
BOARD AGENDA ITEM

Information/Discussion _____

Future Action _____

Action _____

Item: Approval of Construction Management Agreement

Submitted by: Kevin Philipps

Date: 8.10.2026

Recommended by: Kevin Philipps *KP*

Board Meeting Date: 8.17.2026

RECOMMENDATION

It is recommended that the Kent ISD School Board approve the proposed agreement between Kent ISD and Owen Ames Kimball for construction management services for the KCTC satellite campus. The proposed fee is 4% of the cost of work (i.e. cost of construction) plus reimbursable expenses.

BACKGROUND

Owen Ames Kimball has been Kent ISD's lead construction manager for large construction projects for the last 10+ years and administration believes they are perfectly positioned to provide the best construction management services for the new satellite campus at the Dutton Elementary site.

CTE Capital Projects funds will be used to pay for the construction management services.

Attachment(s)

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 « 2026 »
(In words, indicate day, month and year.)

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

Kent Intermediate School District
402930 Knapp Street NE
Grand Rapids, MI 49525

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

Owen-Ames-Kimball Co
Suite 600
126 Ottawa Ave NW
Grand Rapids, MI 49503

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

Kent Intermediate School District South Campus as directed by administration
.

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

Progressive Companies
1811 4 Mile Road, NE
Grand Rapids, MI 49525

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

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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.)

Kent Intermediate School District South Campus as direct by administration

§ 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.)

« »

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

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

« A fixed sum to be established by the Owner as a condition of this Agreement, in accordance with the relevant election ballot language. »

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

.1 Design phase milestone dates, if any:

To be determined»

.2 Construction commencement date:

«To be determined»

.3 Substantial Completion date or dates:

«To be determined »

.4 Other milestone dates:

«To be determined »

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

«Multiple Prime Contractors, competitively bid 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.)

« Not applicable »

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

« Not applicable »

§ 1.1.7.1

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

« »

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

« Russell Bray »
« Director of Facilities t »
« Kent Intermediate School District
2930 Knapp Street NE
Grand Rapids, MI 49525

»
« »

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

« As the Board of Education directs, the State of Michigan, and as otherwise required by law. »

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

.1 Land Surveyor:

«To be determined »« »

« »
« »
« »
« »

.2 Geotechnical Engineer:

«To be determined »« »
« »
« »
« »
« »

.3 Civil Engineer:

«To be provided by Architect »« »
« »
« »
« »
« »

.4 Contractors, as defined in Section 1.4:

«To be determined by the Owner in accordance with competitive bidding requirements under law, including, as applicable MCL 380.1267, MCL 380.1274, and MCL 380.1274a »

.5 Separate Contractors, as defined in Section 1.4:

«To be determined »

.6 Other, if any:

(List any other consultants retained by the Owner.)

«To be determined »

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

« Jeremy Amshey, Chief Operating Officer »
« Owen-Ames-Kimball Co. »
« 126 Ottawa Ave NW »
« Grand Rapids, MI 49503 »
« »
« »

§ 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.)

« To be determined »

§ 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.)

«To be determined »

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

«Not Applicable »

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

«To be determined »

§ 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 may mutually agree to a written adjustment in the schedule for the Construction Manager's services, and the Construction Manager's compensation, as applicable. The Owner may adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties may agree upon protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 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.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in the Agreement Between Owner and Architect. 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, the Owner's Separate Contractors, and consultants of the Architect, Construction Manager, and Owner. Subject to the Construction Manager's professional judgement, experience, and expertise, 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 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. 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. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed. See also Section 12.4.

§ 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 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 Dollars » (\$ « 1,000,000.00 ») for each occurrence and Two Million Dollars (\$ 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 Dollars » (\$ « 1,000,000 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.8.3 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 Five Million Dollars (\$5,000,000).

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

The Construction Manager hereby agrees to waive rights of subrogation. The Construction Manager agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

§ 2.8.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « One Million Dollars » (\$ « 1,000,000.00 ») per claim and «Three Million » (\$ «3,000,000 ») in the aggregate.

§ 2.8.6 **Additional Insured Obligations.** 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.. 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 using the 2013 version of ISO forms CG 2010 07 04 and CG 2037 07 04 or their equivalent.

§ 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 each individually permitted 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 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 (30) days' prior written notice to the Owner.

§ 2.8.9 The Construction Manager shall require each Contractor to provide the insurance it is required to procure and maintain under the General Conditions. The Construction Manager will also maintain records detailing the Contractor's insurance coverages and provide such records to the Owner.

