

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Twenty-Fifth day of March in the year Two Thousand Nineteen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

Browning Public School District #9

P.O. Box 610

129 First Avenue S.E.

Browning, Montana 59417

Phone: (406) 338-2715

Fax: (406) 338-7553 (Dixie Guardipee – Facilities/ Construction, Secretary)

and the Construction Manager:

(Name, legal status and address)

Sletten Construction Company

P.O. Box 2467

1000 25th Street North

Great Falls, Montana 59403

Phone: (406) 761-7920

Fax: (406) 761-0923

for the following Project:

(Name and address or location)

LPW Project Number: 17-054-002

Browning High School - Sports Complex

The Architect:

(Name, legal status and address)

L'Heureux Page Werner, PC

15 Fifth Street South

Great Falls, Montana 59401

Phone: (406) 771-0770

The Owner's Designated Representative:

(Name, address and other information)

Corrina Guardipee-Hall, Superintendent

Browning Public School District #9

P.O. Box 610

129 First Avenue S.E.

Browning, Montana 59417

Phone: (406) 338-2715 Ext. 4208

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Construction Manager's Designated Representative:
(Name, address and other information)

Cliff Garness
Division Manager | Vice President
Sletten Construction Company
P.O. Box 2467
1000 25th Street North
Great Falls, Montana 59403
Phone: (406) 761-7920 Ext. 6440
cgarness@sletteninc.com

The Architect's Designated Representative:
(Name, address and other information)

Timothy M. Peterson, AIA, LEED AP BD+C, GGP
Vice President | Principal
L'Heureux Page Werner, PC
15 Fifth Street South
Great Falls, Montana 59401
Phone: (406) 771-0770 Ext. 330
timothyp@lpwarchitecture.com

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; 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.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The



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Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

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§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 3.1.4.3 The Owner, when such services are requested, 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.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in Agreement Between Owner and Architect for General Architectural/ Engineering Services (2018), including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: See Section 4.1.2.

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Twelve Thousand Eight Hundred Seventy Dollars and No Cents (\$12,870.00)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

Four Point Two-Five Percent (4.25%)

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

Four Point Two-Five Percent (4.25%)

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

Fifteen Percent (15%)

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

To be determined at the end of the Preconstruction Phase.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

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§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

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

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

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

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

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

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire

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Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Subtract the one percent (1%) Montana State Gross Receipts Tax, which will be submitted by Owner.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

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- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Commercial General Liability (w/ Contractual Liability Coverage)	
-Each Occurrence	\$1,000,000
-Medical Expenses (Any One Person)	\$5,000
-Personal and Advertising Injury	\$1,000,000
-General Aggregate	\$2,000,000
-Products/ Completed Operations	\$2,000,000
Asbestos/ Lead Abatement/ EIFS/ Pollution	
-Each Occurrence	\$1,000,000

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-Aggregate	\$2,000,000
Automobile Insurance (Any Auto)	
-Combined Single Limit (Each Accident)	\$1,000,000
Excess/ Umbrella Liability	
-Each Occurrence	\$1,000,000
-Aggregate	\$1,000,000
Workers Compensation	Montana Statutory Limits
Employer's Liability	
-Each Accident	\$1,000,000
-Disease (Each Employee)	\$1,000,000
-Disease (Policy Limit)	\$1,000,000
Builder's Risk Insurance	Provided by Construction Manager as Reimbursable Expense

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, 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, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

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§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
(Paragraphs deleted)
- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER (Signature)

Brian Gallup, Chairperson
Board of Trustees
Browning Public School District #9
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Cliff Garness
Division Manager | Vice President
Sletten Construction Company
(Printed name and title)

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Additions and Deletions Report for AIA® Document A133™ – 2009

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PAGE 1

AGREEMENT made as of the Twenty-Fifth day of March in the year Two Thousand Nineteen

...

Browning Public School District #9
P.O. Box 610
129 First Avenue S.E.
Browning, Montana 59417
Phone: (406) 338-2715
Fax: (406) 338-7553 (Dixie Guardipee – Facilities/ Construction, Secretary)

(Name, legal status and address)

Sletten Construction Company
P.O. Box 2467
1000 25th Street North
Great Falls, Montana 59403
Phone: (406) 761-7920
Fax: (406) 761-0923

...

LPW Project Number: 17-054-002
Browning High School - Sports Complex

...

L'Heureux Page Werner, PC
15 Fifth Street South
Great Falls, Montana 59401
Phone: (406) 771-0770

...

Corrina Guardipee-Hall, Superintendent
Browning Public School District #9
P.O. Box 610
129 First Avenue S.E.
Browning, Montana 59417
Phone: (406) 338-2715 Ext. 4208
corrinag@bps.k12.mt.us

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User Notes:

(1400191025)

PAGE 2

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...

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PAGE 3

12 SCOPE OF THE AGREEMENT

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT PAGE 6

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

...

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost-plus-cost-plus a~~ fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems~~, systems sustainability and site requirements.

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The Owner shall retain an Architect to provide services, duties and responsibilities as described in ~~AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition.~~ Agreement Between Owner and Architect for General Architectural/ Engineering Services (2018), including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: See Section 4.1.2.

...

Twelve Thousand Eight Hundred Seventy Dollars and No Cents (\$12,870.00)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~(—)three (3)~~ months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Four Point Two-Five Percent (4.25%)

...

Four Point Two-Five Percent (4.25%)

...

Fifteen Percent (15%)

...

To be determined at the end of the Preconstruction Phase.

PAGE 13

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

PAGE 14

- .3 Add the Construction Manager's Fee, less retainage of ~~percent (—five percent (5 %))~~. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~percent (—five percent (5 %))~~ from that portion of the Work that the Construction Manager self-performs;

...

- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Subtract the one percent (1%) Montana State Gross Receipts Tax, which will be submitted by Owner.

