

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written notice to the Owner before suspending services. In the event of such a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager all undisputed sums due prior to suspension. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. The Construction Manager'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 consecutive days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager for services performed prior to termination, including any Reimbursable then due in accordance with Article 11.

§ 9.7

§ 9.8

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Michigan.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction as modified.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution unless circumstances require a shorter time frame. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

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

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make

such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement. The Construction Manager shall obtain the Owner's approval prior to disclosures of information for the purpose of verifying that such information disclosures contain no confidential information (including, for example, information protected by FERPA).

§ 10.8 If the Construction Manager receives information of the Owner that is "confidential" or "business proprietary," the Construction Manager shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The Construction Manager 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 Construction Manager to defend itself in any dispute and the Owner has consented to such disclosure. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect. 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 Waiver of Severability

§ 10.10.1 Any waivers hereunder must be in writing. No waiver or right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. A waiver of any term, condition, or covenant by a party shall not constitute a waiver of any other term, condition or covenant.

ARTICLE 11 COMPENSATION

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

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

\$10,750

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

5.0% of the Cost of Work as defined in Article 6

§ 11.2 For the Construction Manager's Supplemental Services, and Additional Services the Owner shall compensate the Construction Manager as follows:

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

To be negotiated prior to performance, taking into consideration the hourly rates schedule in Section 11.5

§ 11.3

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§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager and reimbursed to the Construction Manager with a plus zero percent (0 %), markup

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager’s consultants, if any, will be determined by mutual agreement of the Parties before Additional Services are performed. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

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

- .1
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 ; Liability insurance no greater than 0.25% of the Cost of the Work
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager’s consultants at cost and without markup.

11.6.3 As part of its cost estimating responsibilities, the Construction Manager will periodically provide an estimate of costs related to reimbursable expenses, general conditions/construction support items, and on-site labor supervision costs. For purposes of estimating and billing on-site labor/supervision costs, the Construction Manager will utilize the following amounts:

\$3,400 / week / on site superintendent

§ 11.7 Construction Manager’s Insurance

§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

§ 11.8.1.1 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.

§ 11.8.2 Progress Payments

§ 11.8.2.1 Unless otherwise agreed, payments for undisputed services shall be made monthly in proportion to services performed except final payment shall not be made until Final Completion of the Project. Undisputed payments are due and payable within thirty (30) days of the Owner's receipt of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below
(Insert rate of monthly or annual interest agreed upon.)

Five Percent % (5%) per annum See MCL 438.31

§ 11.8.2.2 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Construction Manager agrees.

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be forwarded to the Owner at with each applicable invoice.

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 The Construction Manager shall perform its responsibilities and provide services in a prompt manner and with that degree of care and skill normally exercised by a Construction Manager of recognized experience and expertise that specializes in providing construction management services for the construction of public school facilities.

§ 12.2 On the basis of its regular on-site observations, Construction Manager will report to the Owner any construction means, methods, techniques, sequences, or procedures observed by it that do not appear to conform with industry standards, and shall also report to Owner any work that appears not to be in conformance with the Contract Documents. The performance of additional services made necessary by defects or deficiencies in the work of the contract shall not entitle the Construction Manager to additional compensation if such services were of such a nature that they should have been observed by the Construction Manager so that the work would not be necessary.

§ 12.3 The Construction Manager shall timely inform both the Owner and the Architect of any observed defects or deficiencies in the quality of workmanship of the various contractors.

§ 12.4 The Construction Manager shall provide daily full-time on-site field supervision during the entire construction phase. The Owner reserves the right to approve the identity of the Construction Manager's field supervisor and other Project representatives, and to require the replacement of any of them upon two (2) weeks' written notice. The Construction Manager shall make available the services of all personnel and other such individuals as may be required to provide the services defined as Basic Services or needed in the course of the Project to complete the Project as described in the Agreement. In the event that any individual identified above is discharged, dies, is disabled or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Construction Manager shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement of the Owner.

§ 12.5 The Construction Manager shall, upon completion of the Project, deliver to the Owner all records and files of the Project, which shall have been organized in a reasonable manner by the Construction Manager, including all field marked copies of the Drawings and Specifications.