§ 2.9 The Construction Manager shall assist the Owner, Architect, and other Project participants in establishing building information modeling and digital 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 at no additional cost to the Owner, except as specifically identified and agreed in Article 11.

§ 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.

§ 2.12 The Construction Manager, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, statutes, acts, ordinances, rules, regulations, applicable licensing requirements and lawful orders of public authorities (collective, "Laws") in connection with the performance of the services under this Agreement. The Construction Manager shall also comply with the applicable Board of Education policies and procedures of the Owner, which may be found on the Owner's website or obtained upon request.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

§ 3.1.1 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 are not limited to, usual and customary construction coordination, scheduling, constructability review, cost estimating, and allocation and supervision of construction activities among the Contractors.

§ 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 update the Construction Management Plan monthly, or as otherwise appropriate, for the Owner's approval, over the course of the Project. The Construction Manager acknowledges that the Owner is not a construction professional and that approval by the Owner is for general concepts only.

§ 3.2.4 The Construction Manager shall prepare and periodically update in writing, at least monthly or as otherwise agreed by the Owner and Construction Manager, the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. The anticipated construction schedule, including critical and long-time items, should be taken into account.

§ 3.2.5 The Construction Manager shall update the Project schedule to include the components of the Work, including but not limited to phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, materials and equipment, including but not limited to 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. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of these alternative materials and systems and may also provide its own suggestions.

§ 3.2.7 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, 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, and, with the Owner's approval and as necessary, 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, in writing, at least monthly or as otherwise agreed by the Owner and Construction Manager, 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 Construction Manager will review and verify that all Project contingency funds are of reasonable type and amount prior to providing and proposing cost estimates. 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 shall 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 reasonably determinable 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 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 in compliance with applicable laws, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders, prepare and publish necessary bid notices and advertisements, 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. Bid documents shall acknowledge that modified forms of the Owner/Contractor Agreement and General Conditions shall be used.

§ 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 bids, the Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, conduct post-bid interviews with apparent low bidders, 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 the Architect, including but not limited to with respect to dispute resolution procedures, permit requirements, bond requirements, insurance requirements (including naming the Owner as an "additional insured"), indemnification, and an acknowledgement of the supremacy of Michigan law. The Construction Manager shall ensure that the Contracts for Construction and the General Conditions (premised on AIA Document A232-2019) have either been reviewed by, or drafted by, the Owner's legal counsel. 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 advise the Owner as to all building and special permits required for the Project and shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the 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 The Construction Manager shall keep the Architect and the Owner informed of any changes in requirements, general market conditions or in construction materials, systems or equipment as the Drawings and Specifications are developed.

§ 3.2.25 In the event that the lowest bid(s) relative to any portion of the Work exceeds the estimate of Construction Costs provided by the Construction Manager as approved by the Owner, the Construction Manager shall assist the Architect in consultation with and at the direction of the Owner and shall proceed in accordance with Section 6.5.3 hereof, as part of the Construction Manager's Basic Services with no additional cost to the Owner.

§ 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. Nothing herein shall be deemed to eliminate or reduce the Construction Manager's obligations following the Construction Phase, which shall extend to the end of the Contractor's warranty periods or, if longer, as set forth in Article 12.

§ 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. See also Section 12.4 and Section 12.18

§ 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, Project cost estimates and the Contract Documents. The Construction Manager shall verify that each Multiple Prime Contractor has provided performance and payment bonds in compliance with the Contract Documents and applicable laws before that Contractor begins Work.

§ 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 in writing, monthly or as otherwise agreed by the Owner and Construction Manager 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 at least monthly, and as otherwise reasonably requested by the Owner, 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 and schedule all tests and inspections 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, in writing, monthly or as otherwise agreed by the Owner and Construction Manager, as to variances between actual costs and budgeted or estimated costs and the anticipated satisfaction of the Owner's fixed limit of construction cost. 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 On a monthly basis or as otherwise expressly agreed by the parties in writing, the Construction Manager shall develop and deliver to the Owner cash flow reports and forecasts for the Project and include them in the Construction Manager's progress reports, and shall advise the Owner and Architect as to variances between actual costs and budgeted or estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records, all of which shall be updated on at least a monthly basis.

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

§ 3.3.12.2 Not more frequently than monthly or as otherwise provided in the relevant Contracts for Construction, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment,

- review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there 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 and quantity of the Work is in accordance with the Contract Documents and has been performed in a good and workmanlike manner, 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, identified in writing along with the relevant certification. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from Subcontractors and material 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. Nothing in this Section 3.3.12.4 shall be interpreted to reduce or eliminate the Construction Manager's duties set forth in Section 12.18.