PAGE 15

Commercial General Liability (w/
Contractual Liability Coverage)
-Each Occurrence

\$1,000,000

<u>-Medical Expenses (Any One Person)</u>	<u>\$5,000</u>
<u>-Personal and Advertising Injury</u>	<u>\$1,000,000</u>
<u>- -General Aggregate</u>	<u>\$2,000,000</u>
<u>- -Products/ Completed Operations</u>	<u>\$2,000,000</u>

<u>Asbestos/ Lead Abatement/ EIFS/ Pollution</u>	
<u>-Each Occurrence</u>	<u>\$1,000,000</u>
<u>-Aggregate</u>	<u>\$2,000,000</u>

<u>Automobile Insurance (Any Auto)</u>	
<u>-Combined Single Limit (Each Accident)</u>	<u>\$1,000,000</u>

<u>Excess/ Umbrella Liability</u>	
<u>-Each Occurrence</u>	<u>\$1,000,000</u>
<u>-Aggregate</u>	<u>\$1,000,000</u>

<u>Workers Compensation</u>	<u>Montana Statutory Limits</u>
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<u>Employer's Liability</u>	
<u>-Each Accident</u>	<u>\$1,000,000</u>
<u>-Disease (Each Employee)</u>	<u>\$1,000,000</u>
<u>-Disease (Policy Limit)</u>	<u>\$1,000,000</u>

<u>Builder's Risk Insurance</u>	<u>Provided by Construction Manager as Reimbursable Expense</u>
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PAGE 16

☐ ☒ Litigation in a court of competent jurisdiction

PAGE 17

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed ~~Maximum~~-Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

PAGE 18

~~3~~ AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:

~~4~~ AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

~~5~~

~~3~~ Other documents:

...

Brian Gallup, Chairperson
Board of Trustees
Browning Public School District #9

Cliff Garness
Division Manager | Vice President
Sletten Construction Company

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:25:28 ET on 05/15/2019 under Order No. 1562200259 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)


CLIFF GARNESS

(Title)

Vice President

(Dated)

5-24-19

**Agreement Between Owner and Architect
For General Architectural/ Engineering Services (2018)**

THIS AGREEMENT is entered into between Browning Public Schools [Glacier County Elementary District No. 9 and Glacier County High School District No. 9] ("Owner") and L'Heureux Page Werner, PC ("Architect") and has as its purpose the contracting for certain architectural and engineering services as more fully outlined below.

ARTICLE 1: SUMMARY OF SERVICES

- 1.1 The Architect hired under this Agreement is L'Heureux Page Werner, PC. No replacements or substitutes may carry out the Architect's responsibilities herein without the express written approval of the Owner.
- 1.2 The Architect is engaged hereunder as an independent contractor and its services consist of those performed by it, its employees, agents and consultants. The Architect agrees to cooperate with the Owner in furthering the Owner's best interests.
- 1.3 The Architect agrees to furnish the Architect's best skill and judgment pursuant to the accepted standards of the professions of Architecture, engineering and their allied disciplines and to cooperate with the Owner in furthering the Owner's best interests. The Architect agrees that any services provided hereunder will meet the requirements of the Montana Department of Labor and Industry, Building Codes Bureau and other such regulatory agencies as may be applicable. The Architect and its consultants shall be properly qualified in the determination of and conformance with building and life-safety codes and regulations regarding energy efficiency and accessibility for the physically challenged.

ARTICLE 2: SCHEDULE

- 2.1 The Architect agrees that time is of the essence with respect to the Owner's service needs and the Architect agrees to perform its services under this Agreement expeditiously in accordance with the Owner's agreed-upon schedule for any Projects assigned to it by the Owner under this Agreement.

ARTICLE 3: SCOPE OF SERVICES

3.1 SCOPE OF SERVICES

This Agreement is for the provision of certain structural, civil, electrical, mechanical and geotechnical engineering, architectural and/or surveying services by the Architect on an as-needed, as-directed-by-Owner basis. The parties acknowledge, however, that this Agreement does not embody any grant of "exclusivity" to Architect attendant to the Owner's need for and/or procurement of engineering or architectural services during the term of this Agreement. The Owner retains sole discretion as to whether such services will be provided by the Architect and/or its consultants under the terms of this Agreement or will be the subject of a separate procurement otherwise consistent with the structures and requirements of §§ 18-8-201 et seq., MCA.

3.1.1 DEFINITION OF BASIC SERVICES AND OPTIONAL BASIC SERVICES

The Architect's Basic Services consist of those described in this Article 3 and Attachments A-E hereto [the terms of which are incorporated herein by reference], and may include programming, pre-design, Schematic Design, Design Development, Construction Document, Bidding Phase and Construction Administration. As part of Basic Services under this Agreement, the Architect will, as necessary, coordinate and cooperate with other consultants or contractors of the Owner, including other consultants, engineers, architects, contractors

and subcontractors who are involved with projects on behalf of the Owner, in furtherance of the Owner's best interests.

3.2 PRE-DESIGN / PROGRAMMING SERVICES

The Architect will provide such pre-design and/or programming services as the Owner may direct, including but not limited to such items as preliminary district-wide evaluations, facility and site inspection, surveys, assessments, programming, long-term facility and master planning, and the development, review and modification of conceptual designs.

3.3 SCHEMATIC DESIGN SERVICES

- 3.3.1 Any Schematic Design Services requested of the Architect under this Agreement shall be provided in accordance with the terms of Attachment A.

3.4 DESIGN DEVELOPMENT SERVICES

- 3.4.1 Any Design Development Services requested of the Architect under this Agreement shall be provided in accordance with the terms of Attachment B.

3.5 CONSTRUCTION DOCUMENT SERVICES

- 3.5.1 Any Construction Document Services requested of the Architect under this Agreement shall be provided in accordance with the terms of Attachment C.
- 3.5.2 The Owner may review any proposed Construction Documents (including Contract Documents) and request revisions or corrections as it deems necessary. These requests shall be reviewed with the Architect, who shall make any necessary revisions or corrections before final approval of the Construction Documents.
- 3.5.3 The Owner reserves the right at its own expense to submit all Construction Documents for review by such consultant or consultants as it may select. In the event of such employment of outside consultants by the Owner, the Architect will cooperate fully with the consultants in order to avoid any unnecessary delays and will promptly make all necessary information available to such consultants. The Owner reserves the right to make changes in the Construction Documents based on input from such consultants, but the Architect shall not be held responsible for any such Owner-directed changes in the design or specifications, provided that the Architect has filed a written objection with the Owner concerning such changes.

3.6 BIDDING OR NEGOTIATION SERVICES

- 3.6.1 Any Bidding or Negotiation Services requested of the Architect under this Agreement shall be provided in accordance with the terms of Attachment D.