§ 12.6 The Construction Manager shall inspect the work of the trade contractors on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the work performed and the materials furnished are in accordance with the Contract Documents and that work on the Project is progressing on schedule using its best efforts consistent with the standards of the construction industry for an Agency Construction Manager. In the event that the quality control testing should indicate that the work, as installed, does not meet the requirements of this Project, the Architect and Construction Manager shall determine the extent of the work that does not meet the requirements and the Construction Manager shall direct the trade contractor(s) to take appropriate corrective action, and advise the Owner of the correction action.

§ 12.7 The Construction Manager shall immediately notify the Owner, in writing, of the presence of any hazardous material in connection with this Project of which the Construction Manager is aware. The Owner, at its cost, shall be responsible for analysis, design, removal, remediation or other action related to any asbestos or hazardous substances.

§ 12.8 The Construction Manager shall act as the Owner's agent at the site of the work to the extent so designated in writing and mutually agreed to by the parties to the Agreement. This shall include, but is not limited to, the arranging for construction support and general condition items benefiting the multiple contractors, performing work on the site, such as the field office, phones and service, fax equipment, copy machine, computer(s), 2-way radios, furniture, supplies, sanitary facilities, utilities, access road, parking areas, enclosed warehouse facilities, site security, temporary lighting and power, temporary heat, temporary enclosures, crane service, housekeeping, and final clean-up.

§ 12.9 The Owner agrees to provide and pay for construction support items or general condition items and the items listed in Paragraph 12.9 not included under this Agreement and not included as a part of any contractor's contract. Such items shall be designated by the Construction Manager and approved by the Owner before they are provided, and shall be the property of the Owner and shall be competitively bid as required by law.

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

§ 12.11 The Construction Manager will, as part of Basic Services, attend the Owner's Board of Education meetings and staff meetings (in person or via communication media) as reasonably requested by the Owner.

§ 12.12 The Owner reserves the right in its discretion to require consolidation or joinder of any mediation relating to this Agreement with another mediation involving an independent contractor or consultant engaged by the Owner in connection with the Project. Agreement in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort.

§ 12.13 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provision of this Article shall be deemed to be void and nonexistent in the event the Owner, in its discretion, determines the Construction Manager should become a party to that dispute by joinder or otherwise.

§ 12.14 The Owner reserves the right to require any mediation to be held near the Owner's principal place of business.

§ 12.15 The Construction Manager further agrees to include a similar mediation provision as identified herein in the form Owner/Contractor Agreement and in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultant also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between parties to those agreements. The Construction Manager shall be responsible for ensuring the inclusion of this provision in pertinent bid documents and contract forms, the preparation of which the Construction Manager provides or with which the Construction Manager assists in preparation.

§ 12.16 The Construction Manager shall be responsible for supervision of construction under 1937 PA 306.

§ 12.17 The Construction Manager shall actively enforce all applicable policies of the Owner, including but not limited to those related to alcohol and tobacco.

§ 12.18 In the event of any inconsistency between the Agreement and AIA Document A232, as modified, the terms of this Agreement shall govern.

§ 12.19 The Construction Manager shall not utilize photographs of this Project for any advertising or promotional purpose that include the image of any student of the Owner with the express written permission of the parent or guardian of that student if that student is a minor and Owner. If the student is of age of majority or is an emancipated minor, the Construction Manager must obtain express written permission from that student and Owner. Such express written permission shall acknowledge the Construction Manager's intent for use of those images. The Owner, in its discretion, may assist the Construction Manager in securing such permission.

§ 12.20 DEFENSE AND INDEMNIFICATION: The Construction Manager shall indemnify and hold harmless the Owner, its Board of Education, its board members in their official and individual capacities, administration, employees (the "Indemnitees"), from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, to the extent caused in whole or in part by or asserted to arise from (i) the negligent acts or omissions of the Construction Manager, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representative or warranty by the Construction Manager under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which the Owner or one or more of the Indemnitees may be entitled to indemnification under this Agreement. The Construction Manager shall not be responsible for indemnifying an Indemnitee for the Indemnitee's negligence, but shall remain responsible to the fullest degree of Construction Manager's fault.

