

# Agreement Between Owner and Owner's Representative

*(Owner's Representative as Owner's Agent)*

## **AGREEMENT**

made this \_\_\_\_\_ day of \_\_\_\_\_ the year Two Thousand and Nineteen

## **BETWEEN** the Owner:

Libertyville School District 70  
1381 Lake Street  
Libertyville, Illinois 60048

## and Owner's Representative:

GravesDesignGroup, LLC  
2231 Trailside Lane  
Wauconda, Illinois 60084

For services in connection with the Project known as:

HVAC/Lighting Upgrades and Ten-Year Safety Survey Improvements

as further described in Article 2.

The Owner and Owner's Representative, (hereinafter referred to as the "OR"), agree as set forth below:

# **ARTICLE 1**

## **RELATIONSHIP OF THE PARTIES**

### **1.1 Owner and Owner's Representative**

The OR shall be the Owner's agent in providing the Owner's Representative Services described in Article 3 of this Agreement. The OR and the Owner shall perform as stated in this Agreement and the OR and Owner accepts the relationship of good faith and fair dealing between them, which is established herein.

#### **1.1.1 Standard of Care**

The OR covenants with the Owner to furnish its skill and judgement with due care and in accordance with applicable federal, state and local laws and regulations, which are in effect on the date of this Agreement first written above.

### **1.2 Owner and Design Professional**

The Owner shall enter into a separate agreement with Design-Builder to provide architectural and engineering design for the Project. The project is defined in Article 2 of this Agreement.

### **1.3 Owner and Contractors**

The Owner shall enter into a separate contract with one or more Contractors for the construction of the Project.

### **1.4 Relationship of the OR to Other Project Participants**

In providing the Owner's Representative's Services described in this Agreement, the OR shall endeavor to maintain a working relationship with the Contractors and the Design-Builder on behalf of the Owner. However, nothing in this Agreement shall be construed to mean that the OR assumes any of the responsibilities or duties of the Contractors and Design-Builder. The Contractors are solely responsible for construction means, methods, sequence and procedures used in the construction of the Project and for the safety of its personnel and its operations and for performing in accordance with the Contractor's contract with the Owner. The Design-Builder is solely responsible for the Project design and construction and shall perform in accordance with the agreement between the Design-Builder and the Owner.

## **ARTICLE 2 PROJECT DEFINITION**

The term "Project", when used in this Agreement shall mean the total design and construction to be performed under this Agreement. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of the total construction to be performed under this Agreement.

### **The Project Name and Location are as follows:**

HVAC/Lighting Upgrades and Ten-Year Safety Survey Improvements to  
Adler Park Elementary School, 1740 North Milwaukee Avenue, Libertyville, Illinois 60048  
Butterfield Elementary School, 1441 West Lake Street, Libertyville, Illinois 60048  
Copeland Manor School, 801 South Seventh Avenue, Libertyville, Illinois 60048  
Highland Middle School, 310 Rockland Road, Libertyville, Illinois 60048  
Rockland Elementary School, 160 West Rockland Road, Libertyville, Illinois 60048  
Education Resource Center, 1381 West Lake Street, Libertyville, Illinois 60048

## **ARTICLE 3 OWNER'S REPRESENTATIVE BASIC SERVICES**

The Owner's Representative shall provide the following basic scope of services:

### **3.1 Project Administrative Services**

**3.1.1** Consult with the Owner and administer the Project on the Owner's behalf, including attending design-builder design meetings and communicating with members of the Project Team.

### **3.2 Services in Connection with Design and Construction Documents Prepared by the Design-Builder**

**3.2.1** Review Ten-Year Safety Survey design and construction drawings prepared by the Design-Builder for the limited purpose of evaluation conformance with the Ten-Year Safety Survey and the design concept expressed in the Design-Build Documents and identify potential additional items that could be included in the Project, prepare a report to the Owner and confer with the Owner potential additional items that could be included in the Project and upon Owner agreement of additional items prepare a memoranda to the Design-Builder noting additional items to be incorporated into the Project.