3.7 CONSTRUCTION ADMINISTRATION SERVICES

- 3.7.1 Any Construction Administration Services requested of the Architect under this Agreement shall be provided in accordance with the terms of Attachment E.
- 3.7.2 The Architect's responsibility to provide Construction Administration Services under this Agreement with respect to any Project commences with the award of the Contract for Construction for that Project and terminates after completion of the eleven month inspection and report required per Attachment E.

- 3.7.3 The Architect shall provide services in the administration of any construction contracts as set forth in this Section, in Attachment E, and in the General and Supplementary Conditions of any such construction contracts, unless otherwise provided in this Agreement.
- 3.7.4 In the course of providing Construction Administration Services, the Architect shall be a representative of and consult with the Owner.

ARTICLE 4: ADDITIONAL SERVICES

- 4.1 If authorized by the Owner in writing, the Architect may furnish or obtain from others Additional Services, including but not limited to the following types. These services, if authorized, shall be paid for by the Owner in accordance with Article 9 of this Agreement.
- a. Services resulting from significant changes in the general scope of any Project or its design, including significant changes to the size, complexity, schedule, location or character of the construction, requiring revision of the design documents or contract documents when such changes are:
 - Inconsistent with approvals or instruction previously given by the Owner including revisions made necessary by significant adjustments in the Owner's program or project budget following adoption of a final program and budget.
 - Due to changes required as a result of the Owner's failure to render decisions in a timely manner.
 - b. Providing services in connection with evaluating major substitutions proposed by the Contractor and making subsequent revisions to drawings, specifications and other documentation.
 - c. Providing services in connection with the replacement of work resulting from fire or other casualty loss during construction.
 - d. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with any Project; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.
 - e. Furnishing the services of special consultants for other than architectural, civil, geotechnical, structural, mechanical and electrical engineering services, such as consultants for interior design, furniture, communications, acoustics, kitchens and landscaping.
- 4.2 The Consultant shall be compensated for Additional Services approved by the Owner in writing as outlined in Article 9.3 below.

ARTICLE 5: OWNER'S RESPONSIBILITIES

- 5.1 The Owner shall provide full information regarding the requirements for any Project, including information regarding the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
- 5.2 The Owner shall establish and update an overall budget for any Project, including relevant costs and reasonable contingencies related to those costs.
- 5.3 The Owner shall designate a representative authorized to communicate with the Architect on the Owner's behalf with respect to any Project.

- 5.4 As needed, the Owner shall furnish a survey of any Project site describing physical characteristics, legal limitations and utility locations 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; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
- 5.5 The Owner shall pay for the cost of any permits or approvals from governmental authorities having jurisdiction over any Project.
- 5.5 The Owner will guarantee full and free access to the Architect to any Project premises for the performance of the Architect's services under this Agreement.
- 5.6 Any pre-construction information, surveys, reports or tests provided by the Owner shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof. Notwithstanding the foregoing, the Architect shall provide prompt written notice to the Owner if the Architect observes or otherwise becomes aware of any fault or defect in the information supplied by the Owner, or any fault or defect in any Project or non-conformance of the work with any such documents or non-conformance of the work with the Contract Documents.
- 5.7 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the project or nonconformance with the Contract Documents. The Owner's failure or omission to give such notice shall not relieve the Architect of its responsibilities under this contract and the Owner shall have no duty of observation, inspection or investigation.

ARTICLE 6: USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 6.1 The Drawings, Specifications and other documents prepared by the Architect and/or its consultants under this Agreement are instruments of the Architect's service for use solely with respect to the services to be provided under this Agreement and, except as provided herein, the Architect and/or its consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall have the right to retain copies, including reproducible copies, of the Architect's and consultant's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project and may use those documents for completion of the Project and when making future additions, modifications, or renovations to the Project or building, with the understanding that the Architect and/or consultant, if not involved in such future use, shall be relieved of any liability as a result of such future use of the documents.
- 6.2 Submission or distribution of documents to meet official regulatory requirements or of similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's and/or consultant's reserved rights.

ARTICLE 7: TERMINATION, SUSPENSION OR ABANDONMENT

- 7.1 This Agreement may be terminated by either party upon not less than fifteen 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. If terminated for failure of

the Architect to fulfill his obligations under the contract, the Owner may take over the work and prosecute the same to completion using the Architect's design, to the extent completed.

- 7.2 If any Project is abandoned by the Owner for more than 90 consecutive days, the Architect may suspend services with respect to that Project and will be entitled to an extension of time for completion of the Project, if circumstances warrant such an extension.
- 7.3 Failure of the Owner to make payments to the Architect in accordance with this Agreement, without written notice of justifiable reason for the nonpayment, shall entitle the Architect to suspend services under this Agreement.
- 7.4 In the event of a termination not the fault of the Architect, the Architect shall be compensated for actual services performed prior to termination, together with Reimbursable Expenses then due.
- 7.5 Suspension or termination of the Agreement by the Architect for cause shall not prevent the Owner from completing a Project using the Architect's design and drawings. In such case the Architect will cooperate with the Owner in making such documents available to the Owner.

ARTICLE 8: PROJECT DIRECTION AND PARAMETERS

- 8.1 The parties agree that, in directing the Architect regarding the provision of specific services under this Agreement, the Owner will utilize written directives in substantially the format of the "Project Directive" form attached hereto as Exhibit F. At a minimum, all project directives will include a description of the project or assignment, a schedule for completion, compensation terms and express notice of any intention of the parties to deviate from the terms of this Agreement. Except as may be specifically noted on the Project Directive form relating to any specific assignment or project, this Agreement will govern the provision of services by the Architect in all instances.

ARTICLE 9: PAYMENTS TO THE ARCHITECT

9.1 PAYMENTS ON ACCOUNT OF REIMBURSABLE EXPENSES

- 9.1.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses by the Architect and its employees and consultants in the interests of any Project, as identified as follows:

- .1 Transportation in connection with any Project (except that travel between the Architect's local office and the Project is a part of Basic Services and not a Reimbursable Expense), authorized out-of-town travel, lodging and subsistence, long-distance telephone and fax communications; mileage is compensable at the rates set forth on Attachment G.
- .2 Any fees paid for securing approval of authorities having jurisdiction over a project not paid by the Owner under Article 5.5 above.
- .3 Reproductions, plots, standard form documents, postage, copying and delivery of Instruments of Service;
- .4 Expense of renderings, models and mock-ups expressly requested by the Owner; and
- .5 other similar direct Project-related expenditures as approved by the Owner.