§ 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 to the Owner 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 Manager shall in no way waive, limit or excuse the Contractor's full duty and liability with regard to safety.

§ 3.3.14 The Construction Manager shall determine that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents using the best efforts consistent with the standards of the construction industry for a construction manager-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. See Section 12.2.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent authorized by law and provided in this Agreement. The Construction Manager shall not have control over, charge

of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. 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, and others performing at the Construction Manager's direction or control, including but not limited to the failure to reject nonconforming 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 all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 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. When transmitting submittals to the Architect, the Construction Manager shall indicate that it has reviewed such submittals for completeness.

§ 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, and, with the Owner's approval as necessary, 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, delays, 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:

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§ 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:

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§ 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 make available all such records 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 in reasonable condition and in good order.

§ 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, dated current. 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 inspections.

§ 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,; 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, and 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. 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.

§ 3.3.32 To the extent permitted 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, unless said portion of work is below the legally required threshold for bonding and Owner expressly waives bond requirement in writing. 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 Architect in the planning and sequencing of construction activities in order to accommodate necessary Work during occupancy of the Project area in a manner acceptable to the Owner. The Construction Manager acknowledges and agrees that the Owner needs and will be using the Project area or portions thereof for its educational purposes during construction. The Construction Manager will perform its work and will coordinate and manage the work of the Contractors so as not to interfere with the Owner's use of the Project area for educational purposes, including but not limited to controlling and managing noise levels, safety, dirt, dust, debris, convenient access, etc.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1

Supplemental Services or Additional Service may be provided by the Construction Manager and compensated by the Owner as a Supplemental Service or Additional Service if: (a) required for the Project, (b) the Owner authorizes the performance of same in writing prior to the Construction Manager's provision of any such service, and (c) the Construction Manager provides a good faith estimate of the cost of same prior to the Owner's authorization. The Owner shall not be obligated to pay for any Supplemental Service or Additional Service in the absence of the foregoing. For a properly authorized Supplemental Service or Additional Service, the Owner shall compensate the Construction Manager as provided in Sections 11.2 through 11.4. Supplemental Services or Additional Services do not include those items listed below that are identified as Basic Services, which shall be provided as Basic Services.

Supplemental Services	Responsibility (Construction Manager, Owner or not provided)
§ 4.1.1.1 Measured drawings	
§ 4.1.1.2 Tenant-related services	
§ 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	
§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination	Basic Service
§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance	
§ 4.1.1.8 Assistance with site selection	
§ 4.1.1.9 Assistance with selection of the Architect	
§ 4.1.1.10 Furnish land survey	
§ 4.1.1.11 Furnish geotechnical engineering services	

§ 4.1.1.12 Provide insurance advice	
§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies	Basic Service
§ 4.1.1.14 Stakeholder relationships management	Basic Service, if requested by Owner
§ 4.1.1.15 Owner moving coordination	
§ 4.1.1.16 Coordination of Owner's Separate Contractors	Basic Service
§ 4.1.1.17 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1

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§ 4.1.2.2

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§ 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:

- .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 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; or
- .8

§ 4.2.3 The Construction Manager shall provide the following Additional Services, if 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 except those claims required for the timely completion of construction.
- .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 the 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 as specifically requested by the Construction Manager 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 its cost estimates 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, if requested, 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 the 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, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.

§ 5.8

§ 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.

§ 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. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services or information.

§ 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. 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 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. See also Section 3.2.22.

§ 5.17 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and the Contract Documents shall obligate the 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 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. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants; compensation of the Architect and the Architect's consultants, and compensation of any other Owner-hired consultants, including respective 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 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,; unused or unauthorized use of Project

contingency funds; 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 detailed estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; 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.

§ 6.4 If, at any time, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, 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, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the 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, and the Construction Manager's consultants, if any 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 individually permitted 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 The parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in this Agreement or any other Contract Document is contrary to this provision, such term is void and unenforceable.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's board members 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 or the Construction Manager's breach of this Agreement.

§ 8.1.4 To the extent permitted by law, which the Owner represents is limited, he Construction Manager and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

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

§ 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)

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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 Consolidation or Joinder

§ 8.3.4.1

§ 8.3.4.2

§ 8.3.4.3

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make undisputed payments to the 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' 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 subject to negotiation by the parties.

§ 9.2 If the Owner voluntarily suspends the Project for more than 30 consecutive days, other than a scheduled suspension, 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 subject to negotiation by the parties.