### **3.3 Services in Connection with the Construction of the Project**

- 3.3.1** Assist the Owner in responding to the Design-Builder's questions regarding the intent of the Design-Build Documents.
- 3.3.2** Review Design-Builder's Submittals to the Owner associated with the Ten-Year Safety-Survey portion of the Project for the limited purpose of evaluating the Submittal for conformance with the Owner's Criteria and other design concepts expressed in the Design-Build Documents. By reviewing Submittals, Owner's Representative does not assume the responsibility to coordinate the services performed or the information provided by the design professionals engaged by the Owner, the Design-Builder, or the trade contractors and suppliers of any of them. Owner's Representative's review of the submittals is not for the purpose of determining the accuracy or completeness of other information, such as dimensions, quantities, and installation or performance of equipment or systems. Owner's Representative review shall not constitute approval of safety precautions; approval of any construction means, methods, techniques, sequences or procedures, or approval of an assembly of which the reviewed item is a component. Owner's Representative shall not be obligated to review any Submittals until the Design-Builder and the Design-Builder's professional consultants provide a representation that the Design-Builder and the Design-Builder's professional consultants have (1) reviewed and approved the Submittal, (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within the Submittal with the requirements of the Design-Build documents.
- 3.3.3** Visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing, to become generally familiar with the progress and quality of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Design-Build Documents. However, the Owner's Representative shall not be required to make exhaustive or continuous on-site inspections to check the quality of or quantity of the Work. On the basis of the site visits, the Owner's Representative shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Design-Build Documents and from the most recent construction schedule submitted by the Design-Builder, and (2) defects and deficiencies observed in the Work.
- 3.3.4** Recommend to the Owner amounts due the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising the Design-Builder's Application for Payment, and (3) an evaluation of the progress of the Work. Such recommendation shall not constitute a representation that the Consultant has (1) made exhaustive or continuous inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers, and other data requested by the Owner to substantiate the Design-Builder's right to payment; or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

- 3.3.5** Conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. Inspections shall be conducted with the Owner's Project Manager to check conformance of the Work with the requirements of the Design-Build Documents and to verify the accuracy and completeness of the list submitted by the Design-Builder of Work to be completed or corrected.
- 3.3.6** Recommend to the Owner the final amount due to the Design-Builder on the basis of (1) the payment provisions of the Design-Build Contract, (2) the data comprising the Design-Builder's final Application for Payment, and (3) a final inspection indicating the Work complies with the requirements of the Design-Build Contract. Such recommendation shall not constitute a representation that the Owner's Representative has (1) evaluated the quality of the Work or made exhaustive or continuous inspections to check the quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Design-Builder's Contractor(s) and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, or (4) ascertained how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

## **ARTICLE 4**

### **DURATION OF THE OWNER'S REPRESENTATIVE SERVICES**

#### **4.1**

The duration of the OR's Basic Services under this Agreement shall commence with the Owner's execution of Design-Builder contract change order for the Project and be completed on OR's recommendation to the Owner the final amount due to the Design-Builder or October 31, 2019, whichever is earlier.

**4.1.1** The commencement date for the OR Basic Services shall be as stated in 4.1, or the date of the execution of this Agreement by the Owner as stated herein, or the date on which the Owner issues to the OR a written instruction to proceed with Basic Services, whichever is earlier.

**4.1.2** The OR's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of the design and construction occur simultaneously, some of the services may overlap.

## **ARTICLE 5**

### **CHANGES IN THE OWNER'S REPRESENTATIVE BASIC SERVICES AND ADDITIONAL COMPENSATION**

#### **5.1 Owner Changes**

**5.1.1** The Owner with the Agreement of the OR and without invalidating this Agreement, may make changes in the OR's Basic Services specified in Article 3 of this Agreement. The OR shall promptly notify the Owner of changes that increase the OR's compensation or duration of the OR's Basic Services or both.

#### **5.1.2 Additional Compensation and Changes in Duration**

The OR shall be entitled to receive additional compensation when the scope of Basic Services is increased or extended through no fault of the OR. If the scope of the Basic Services is increased or the duration of the OR's Basic Services is extended, the OR shall be entitled to receive additional compensation. The OR shall give a written request for additional compensation to the Owner within thirty (30) days of the occurrence of the event-giving rise to such request. The amount of additional compensation to be paid shall be determined on the basis of the OR's cost and a customary and reasonable adjustment in the OR's fixed or lump sum fee consistent with the provisions of Article 7.