Reimbursable Expenses will be billed to the Owner at actual cost.

- 9.1.2 Records of Reimbursable Expenses pertaining to Basic Services and Additional Services shall be made available to the Owner or the Owner's authorized representative at the Owner's request. Such expenses shall be clearly described and itemized on the Architect's applications for payment.

- 9.1.3 Payment for Reimbursable Expenses shall be on a monthly basis per submitted invoices, itemized as required by 9.1.2 above.

9.2 PAYMENTS FOR BASIC SERVICES

- 9.2.1 Applications for payment for Basic Services shall provide sufficient detail to enable the Owner to track the work performed during the payment period and shall be in a format easily understood by the Owner. Payment shall be on a monthly basis per submitted invoices, which must include an itemization of all costs and services provided. Progress payments shall be made in proportion to services rendered and shall be due and owing within thirty days of the Architect's submittal of its monthly invoice. The Owner agrees to make every effort to reimburse the Architect at the earliest opportunity in accordance with school district procedures for approving such obligations and issuing the necessary school district warrants.

- 9.2.2 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractor or subcontractors.

9.3 PAYMENTS FOR ADDITIONAL SERVICES

- 9.3.1 Payments for any Additional Services shall be made monthly upon presentation of the Architect's statement of Additional Services rendered and expenses incurred attendant thereto.

- 9.3.2 The hourly rates for the Architect and its consultants for Additional Services shall be as set forth in Attachment G, which is attached hereto and made a part hereof. For any Additional Services involving the work of consultants, such services will be billed at a multiple of 1.10 times actual cost to the Architect.

ARTICLE 10: BASIS OF COMPENSATION

- 10.1 Unless otherwise provided for in the specific Project Directive, the Owner shall compensate the Architect for Basic Services on an hourly basis at the rates set forth on Attachment G, with a "Not-To-Exceed" [NTE] cap established in the Project Directive. In no event, however, shall the compensation to be received by the Architect for Basic Services attendant to any specific Project exceed the sum set forth in the Project Directive for that Project.
- 10.2 Any certificates, reports or other materials required from the Architect in connection with any Project shall be provided to the Owner prior to any final payment relating that Project. No payment, including final payment, shall in any manner affect, waive or release any of the Owner's right or claims against the Architect, whether or not known at that time.

ARTICLE 11: OBLIGATIONS OF THE ARCHITECT

- 11.1 Upon request of the Owner, the Architect will furnish the Owner with information relative to the Architect's consultant architects and Architects, including agreements between the Architect and any of its consultants. All such agreements shall specify the scope of design, Architecting and/or other services to be performed. The Architect shall, upon request, furnish the Owner with documentation demonstrating that its consultants are currently registered as professional architects and/or Architects and shall furnish the Owner with information as to similar professional work in they have been engaged. The Owner reserves the right to disapprove of any consultant Architect or architect by notifying the Architect of such disapproval. The failure of the Owner to disapprove of any consultant shall not release the Architect of any responsibility for any defects or deficiencies in the design or engineering services provided.
- 11.2 The Architect shall indemnify and hold harmless the Owner against injury, loss, or damage arising out of any negligent acts, errors, or omissions attendant to its provision of services to

the Owner. The Architect shall not be held responsible for injury, loss, or damage arising out of errors or omissions attributable to Owner-provided information regarding existing site and building conditions. The Architect shall be responsible for any errors, omissions and/or conflicts in any construction documents developed hereunder and such responsibility shall include, but not be limited to, prompt correction, at the Architect's expense, of any such errors, omissions and/or conflicts.

- 11.3 The Architect agrees to remedy any defect resulting from any of its negligent acts, errors or omissions contained in any construction documents developed hereunder or, upon the choice of the Owner, to pay the reasonable cost of such remedy as performed by a competent third party at the direction of the Owner. The Architect further agrees to pay any other damages incurred by the Owner which are proximately caused by any negligent acts, errors or omissions described in Section 11.2 hereof.
- 11.4 The Architect's obligations pursuant to paragraphs 11.2 and 11.3 are in addition to and not in lieu of other remedies available to the Owner.
- 11.5 The Architect agrees that it will secure and maintain in full force and effect all forms of insurance coverage required by law in the State of Montana, including but not limited to automobile liability (including hired/non-owned) coverage and workers compensation coverage. The Architect shall ensure that all of its consultants carry and maintain such coverage as well. The Architect and its consultants shall submit proof of such insurance to the Owner no later than the submittal of its first invoice to the Owner and at anytime thereafter when a material change in coverage, carriers or underwriters occurs. The maintenance in full current force and effect of the insurance coverage called for above shall be a condition precedent to the Owner's obligation to pay for services under this Agreement.

In addition to the insurance referenced above, the Architect agrees that it shall secure and maintain in full force and effect a policy of professional liability insurance in the minimum amount of \$1,000,000.00 providing coverage for any errors or omissions by the Architect occurring during the term of this agreement. The policy shall provide that it cannot be canceled or terminated without 45 days prior written notice to the Owner. Should the Owner agree to cancellation of the policy, the Architect shall purchase another policy providing the same protection as the canceled policy and provide the Owner with proof of such insurance.

Any consultant architect or engineer utilized in connection with providing services under this Agreement shall also be required to provide to the Owner a certificate of insurance indicating that a policy of professional liability insurance has been issued to said consultant in an amount no less than \$1,000,000, which policy shall be in full force and effect and which shall provide coverage for any errors and omissions of said consultant occurring during the term of this agreement. Said consultants, furthermore, must agree that said policy cannot be canceled or reduced without 45 days' prior to written notice to the Owner.

With respect to any insurance policy which is a "claims made" policy, in the event at any time any such policy is cancelled or nonrenewed, the Architect shall provide a substitute policy with terms and conditions and in amounts which comply with the terms of this Agreement and which provide for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy. The substitute policy or alternate form of coverage may consist of tail coverage, an extended reporting period or some other form of coverage, so long as it operates to provide the requisite level of coverage retroactive to the date of commencement of work under this agreement with respect to all "claims made" policies that are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this agreement. All substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of completion of the project.