§ 12.21 The Owner shall be identified as an "additional insured" on all general liability insurance policies held by the Construction Manager which are applicable to the Project. The Construction Manager shall also ensure that the Contract Documents applicable to contractors and subcontractors require that contractors and subcontractors include the Owner as an "additional insured" on all general liability insurance policies applicable to the Project held by contractors and subcontractors. The Construction Manager shall provide (and acquire as necessary) certificates of insurance evidencing the Owner's status as "additional insured" on all required policies, as well as a provision that insurance coverage cannot be reduced or eliminated without 30 days' notice to the Owner.

§ 12.22 The Construction Manager will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2
- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this agreement.)

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

AIA 132 2019 Exhibit A

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

AIA Document A232-2019, General Conditions of the Contract for Construction, as modified

Except as otherwise set forth herein, in the event of any inconsistency between this Agreement and any other Contract Documents, this Agreement shall govern and control. In the event of any other inconsistency between or among the various Contract Documents, the terms most beneficial to the Owner shall control.

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

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)



MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: ROBERT SMITH
RE: **APPROVAL OF DENTAL OCCUPATIONS INSTRUCTOR POSITION**

BACKGROUND:

As a result of several years of planning and coordination in connection with the VB Tech Main St. building expansion project, Van Buren Tech is interested in hiring a CTE instructor to teach the new Dental Occupations program, which is scheduled to start at the beginning of the 21-22 school year.

RECOMMENDATION

RESOLVED that the Board of Education approve the position for a Dental Occupations Career & Technical Education instructor.

VAN BUREN INTERMEDIATE SCHOOL DISTRICT

Job Description

TITLE: Dental Occupations Program Instructor

JOB GOAL(S): The program instructor's primary role is the instruction of students' in a manner consistent with the philosophy and goals of Van Buren Tech. Generally, the roles are more broadly defined than those of a traditional classroom teacher. They include instructional delivery, program management, supervision duties, & curriculum development.

QUALIFICATIONS:

Education: Bachelor's degree from an accredited college or university required

Certification: Vocationally certified by the State of Michigan to teach at the secondary level required or Eligible for Career & Technical Education (CTE) OR eligible for Annual Career Authorization (Requires 4,000 hours of relevant work experience in the past 6 years)

Work Experience: A demonstrated successful work history as a registered Dental Hygienist or Dentist.

Skills: Possess good interpersonal and communication skills
Ability and desire to work successfully in helping others

ESSENTIAL JOB FUNCTIONS:

Curriculum

1. Develop and operationalize a curriculum designed to achieve the stated goals of the instructor's assigned program using the State Standards provided for the Dental Occupations CIP code.
2. Accept the student as he/she is, establish individual student learning goals and learning program.
3. Demonstrate continuing progress toward individualizing the curriculum within their program consistent with Van Buren Tech's Curriculum Development Model.
4. Identify and make use of school and community resources which will contribute to the effectiveness of the students' learning experiences.
5. Organize and meet with a program advisory committee.
6. Develop a work-based component to allow students to gain real-world experience.

ESSENTIAL JOB FUNCTIONS - CONTINUED

Orientation

1. Give students an overview of the program, descriptions of jobs that the program can provide training for, descriptions of different learning techniques and reasons for them.
2. Utilize business industry sites orientation prior to the work-based learning component.

Management and Supervision

1. Maintain a program inventory control system
2. Manage a basic program budget.
3. Supervise the students enrolled in their program during the time period which the students are in attendance.
4. Develop and implement a safety program.
5. Develop and manage a planned preventive maintenance program for the program areas equipment.
6. Supervise a day-to-day housekeeping program.
7. Supervise and evaluate intern teachers, if provided.
8. Work in cooperation with employers, advisory committee members and placement coordinators to implement a student work-based learning program and placement of students in these training stations.
9. Work in cooperation with employers, advisory committee members and placement coordinators to provide work-based learning opportunities for students.
10. Provide information for student data follow-up for school improvement and annual report.
11. Evaluate students and provide regular feedback.
12. Proficient in technology.
13. Have a growth mindset.
14. Ability to organize and support a program assistant.