#### **5.1.3 Changes in the OR's Basic Services**

Changes in the OR's Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the Owner and the OR. The Amendment shall be executed by the Owner and OR prior to the OR performing the Services required by the Amendment. The OR shall proceed to perform the Services required by the Amendment only after receiving written notice directing the OR to proceed.

#### **5.1.4 Payment of Additional Compensation**

The OR shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

## **ARTICLE 6**

### **OWNER'S RESPONSIBILITIES**

#### **6.1 Owner's Deliverables to OR**

**6.1.1** Executed and proposed Contracts and Agreements.

**6.1.2** Lender's requirements for payment (forms, formats, procedures, etc.)

## **6.2**

The Owner shall provide to the OR complete information regarding the Owner's requirements for the Project

## **6.3**

The Owner shall examine information submitted by the OR and shall render decisions pertaining thereto promptly.

## **6.4**

The Owner shall furnish legal, accounting and insurance counseling services as may be necessary for the Project.

## **6.5**

The Owner shall furnish insurance for the Project as specified in Article 8.

## **6.6**

If the Owner observes or otherwise becomes aware of any fault or defect in the Project or any nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the OR.

## **6.7**

The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the work in cooperation with the OR, consistent with this Agreement and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the OR.

## **6.8**

The Owner shall cause any and all agreements between the Owner and the Contractor to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation which survive completion of the Project and termination of the Agreement and shall expressly recognize the OR as the Owner's agent in providing the OR Basic and Additional Services specified in this Agreement and as a third-party beneficiary of the Agreement.

## **6.9**

At the request of the OR, sufficient copies of the Contract Documents shall be furnished by the Owner at the Owner's expense.

#### **6.10**

The Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for some permanent changes in existing facilities.

#### **6.11**

The Owner shall furnish evidence satisfactory to the OR that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, the OR is not required to commence the OR Services and may, if such evidence is not presented within a reasonable time, suspend the Services specified in this Agreement upon fifteen (15) days written notice to the Owner. In such event, the OR shall be compensated in the manner as provided in Article 9.2.

#### **6.12**

The Owner shall send to the OR and shall require the Design-Builder to send to the OR copies of all notices and communications sent to or received by the Owner or the Design-Builder relating to the Project. During the Construction Phase of the Project, the Owner shall require that the Contractors submit copies of all notices and communications relating to the Project directly to the OR.

#### **6.13**

The Owner shall designate an officer, employee or other authorized Project Manager to act in the Owner's behalf with respect to the Project. The Owner's Project Manager for the Project is ~~(to-be-determined)~~. This Project Manager shall have the authority to approve changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

During the Agreement Term, and for a period of two (2) years thereafter, Owner and its affiliates or successors, shall not recruit, nor cause any other person to recruit, nor make, nor cause any other person to make, any offer of employment or independent contractor or consultant status to any person who at any time during the Agreement Term was or is an employee or independent contractor status of GravesDesignGroup, LLC or its respective affiliates or successors, in connection with (1) any business substantially similar to that being carried on by OR for its respective affiliates or successors, or (2) any business that employs marketing or sales methods substantially similar to those being used by OR for its respective affiliates or successors.

#### **6.14**

The Owner shall make payments to the Contractor on the basis of the Contractors' applications for payment as recommended by the OR and as stated in Section 3.3.4 and through Section 3.3.6.



## **ARTICLE 7**

### **COMPENSATION FOR OR SERVICES AND PAYMENT**

#### **7.1**

The OR shall receive compensation for its services in accordance with 7.3 Lump Sum.

#### **7.2**      **NOT USED.**

#### **7.3**      **Lump Sum Fee**

The Owner shall compensate the OR on the basis of a lump sum fee in accordance with the terms and conditions of this Agreement as follows:

Two percent (2.0%) of the cost of the Project, as calculated based on Design-Builders' requests for payment, paid proportionately on a monthly basis with the Design-Builder' pay requests.

#### **7.3.1**      **Payments**

Payments shall be made monthly, not later than thirty (30) days after receipt of the OR's Invoice by the Owner.

**7.3.2.1**      No deductions shall be made from the OR's compensation due to any claim of the Owner, Contractors or others not a party to this Agreement or due to any liquidated damages, retainage or other sums withheld from payments to Contractors or others not a party to this Agreement.