- 11.6 Any actions against the Architect by the Owner brought to recover damages, including but not limited to damage to the work and the project itself for any failures or defects therein, caused by the design, planning, inspection, construction, administration or observations of construction of the project shall be brought within ten (10) years after the final completion and acceptance of the project. Notwithstanding anything contained herein to the contrary, and action for any damages which were first discovered by the Owner during the tenth year after final completion and acceptance of the project may be commenced at any time within one year after the discovery of such failure or defect.

ARTICLE 12: GENERAL CONDITIONS

- 12.1 This Agreement shall be governed by the laws of the State of Montana. Venue for any suit, action or claim to interpret or enforce the terms of this Agreement shall be the Ninth Judicial District Court of the State of Montana, Cut Bank, Glacier County, Montana. The prevailing party in any action shall be entitled to recover their costs and attorney's fees from the other party; in addition to any other damages awarded.
- 12.2 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.
- 12.3 The Architect and its consultants shall reject the use of any hazardous material in the construction of the project, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Further, if any such materials are discovered in the course of the Project, the Architect shall notify the Owner immediately.
- Unless otherwise provided in this Agreement or a specific Project Directive, the Architect and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited, to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 12.4 No waiver of any breach of any one of the agreements, terms, conditions or covenants of this Agreement by the Owner or Architect shall be deemed to imply or constitute a waiver of any other agreement, term, condition or covenant of this Agreement. The failure of either party to insist on strict performance of any agreement, term, condition or covenant herein set forth, shall not constitute or be construed as a waiver of the rights of either or the other thereafter to enforce any other default of such agreements term, condition or covenant; neither shall such failure to insist upon strict performance be deemed sufficient grounds to enable either party to forego or subvert or otherwise disregard any other agreement, term, condition or covenant of this Agreement.
- 12.5 If in any instance any provision hereof shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instances, but the remaining provisions shall be given effect in accordance with their terms.
- 12.6 This Agreement represents the entire and integrated agreement between the Owner and Architect relating to the subject matter of this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.
- 12.7 Any notices required or permitted under this Agreement or which any party elects to give shall be in writing and delivered either personally to the other party's authorized agent set forth below (or as changed by written notice); or by depositing such notice with the United States Postal Service, postage fully prepaid, to the person at the address set forth below; by

certified mail, return receipt requested; or to such other address at either party may later designate in writing. Any notice given by mail as herein provided shall be deemed given when deposited in the United States mail:

Owner:

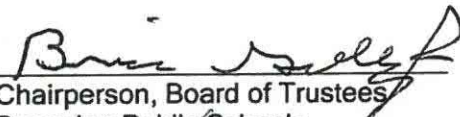
Browning Public Schools
P.O. Box 610
Browning, MT 59417

Architect:

L'Heureux Page Werner, PC
15 Fifth Street South
Great Falls, Montana 59401

- 12.8 The Architect warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement.
- 12.9 The term of this Agreement shall extend from be from 08.23.2018 through 12.31.2020. The parties may mutually agree to renew and extend the term of this Agreement for an additional period of no more than two years, with the terms of the Agreement being subject to negotiation. Such extension shall require the written agreement of the parties as to both (1) the duration of any extension and (2) any modifications to the terms of this Agreement. Neither party is obligated to enter into any extension and in the absence of a mutual written agreement for renewal and extension, this Agreement shall terminate on December 31, 2020.
- 12.10 There will be two originals of this Agreement executed by the parties, one to be retained by each party.

OWNER:


Chairperson, Board of Trustees
Browning Public Schools

OCT-15-2018
Date

ATTEST: 
District Clerk

ARCHITECT:


Timothy M. Peterson, AIA, LEED AP BD+C, GGP
Vice President / Principal

August 23, 2018
Date

ATTACHMENT A

Schematic Design Services

In the Schematic Design Phase, the Architect will provide those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the Owner. Design should be conceptual in character, based on the requirements developed during pre-design and programming processes and reviewed and approved by the Owner. Schematic Design services include, but are not necessarily limited to, the following:

Project Administration	Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and design progress review conferences with Owner, including the establishment of preliminary construction cost estimates.
Disciplines Coordination	Coordination between the architectural work and engineering work and other consultants involved with the project.
Document Checking	Review and coordination of documents prepared for the project.
Permitting Authority	Consultations, research of critical applicable regulations, laws and codes; Preparation of written and graphic explanatory materials;
Owner Data	Review and coordination of data furnished for the project by the Owner.
Architectural Design	Services responding to scope of work (program/pre-design) requirements and consisting of conceptual site and building plans, schematic sections and elevations, preliminary selection of building systems and materials, development of approximate dimensions, areas and volumes.
Structural Design	Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.
Mechanical Design	Services consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for energy sources/conservation, heating, ventilation and air conditioning (HVAC), plumbing, fire protection, and general space requirements.
Electrical Design	Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection, suppression and alarms, and general space requirements.



Civil/Site Design	Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations.
Specifications	Services consisting of preparation for Owner's approval of proposed development plan for architectural outline specifications and coordination of outline specifications for other disciplines.
Materials Research	Services consisting of identification of potential architectural and structural materials, systems and equipment.
Project Delivery	Services consisting of consideration of alternative potential project delivery methods.

ATTACHMENT B

Design Development Services

In the Design Development Phase, the Architect will provide those services necessary to prepare, from the approved schematic design documents, the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire project for approval by the Owner. These drawings and documents shall include but not be limited to floor plans, exterior elevations and one rendered exterior perspective. Consideration shall be given to availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction, user safety and maintenance requirements, and energy conservation. Design Development services include, but are not necessarily limited to, the following:

Project Administration	Services consisting of design development administrative functions including consultation, meetings and correspondence, and design progress review conferences with Owner, and including further refinement of any project construction budget.
Document Checking	Review and coordination of documents prepared for the project.
Permitting Authority	Consultations, research of applicable regulations, laws and codes; Preparation of written and graphic explanatory materials; Assist in obtaining approvals from approving agencies as required.
Owner Data	Review and coordination of data furnished for the project by the Owner.
Architectural Design	Continued development and expansion of architectural schematic design documents to establish the final scope, relationships, forms, size, and appearance of the project through plans, sections and elevations, materials selections, and equipment layouts. At intervals mutually agreeable to the Owner, the Architect shall provide drawings and other documents that depict the current status of design development for the Owner's review.
Structural Design	Continued development of the specific structural system(s) and schematic design documents in sufficient detail to establish basic structural system and dimensions, structural design criteria, foundation design criteria, preliminary sizing of major structural components, critical coordination clearances, and outline specifications or materials lists.
Mechanical Design	Continued development and expansion of mechanical schematic design documents and development of outline specifications for materials lists to establish approximate equipment sizes and capacities, preliminary equipment layouts, required space for equipment, chases and clearances, acoustical and vibration control, visual impacts and energy conservation measures.
Electrical Design	Continued development and expansion of electrical schematic design documents and development of outline specifications or

materials lists to establish criteria for lighting, electrical and communication raceways, approximate sizes and capacities of major components, preliminary equipment layouts, required space for equipment, chases, and clearances.