Terms of Employment: As per master agreement and provisions established by Van Buren ISD Board of Education.

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: DAMIAN KOOB – DIRECTOR OF TECHNOLOGY SERVICES
RE: APPROVAL OF HELP DESK COORDINATOR POSITION

BACKGROUND

To help the Technology Services Department become structured for success and to allocate the proper resources for our customers, I would like to introduce a new job description for your approval that will help us address the needs of our locals and VBISD. This position is a Help Desk Coordinator, which will lead our technical support team to provide excellent customer service and resolve technical issues delivered to the Help Desk. This position will be an important part of the Technology Services team to ensure that excellent customer service is being provided, communication to end users is a constant, and provide a second layer of support for technology in the classrooms.

The job description for these positions are attached.

RESOLVED that the VBISD Board of Education approves the Help Desk Coordinator position in the Technology Services department.

Attachments

VAN BUREN INTERMEDIATE SCHOOL DISTRICT

JOB DESCRIPTION

TITLE: Help Desk Coordinator

REPORTS TO: District Technology Coordinator

Summary: Under the direction of the District Technology Coordinator, the Help Desk Coordinator is responsible for leading our technical support team to provide excellent customer service and resolve all technical issues delivered to the Help Desk. Must have a solid technical background combined with customer service experience and have a problem-solving attitude with an ability to motivate the Technology Services team to achieve specific goals.

MINIMUM QUALIFICATIONS:

Education: Associate's degree in a computer-related discipline or related field required. Extensive technical experience related to the area of assignment may be considered as a substitute for the degree requirement.

Work Experience: Five years of computer technical support experience and experience with a wide range of electronic media technologies.

Skills:

- ◆ Require extensive knowledge and skill level for installation, maintenance and repair of current personal computer hardware, operating systems, network connections and software
- ◆ Possess excellent communication skills and the ability to interact effectively with both technical and non-technical personnel
- ◆ Possess demonstrated leadership and team management skills
- ◆ Hands on experience with help desk and remote control software

ESSENTIAL JOB FUNCTIONS:

1. Demonstrate excellent customer-focused attitude and service skills.
2. Manage the help desk team
3. Ensure customer service is timely and accurate on a daily basis
4. Recruit, train and support help desk representatives and technicians
5. Set specific customer service standards
6. Contribute to improving customer support by actively responding to queries and handling complaints
7. Establish best practices through the entire technical support process
8. Follow up with customers to identify areas of improvement
9. Develop daily, weekly and monthly reports on help desk team's productivity

ESSENTIAL JOB FUNCTIONS (cont'd):

10. Provide customer feedback to the appropriate internal teams, like product developers
11. Serve as a team player for technical support staff and service functions.
12. Set up and install new computer systems, including hardware, client network software and application software.
13. Diagnose computer, network and data communications malfunctions; perform maintenance and repairs on computer hardware and peripherals.
14. Perform on-site maintenance and repair services on computer, media and telecommunications hardware and peripherals.
15. Perform problem analysis to resolve system hardware and application issues. Perform diagnosis of problems, providing solutions within area of responsibility, and/or through consultation with the District Technology Coordinator; and coordinate implementation of fixes and enhancements. Provide backup for other team members, as required.
16. Create and maintain all appropriate system documentation.
17. Maintain inventory of computer technology-related equipment, supplies and parts.
18. Maintain appropriate records of equipment repairs and costs.
19. Work cooperatively with other technical support staff to perform the above duties.
20. Communicate appropriately and effectively with District Technology Coordinator, co-workers, District staff and public.
21. Perform other related duties as assigned by the District Technology Coordinator or Director of Technology Services.

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: DAVE MANSON, SUPERINTENDENT
RE: APPROVAL OF EMPLOYMENT OF STAFF

BACKGROUND:

With the recent resignation of Rebecca Longcore, a vacancy for the Regional Supervisor in Paw Paw was created and the position needed to be filled.