§ 9.3 If the Owner voluntarily suspends the Project for more than 90 consecutive days for reasons other than a scheduled suspension or 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 timely and properly performed prior to termination, including any Reimbursable Expenses 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. Notwithstanding the foregoing, the Construction Manager acknowledges the availability of Owner's environmental reports and Asbestos Management Plan in accordance with law.

§ 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 and Severability

§ 10.10.1 Any waivers hereunder must be in writing. No waiver or right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any such default. A waiver of any term, condition, or covenant by a party shall not constitute a waiver of any other term, condition, or covenant.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's timely and proper performance of Basic Services, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

« Included in Construction Phase Services 11.1.2 »

§ 11.1.2 For Construction Phase Services and Post-Construction Phase Services, as set forth in this Agreement:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

« 4% of the Cost of the Work as defined in Section 6.1 »

§ 11.2 For the Construction Manager's properly authorized 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 and agreed upon in writing prior to performance, taking into consideration any hourly rates schedule in Section 11.5 »

§ 11.3

§ 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 plus « zero » percent (« 0 » %) markup

§ 11.5 The hourly billing rates for Supplemental and Additional services of the Construction Manager and the Construction Manager's consultants are set forth below.
(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 Owner-approved 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 If required by the Owner, and with the Owner's prior written approval, the Construction Manager's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.
- .12 Liability Insurance shall be billed at a rate of 0.43% of Cost of the Work
- .13 Web based Project Management Software (centralized document management system – see Article 2.10) shall be billed at a rate of 0.15% of Cost of the Work
- .14 Field Supervision shall be billed at \$4,800 / week

§ 11.6.2 Reimbursable expenses will include general conditions/construction support items and on-site labor/supervisory costs. For Reimbursable Expenses the compensation shall be the expenses actually incurred by the Construction Manager and the Construction Manager's consultants at cost and without markup. The Construction Manager will provide a budget for reimbursable expenses for each phase of construction and obtain the Owner's approval of that budget before commencing work on that phase. The Construction Manager will provide detailed backup for expenditures with every invoice. Once established, that approved amount shall not be exceeded without the Owner's prior written consent. -

§ 11.6.3 After bids have been awarded for the Project (or each distinct portion thereof), the Construction Manager will provide a formal updated budget for the Construction Manager's Fee and General Conditions/Construction Support items for the Owner's review and approval.

§ 11.7

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§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

§ 11.8.1.1

§ 11.8.2 Progress Payments

§ 11.8.2.1 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (3) days of the Owner's receipt of the Construction Manager's invoice unless to the extent reasonably disputed by the Owner in good faith. Undisputed 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 offset sums requested by or paid to Contractors for the cost of changes in the Work, unless permitted in the Contract Document, or the Construction Manager agrees or the Construction Manager is otherwise responsible. Notwithstanding the foregoing, it is expressly understood and agreed that the Owner's obligation to make payment to the Construction Manager is dependent upon the Construction Manager's complete and timely performance of services at least to the standard required by this Agreement. The Owner may withhold sums if and to the extent the Construction Manager's performance fails to satisfy the foregoing requirements, to protect the Owner from increased costs, damages, and the reasonably likelihood of same.

§ 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 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 the 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.

§ 12.3 The Construction Manager shall timely inform both the Owner and the Architect of any observed defects or deficiencies in the quality of workmanship of the various contractors.

§ 12.4 The Construction Manager shall provide daily, on-site field supervision during the entire construction phase. The Owner reserves the right to approve the identity of the Construction Manager's field supervisor and other Project representatives, and to require the replacement of any of them upon two (2) weeks' written notice. Once dedicated to this Project, the Construction Manager shall not remove or change any of the above-referenced individuals without the Owner's prior written consent, as long as referenced individuals remain employed by the Construction Manager. The Construction Manager shall not change dedicated personnel, regardless of whether such change is approved by Owner, without promptly providing Owner a qualification and experience resume of the person(s) proposed as replacement(s).

§ 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 observe, inspect, and supervise 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 is being performed and the materials furnished are in accordance with the contract documents and that the 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 corrective action.

§ 12.7 As part of Basic Services, the Construction Manager shall provide conduct a post-occupancy inspection at eleven (11) months following the Date of Substantial Completion and thereafter provide callback services for a period through the warranty period. The warranty period shall be twelve (12) months from Substantial Completion of each individually permitted project.