Civil/Site Design	Continued development of civil/site schematic design documents and development of outline specifications required for the project.
Specifications	Services consisting of preparation for Owner's approval of proposed General and Supplementary Conditions of the Contract for construction, development of architectural outline specifications, coordination of outline specifications of other disciplines, and production of design manual including design criteria, and outline specifications of materials lists.
Scheduling	Review and update of previously established schedules for project.
Cost Estimating	Development of a probable construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the design development documents, plus appropriate design contingencies. Assist Owner with analyzing scope, schedule and budget options to stay within the Owner's budget and advise Owner of any adjustments to the preliminary estimate of construction cost.
Presentations	The Architect will make one presentation of the Design Development documents to the School Board at a public meeting at a time mutually agreeable to the Architect and Owner. As part of that presentation, the Architect will provide a written report to the Owner outlining the nature and magnitude of any deviations between the Design Development documents and the Schematic Design documents previously provided to the Owner.
Energy Use	Architect will consider energy efficiency in all aspects of the project and shall submit to the Owner an estimated annual energy use analysis of the project and the new heating & ventilation system.
Design Documents	Provision of sufficient sets of design development documents.
Time Schedule	Submission to the Owner of a new timetable for all elements of work remaining through Owner occupancy.

ATTACHMENT C

Construction Document Services

In the Construction Documents Phase, the Architect shall provide those services necessary to prepare for approval by the Owner, from the approved design development documents, Construction Documents consisting of drawings, specifications, and other documents setting forth in detail the requirements for construction of the project and bidding and contracting for the construction of the project. Construction document services include, but are not necessarily limited to, the following:

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| Project Administration | Administrative functions including consultations, meetings and correspondence, and design and document progress review conferences. |
| Document Checking | Review and coordination of documents prepared for the project. |
| Permitting Authorities | Prior to the approval of the final Construction Documents by the Owner, the Architect shall submit the construction documents to the specific state and local agencies having jurisdiction over the project, including but not limited to any necessary review under § 20-6-622, MCA. Simultaneously, the Architect shall submit sufficient copies of all construction documents to the Owner's review. The Architect shall make written request of the reviewing agencies for the requisite approvals and any changes necessary to obtain such approval shall be made by the Architect at the Architect's expense. All approvals must be in writing and must be filed with the Owner. In the event of a decision by any lawful regulatory authority that such construction documents do not fully conform to applicable building codes, regulations, laws, and ordinances, the Owner may have the matter heard on appeal or review by the appropriate administrative agency or agencies. |

The Owner may review the proposed construction documents and request minor revisions or corrections as it deems necessary. These requests shall be reviewed with the Architect, who shall make the necessary revisions or corrections before final approval of the construction documents.

Construction Documents shall accurately reflect and comply with all applicable codes, ordinances, and regulations. The Architect shall investigate the availability of all necessary

utility services and shall meet with and discuss the availability of such services with the appropriate authorities.

Owner Data	Review and coordination of data furnished for the project by the Owner.
Architectural Design	Preparation of drawings based on approved design development documents setting forth in detail the architectural construction requirements for the project.
Structural Design	Preparation of final structural engineering calculations, drawings and specifications based on approved design development documentation, setting forth in detail the structural construction requirements for the project.
Mechanical Design	Preparation of final mechanical engineering calculation, drawings and specifications based on approved design development documentation, setting forth in detail the mechanical construction requirements for the project.
Electrical Design	Preparation of final electrical engineering calculation, drawing and specifications based on approved design development documentation, setting forth in detail the electrical construction requirements for the project.
Civil/Site Design	Preparation of final civil/site design drawings and specifications based on approved design development documentation required for the project.
Specifications	Development and preparation of bidding documents, General and Supplementary Conditions of the contracts for construction, architectural specifications, coordination of specifications prepared by other disciplines, and compilation of Project Manual. The drawings shall include, but not be limited to a complete set of architectural working drawings including site plans, site utility plans, existing grades, new final grades, parking requirements, architectural plans, sections, elevations, reflected ceiling plans, details, finish schedules and complete structural, mechanical, electrical, plumbing (including the fire protection system), coordinated with the specifications, which shall describe the scope, materials and quality of the workmanship of all items above. Each area shall be shown at sufficient scale to adequately and fully explain the function of the area and the intention of the work, and to enable the satisfactory construction of the area by the contractor. All original drawings must carry the

registered professional stamp of the engineer and Architect responsible for that document.

Cost Estimating

Development of a probable construction cost from quantity surveys and unit costs of building elements for the project and advising Owner of any adjustments to previous preliminary estimates of previous construction cost. Costs shall reflect the level of design elements presented in the construction documents plus appropriate design contingencies. Assist Owner with analyzing scope, schedule, and budget options to stay within the Owner's budget. Submit to the Owner a new estimate of the probable cost of construction.

Scheduling

Review and updating previously established schedules for the project.

Bidding Information

Preparation, after consultation with the Owner, of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

Presentation

The Architect will make one presentation of the Construction Documents to the School Board at a public meeting at a time mutually agreeable to the Architect and Owner. As part of that presentation, the Architect will provide a written report to the Owner outlining the nature and magnitude of any deviations between the Construction Documents and the Design Development documents previously provided to the Owner.

Project Budget

The project budget shall be established in writing prior to competitive bidding and the Architect shall not rely on any unwritten or unapproved Owner budget.