RECOMMENDATION:

<u>Regional Supervisor-Paw Paw Public Schools:</u>	<u>Salary:</u>
Anna Austin	\$75,938

**Salary will be prorated due to start date, FTE or, other reasons*

RESOLVED that the Board of Education employ Anna Austin as the Regional Supervisor for Paw Paw Public Schools.

MEMO

DATE: MARCH 3, 2021
TO: BOARD OF EDUCATION
FROM: ROBERT SMITH, DIRECTOR OF CAREER & TECHNICAL EDUCATION
RE: APPROVAL OF STUDENT ACHIEVEMENT COACH POSITION

BACKGROUND:

Historically, Van Buren Tech has lacked a comprehensive and multi-tiered system for student social-emotional support. Over the past few years, ongoing conversations have taken place regarding the best way to implement a multi-tiered system that would allow us to have one “point” person who oversees the student data and coordinates services. With the impending retirement of the current “Student Services Interventionist,” we are interested in modifying and transforming the responsibilities of that position to better align with the needs for a multi-tiered social support system. Thus, Van Buren Tech is interested in hiring a Student Achievement Coach for the 2021-2022 school year. The Student Achievement Coach will collaborate with our classroom instructors to develop and coordinate behavior support plans that improve student learning and personal growth, as well as establish effective rapport with students, and motivate students to develop skills needed to improve positive student behavior in the school environment.

RECOMMENDATION

RESOLVED that the Board of Education approve the position for a Van Buren Tech Student Achievement Coach.

VAN BUREN INTERMEDIATE SCHOOL DISTRICT NOTIFICATION OF JOB OPENING

TITLE: **STUDENT ACHIEVEMENT COACH**

JOB GOAL(S):

Van Buren Tech Student Achievement Coach will combine the ability to motivate and build relationships to drive a comprehensive and tiered social emotional support system. The Student Achievement Coach will collaborate with the classroom teachers/building administrators to coordinate behavior support plans that improve learning and personal growth, establish effective rapport with students, and motivate students to develop skills needed to improve positive student behavior in the school environment. To help ensure a positive and safe school climate, the Student Achievement Coach is also responsible for providing assistance to teachers and students.

RESPONSIBILITIES:

- Assist teachers in identifying trends of behavior that negatively impact student achievement
- Assist in promoting a positive, supportive and engaging learning environment
- Assist teachers with behavioral interventions
- Conduct behavioral assessments, design behavioral programs and monitor behavioral plans for students who struggle behaviorally
- Collect, analyze and share data related to student behavior interventions and monitoring
- Adjust methods to meet student's individual learning styles
- Maintain professional competence through continuous professional development opportunities
- Ability to apply a gradually progressive system of verbal and non-verbal strategies to effectively de-escalate out-of-control behavior or potentially dangerous situations.
- Demonstrate knowledge of various methods of data collection and subsequent analysis and interpretation for data to drive appropriate behavioral interventions.
- Ability to maintain frequent and meaningful parental communication; develop proactive partnerships between the student/parent and school to support academic achievement and pro-social behaviors
- Act as a positive role model for students and model professional and ethical standards
- Work in a collegial and collaborative manner with peers, school personnel and the school community to promote and support the mission and goals of the school
- Maintains effective working relationships with school staff, parents and students
- Performs all other duties as assigned by supervisor

SKILLS AND CHARACTERISTICS:

- Share a commitment to the mission of Van Buren Tech and an unwavering belief that all students can and will succeed
- Share a commitment to the continued investment of our parent and family partnerships
- High level of personal organization and planning
- Team player, maturity, humility, strong work ethic, follow-through, high EQ, willingness to respond positively to feedback and a “whatever it takes” attitude
- Excellent communication skills, both written and verbal
- Knowledge of behavior management strategies and practices that maintain and support positive classroom environments
- Strong instructional and classroom management skills
- Ability to inspire, motivate and engage teenagers
- Goal-oriented, seeks to improve skills through constructive feedback
- Compassionate, enthusiastic, empathetic and displays a strong work ethic
- Proven leadership skills

EDUCATION, BACKGROUND, AND WORK EXPERIENCE:

- Bachelor's Degree required
- At least three years of successful experience working with students, including those with behavioral issues or considered at-risk for academic success.
- Demonstrated knowledge of crisis intervention strategies.
- Current teaching certification preferred.
- Training in Restorative Practices, Capturing Kids Hearts, and Crisis Prevention Intervention preferred.