§ 12.8 The performance of work made necessary by defects or deficiencies in the work of a Contractor shall not be an additional service if they are of such a nature that they should have been observed by the Construction Manager so that the work would not be necessary. No portion of this section is intended to in any way limit any claim the Construction Manager may have against the Contractor in question.

§ 12.9 The Construction Manager shall act as the Owner's agent at the site of the work to the extent so designated in writing and mutually agreed to by the parties to the Agreement. This shall include, but is not limited to, the arranging for construction support and general conditions items benefiting multiple contractors, performing work on the site, such as the field office, phones, and service, fax, equipment, copy machine, computer(s), 2-way radios, furniture, supplies, sanitary facilities, utilities, access road, parking areas, enclosed warehouse facilities, site security, temporary lighting and power, temporary heat, temporary enclosures, crane service, housekeeping, and final clean-up.

§ 12.10 The Owner agrees to provide and pay for construction support items or general condition items and the items listed in Paragraph 12.9 not included under this Agreement and not included as part of any contractor's contract. Such items shall be designated by the Construction Manager and approved by the Owner before they are provided and shall be the property of the Owner and shall be competitively bid as required by law.

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

§ 12.12 The Construction Manager shall provide the following as Basic Services: (i) preparing documentation for alternate bid or proposal requests proposed by the Owner, (ii) preparing for, and attendance at, a public presentation, meeting, or hearing, and (iii) assisting the Initial Decision Maker.

§ 12.13 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.

§ 12.14 The Construction Manager will include in all agreements with independent contractors and consultants retained for the project dispute resolution language similar to that contained in Section 8.2, thereby providing for mediation as the primary method for dispute resolution between parties to those agreements. The Construction Manager shall also be responsible for ensuring the inclusion of this language in pertinent bid documents and contract forms that the Construction Manager has responsibility to provide or assist in providing.

§ 12.15 The Owner reserves the right in its discretion to require consolidation or joinder of any mediation Owner in connection with the Project in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort.

§ 12.16 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not 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 shall become a party to that dispute by joinder or otherwise.

§ 12.17 The Owner reserves the right to require any mediation to be held near the Owner's principal place of business.

§ 12.18 The Construction Manager shall be responsible for supervision of construction under 1937 PA 306 MCL 388.851. et seq.

§ 12.19 The Construction Manager shall timely inform both the Owner and the Architect of any observed defects or deficiencies in the quality of workmanship of various Contractors.

§ 12.20 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, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

§ 12.21 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. Except and to the extent knowingly caused or exacerbated by the Construction Manager, the Owner at its cost, shall be responsible for analysis, design, removal, remediation, or other action related to any asbestos or hazardous substances.

§ 12.22 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 in Michigan.

§ 12.23 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.

§ 12.24 The Construction Manager, without additional cost to the Owner, shall maintain in force insurance coverage as set forth in Section 2.8. Insurance shall be 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 and/or claims-made and maintained in force during the life of the Project and for a period of no less than seven (7) years after the relevant date of Substantial Completion of the Project. The Construction Manager shall notify the Owner thirty (30) days in advance if the coverage becomes unavailable or if the coverage amount is substantially changed. The Construction Manager's applicable insurance shall be primary.

§ 12.25 The Construction Manager shall not be entitled to additional compensation in the event it is necessary to extend the completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, disease outbreak, etc., unless such delay negatively impacts the critical path of construction, for which the Construction Manager may seek additional compensation in accordance with the first paragraph of Section 4.1.1.

§ 12.26 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.

§ 12.27 The Construction Manager shall actively enforce all applicable policies of the Owner, including but not limited to those related to alcohol and tobacco.

§ 12.28 The Construction Manager shall indemnify and hold harmless the Owner, its Board of Education, its board members in their official and individual capacities, administration, and employees ("Indemnitees"), from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorneys' 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 of subcontractors, (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representation or warranty by the Construction Manager under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suite, 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 the Construction

Manager's fault.

§ 12.29 The Construction Manager may have provided services related to the Project prior to the date of this Agreement. The parties expressly acknowledge and agree that any such services shall be deemed governed by the terms of this Agreement regardless of when performed.

§ 12.28 « Builder's Risk Insurance to be carried by Owner as set forth in the General Conditions. »

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 as modified.

.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.)

« »

- .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

In the event of any inconsistency or ambiguity within, between, or among the various Contract Documents, the terms most beneficial to the Owner (as determined in the Owner's sole discretion) shall control. »

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

KENT INTERNEDIATE SCHOOL DISTRICT,

OWEN-AMES-KIMBALL, CO.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Modified: 7/27/26; 8:10 am