Registered Stamps

Ensure that all original drawings carry the registered stamp of the engineer and Architect responsible for that document.

ATTACHMENT D

Bidding and Negotiation Services

In the Bidding Phase, the Architect, following the Owner's approval of the Construction Documents and the most recent statement of probable construction cost, shall provide services necessary to assist the Owner in obtaining any bids and in awarding and preparing the contracts for construction.

Project Administration Following the Owner's approval of the construction documents and of the latest estimates of construction cost, assist the Owner in obtaining bids and assist in awarding and preparing contracts for construction.

Any revisions or corrections after the construction documents have been released to bidders shall only be made by addendum. The Architect shall promptly notify the Owner of any revisions or corrections made by addendum. Previous acceptance of the construction documents will not limit the Owner's rights to request the revisions and/or corrections after documents have been released to the bidders, but may entitle the Architect to submit a claim for additional compensation if warranted under the Agreement. Any revisions or corrections consistent with previous approvals by the Owner shall be accomplished at the expense of the Architect.

Preparation of Docs Preparation of the invitations for bids, as well as the necessary forms, record of bidders, plan deposits, proposals and other bidding and construction documents, all subject to the Owner's approval.

Coordination Coordination between the architectural work and the work of engineering and other involved consultants for the project.

Bidding Materials Organization, coordination, and handling of bidding documents for reproduction, distribution and retrieval, receipt and return of document deposits.

Addenda Preparation and distribution of Addenda as may be required during bidding and including supplementary drawings, specifications, instructions, and notice(s) of changes in the bidding schedule and procedure.

Alternates Consideration of alternative, separate or sequential bid approaches and the provision of services in connection with

the bidding, negotiation and/or award of such alternative or sequential bid approaches.

Bidding	Participation in pre-bid conferences, responses to questions from bidders, and clarification or interpretations of the bidding documents, attendance at bid opening and documentation and distribution of bidding results.
Substitutions	Consideration, analysis, comparisons, and recommendations relative to substitutions proposed by bidders prior to receipt of bids.
Bid Evaluation	Validation of bids, participation in review of bids and alternates, preparation of a written bid evaluation and recommendation on award of contract for submission to Owner.
Contract Agreements	Assist Owner in notification of contract award, assistance in preparation of construction contract agreements, preparation and distribution of sets of contract documents for execution of the contract, receipt, distribution and processing, for Owner approval, of required certificates of insurance, bonds and similar documents, and preparation and distribution to contractor(s) on behalf of the Owner, of notice(s) to proceed with the work.
Bidding Requirements	The Architect shall include in the bidding information, plans and/or specifications the following requirements: (a) all government requirements related to the payment of prevailing wage rates; (b) requirements of state law relating to resident hiring preferences and nondiscrimination; (c) a requirement that the contractor provide operations manuals and adequate training for the Owner in the operation of mechanical, electrical, heating and air conditioning systems installed by the contractor, as well as warranty information and forms and any other information or documentation available to the contractor which would assist the Owner in operating and maintaining the equipment and systems; (d) the requirement that no hazardous materials will be used in the project or its fixtures, including but not limited to friable asbestos materials or products, polychlorinated biphenyl (PCB), or materials as would be hazardous to potable water, and further, that the contractor will be required to certify, in writing, upon completion of the project, that the building contains no such materials; (e) a requirement that the contractor provide lien releases or waivers or similar documents before payment, ensuring payment to sub-



contractors for supplies, labor and materials; and (f) a requirement that the work be done to all applicable codes and be compliant with the ADA and/or state disability standards.

Re-design Costs

The Architect is responsible for the review of all bids received and the making of a written recommendation to the Owner for award. If the lowest bid exceeds the most recent estimate of the probable cost of construction by more than 5%, then the Architect shall provide such value engineering gestures as may be necessary to bring costs within the Owner's budget. If the lowest bid exceeds the most recent estimate by 10% or more, then the Architect shall provide such redesign measures as may be necessary to bring costs within the Owner's budget.



ATTACHMENT E

Construction Administration Services

In the Construction Administration Phase, the Architect will provide those services necessary for the administration of the construction contract on behalf of the Owner as generally set forth in the General Conditions of the Contract for Construction. Construction Administration services include, but are not limited to, the following:

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| Project Administration | Construction contract administrative functions including consultation, site visits, conferences, communications, and progress reports. |
| Permitting Authorities | Services relating to seeking conformity to applicable laws, statutes, regulations and codes of regulating entities in furtherance of the Owner's interests during construction of the project. |
| Construction | Processing of submittals, including receipt, review of and appropriate action on shop drawings, product data, samples, and other submittals required by the contract documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the work or in the construction, while allowing sufficient time in the Architect's professional judgment to permit adequate review; Distribution of submittals to Owner and maintenance of master file of submittals and related communications. |
| Field Observations | The Architect and its consultants will make such periodic visits to the Project site as may be necessary to familiarize themselves with the progress and quality of the work and to determine if the work is proceeding in accordance with the contract documents. The Architect will guard the Owner against deficiencies in the work performed and materials provided by the contractor (and against noncompliance by the contractor with the terms of his contract), although the Architect does not guarantee the performance of that contract. On the basis of their on-site observations, the Architect and its consultants will keep the Owner informed of the progress and quality of the work and will exercise due care and diligence in discovering and promptly reporting to the Owner defects and deficiencies in the work. If the Architect observes any work that does not conform to the contract documents or that will prove detrimental to the owner, the Architect will reject that work and will immediately report it to the Owner. The Architect and its consultants shall make as many observations as may be reasonably required to fulfill their obligations to the Owner. |

Periodic visits of the Architect shall be not less than an average of one time per week. Each major engineering discipline shall make periodic visits not less than once per month, during the course of work applicable to that discipline. During critical work phases, each engineering discipline may be required to make visits more frequently, timed to coincide with the construction progress. The Architect and its consultants shall prepare and submit written reports regarding their on-site observations to the Owner every month for the previous one-month period. The Architects and its consultants (as necessary) shall attend regularly-scheduled construction progress meetings with the contractor and Owner and prepare and submit a report to the Owner of the proceedings of those meetings.

Except as may be provided elsewhere in this Agreement, the Architect shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the contract documents and shall not have control over or charge of acts or omissions of the contractor, subcontractors, or their agents or employees or of any other persons performing portions of the work. The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, except to ensure, based on its on-site observations, that the work is being performed in accordance with the requirements of the contract documents.