H. Approval to Establish a District-Wide Professional Development
Advisory Committee **(Roll Call Vote)**

165

MEMO

TO: Board of Education
FROM: Dave Manson, Superintendent
DATE: March 3, 2021
SUBJ: **Approval of Establishing a District-Wide Professional Development Advisory Committee**

Effective October 1, 2019, a school may count up to 38 hours of qualifying professional development (QPD) for teachers as hours of student instruction for state school aid. Pursuant to State School Aid Act Section 101(10) MCL 388.1701(10), in order to count “qualifying” professional development toward hours of student instruction, a district-wide professional development advisory committee appointed by the board of education must be established and approved with the following criteria:

- The advisory committee must be composed of teachers employed by the district who represent a variety of grades and subject matter specializations, including special education; nonteaching staff; parents; and administrators.
- Advisory committee meeting minutes noting the recommendation of at least 8 hours of professional development to be used for instructional hours for the school year.
- List of all members of the committee, with title, representing the required composition:
 - Majority of representatives comprised of teachers of varying subject matter and grade level, including special education
 - Nonteaching staff
 - Parents
 - Administrators

RESOLVED, that the Van Buren Intermediate School District Board of Education approve the establishment of a District-Wide Professional Development Advisory Committee as required by MCL 388.1701 (10).

**RESOLUTION TO PERMIT
SCHOOL BOARDS TO MEET IN PERSON**

WHEREAS, school districts have been strongly encouraged to begin offering in-person instruction by March 1, 2021 and each local school board has the responsibility to make that ultimate decision for their school district, and

WHEREAS, **Van Buren Intermediate School District** has worked diligently to prepare for and implement the return to in-person learning for all students in grades PreK, K-12 and post-secondary; and

WHEREAS, all students and staff are permitted by the state of Michigan, including the Michigan Department of Health and Human Services, to attend school in person; and

WHEREAS, members of school boards are the only individuals within their school districts who are not permitted to meet in person; and

WHEREAS, requiring school boards to meet virtually while encouraging students to attend school in person and for staff to work in person sends a mixed message to our community and staff, and

WHEREAS, **Van Buren Intermediate School District** would like the ability to meet in person with strong health and safety mitigation measures in place that are consistent with measures taken for all other school classes and activities;

NOW, THEREFORE, BE IT RESOLVED, **Van Buren Intermediate School District** requests that MDHHS and the Governor allow school boards to have the option to meet either virtually, in-person or a combination of the two beginning immediately.

Ayes:

Nays:

Resolution declared adopted.

Secretary, Board of Education

The undersigned duly qualified and acting Secretary of the Board of Education of Van Buren Intermediate School District, Michigan, hereby certifies that the foregoing constitutes a true and complete copy of a resolution adopted by the Board at the Meeting, the original of which is part of the Board's minutes. The undersigned further certifies that notice of the Meeting was given to the public pursuant to the provisions of the "Open Meetings Act" (Act 267, Public Acts of Michigan, 1976, as amended).

Secretary, Board of Education

IV. OTHER BUSINESS

A. Adjournment

This meeting is a meeting of the Board of Education in public for the purpose of conducting the School District's business and is not to be considered a public community meeting. There is a time for public participation during the meeting as indicated on the agenda."

It is the policy of the Van Buren Intermediate School District that no discriminatory practices based on race, color, religion, national origin, sex, age, height, weight, marital status, disability, genetic information or any other status covered by federal, state, or local law be allowed during any program, activity, service, or in employment. Inquiries regarding the non-discrimination policies should be directed to Barbara Matthews, Director of Finance & Operations or Dave Manson, Director of Special Education, 490 S. Paw Paw Street, Lawrence, MI 49064, 269-674-8091.