Documents

Preparation, reproduction, and distribution of clarification documents and interpretations in response to requests for clarification by contractors or the Owner; Preparation, reproduction and distribution of drawings and specifications to describe work to be added, deleted or modified; Review of proposals, review and recommend changes in time for substantial completion, assist in the preparation of modifications of the contracts and coordination of communications, approvals, notifications, and record-keeping relative to changes in the work.

Scheduling

Monitoring the progress of the contractors relative to established schedules and making status reports to the Owner.

Payment Certification

Review and evaluate applications for payment, and certify amounts due the Contractor. Maintain records of payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site and on the data comprising the Contractor's Application for Payment, that the work has

progressed to the point indicated and that, to the best of Architect's knowledge, information and belief, the quantity, quality and value of the work is in accordance with the Construction Contract Documents. The issuance of a Certificate for Payment shall also constitute a representation that the Contractor is entitled to payment in the amount certified. Said certificates shall be in a standardized form acceptable to the Owner reflecting proper detail and identification of the contract items involved and shall be in a designated office of the Owner within ten days after the Architect's receipt of the Application for Payment. The issuance of a Certificate for Payment shall be a representation that the Architect has (1) made continuous on-site inspections to check the quality or quantity of work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from subcontractors and materials, supplies, and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

The issuance of a Certificate for Payment shall not constitute a representation that the work is free of defects, or constitute the acceptance of the work by the Owner.

The Architect shall not certify payments unless required documents such as lien releases or waivers, an updated and factual Project construction schedule, appropriate warranties, operating manuals and instructions have been provided by the Contractor.

Action on Submittals

Review and evaluation of contractor proposals, including the preparation of drawings, specifications and other documentation and supporting data.

Change Orders

Prepare Change Orders and Construction Change Directives, with supporting documentation, for the Owner's approval and execution in accordance with the Contract Documents, and authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time that are consistent with the intent of the Contract Documents.

Project Closeout

Conduct inspections to determine the dates of Substantial Completion and Final Completion. The dates of Substantial Completion and Final Completion shall be mutually agreed upon in writing by the Owner and the Architect; Observe the final testing and start-up of utilities, operational systems and equipment; Receive, index, bind, and forward to the Owner

for the Owner's review, two sets of written warranties, building operating and maintenance manuals, and related documents required by the Contract Documents. Receive and forward to the Owner for the Owner's review and records written warranties and related document, such as affidavits, releases and waivers of lien required by the Contract Documents to be assembled by the Contractor. Issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

Before final payment to the Contractor, the Architect shall identify any amounts necessary to pay a claim or claims by the Owner against the Contractor for non-conforming work and/or any liquidated damages attributable to the Contractor.

Record Documents

Review contractor's field records showing significant changes in the work made during construction based on marked up prints, the Architect's inspection and observation, drawings and other data furnished by the Contractor to the Consultant. Maintain supervision over all changes in the plans in the course of the work and keep a current, accurate record of all variations or departures from the Construction Documents as originally approved, keep the Owner advised in advance if possible with respect thereto, advise the Owner to the best of the Architect's ability on a current basis of the work occasioned by such variations or departures, and secure from the Contractor a set of reproducible, record drawings through the length of the construction to reflect the actual construction and work in place. The accuracy of such revised drawings is not expected to be any greater than the accuracy of the original drawings. A full set of said drawings shall be provided to the Owner prior to final payment to the Architect and the Contractor. Any variations or departures that affect project costs or project time shall only be implemented after compliance with applicable sections of this Agreement.

O & M Manuals

Process, review, comment and take appropriate action on, and transmit Operations and Maintenance Manuals from contractor to Owner.

Rejecting Work

The Architect shall reject work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Such special inspection or testing shall only be accomplished after obtaining the Owner's concurrence and agreement to pay for that inspection and testing. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

Warranty Period

Continued assistance to investigate contract problems that arise during the warranty period.

Warranty Inspections

Accompanied by a representative of the Owner, make at least two complete warranty inspections of the work after the work has been completed and accepted by the Architect and the Owner. One such inspection shall be made approximately one month after Substantial Completion of the work and another such inspection shall be made approximately eleven months after Substantial Completion. The Architect shall determine, based upon the Architect's professional opinion, whether the work and all portions thereof are in accordance with the construction documents, and the Architect shall provide a written report of these inspections to the Owner. The Architect shall in good faith and with due diligence endeavor to see that any remedial work found to be necessary is performed in a satisfactory manner by the contractor; shall be responsible for the inspection of such remedial work and shall inform the Owner in writing, whether such remedial work has been satisfactorily completed.

Claims Decisions

Evaluate claims in connection with the work. Render written decisions within ten working days or within ten working days advise the Owner of the time frame to appropriately respond on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

ATTACHMENT F

PROJECT DIRECTIVE FORM

OWNER: Browning Public Schools

ARCHITECT: L'Heureux Page Werner, PC

This Project Directive Form is entered into in accordance with Article 8.1 of the A-E General Services Agreement between the Owner and Architect. Except where specifically noted herein, the terms of that Agreement will govern the provision of the following services by the Architect.

A. DESCRIPTION OF SERVICES (describe services as outlined in Articles 3 and 4 of the Agreement)

LPW Project Numbers / Descriptions:

17-054 / Browning High School Sports Complex

Project to Include:

NEW CONSTRUCTION:

- ☒ Multi-sports competition field with field-turf surfacing/ bleachers
- ☒ Competition track
- ☒ Softball field
- ☒ Parking and access roads
- ☒ Site lighting
- ☒ Tennis court, if budget allows

B. SCHEDULE FOR COMPLETION

Completion Estimate 10.31.2020

C. VARIATIONS FROM TERMS OF AGREEMENT (Note any instances where Parties intend to alter or modify the terms of the General Services Agreement with respect to the specific services described above)

D. COMPENSATION TERMS

TOTAL FEES: \$598,731.00


E. SPECIAL COMMENTS

OWNER:

By: B. Gellert

OCT-15 2018
Date

ARCHITECT:

By: 
Timothy M. Peterson, AIA, LEED AP BD+C, GGP
Vice President / Principal

August 23, 2018
Date