**7.3.2.2**      Payments due the OR that are unpaid for more than thirty (30) days from the date of the OR's Invoice shall bear interest at the rate of 1.5% simple interest per month. The OR shall be entitled to recover all costs and expenses, including attorney's fees, incurred in enforcing payment under this Agreement.

#### **7.4**      **Compensation for Additional Services**

The OR shall be compensated, and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and OR.

#### **7.5**      **Reimbursable Expenses**

Reimbursable expenses are in addition to the fees for basic and additional services and include all actual expenditures made by the OR.

**7.5.1**      Expenses for the outside services of reprographics, reproduction, delivery service, long distance telephone, postage, photographic film and processing, and special client purchases will be billed at ten percent (10%) over actual cost to the OR.

- 7.5.2** Expenses for transportation and living when traveling in connection with the project, if any, will be billed at ten percent (10%) over the actual cost billed to the OR.
- 7.5.3** Mileage to and from meetings with the Design-Builder when not conducted at the project site will be charged at the rate of the current IRS regulated rate. Tolls and parking will be charged at cost.
- 7.5.4** Invoices will be separated as to Basic Services, Additional Services and Reimbursable expense. All invoices will be billed the last day of the month for which the service is provided.

## **ARTICLE 8 INSURANCE AND MUTUAL INDEMNITY**

### **8.1 OR's Liability Insurance**

- 8.1.1** The OR shall purchase and maintain insurance for the duration of this agreement, and shall protect the OR from the claims set forth below that may arise out of or result from the OR's performance of services pursuant to this Agreement: All insurance shall be maintained in force for the term of this Agreement. All insurance obtained by the OR under the terms of this Agreement, excluding Worker's Compensation and Commercial Automobile Liability Insurance, shall name Owner as an additional insured.
- 8.1.1.1** Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;
- 8.1.1.2** Claims for damages because of bodily injury, occupational sickness or disease or death of OR's employees under any applicable employer's liability law;
- 8.1.1.3** Claims for damages because of bodily injury or death of any person other than OR's employees;
- 8.1.1.4** Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the OR or (2) by any other person;
- 8.1.1.5** Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss or use therefrom; or
- 8.1.1.6.1** Claims for damages because of bodily injury or death of any person or property damage arising out of the Ownership, maintenance or use of any motor vehicle.
- 8.1.2** The OR's Commercial General and Automobile Liability Insurance, as required by Paragraph 8.1.1, shall be written for not less than the following limits of liability:

### **Commercial General Liability Insurance**

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury Limit	\$ 1,000,000
Each Occurrence	\$ 1,000,000

**Automobile Liability (Hired and Non-Hired Autos)**

Personal Bodily Injury	\$ 1,000,000
Property Damage	\$ 1,000,000
OR: Combined Single Limit ( <i>Bodily Injury and Property Damage Liability</i> )	\$ 1,000,000

**Excess Liability - Umbrella Form**

Each Occurrence	\$ 2,000,000
Aggregate	\$ 2,000,000

**Workers Compensation and Employer's Liability (Statutory Limits)**

Bodily Injury by Accident	\$ 1,000,000	Each Accident
Bodily Injury by Disease	\$ 1,000,000	Policy Limit
Bodily Injury by Disease	\$ 1,000,000	Each Employee

**Professional Liability**

Each Occurrence	\$ 1,000,000
Aggregate	\$ 1,000,000

**8.1.3** Commercial General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

**8.1.4** The foregoing policies shall contain a provision that coverage afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice has been given to the Owner and shall include either a liability endorsement covering this Agreement or an endorsement making the Owner an additional insured under the general liability policy. Certificates of insurance showing such coverage to be in force shall be filed with the Owner prior to commencement of the OR's services.

**8.2 Owner's Insurance**

**8.2.1** The OR, as agent of the Owner, shall be named as an additional insured in any liability insurance policy obtained by the Owner for the Project.

**8.3 Notices and Recovery**

**8.3.1** The Owner and OR each shall provide the other with copies of all policies thus obtaining for the Project. Each party shall provide the other thirty (30) days notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

#### **8.4**      **Waiver of Subrogation**

**8.4.1**      The Owner and OR waive all rights against each other and against the Contractor, Design-Builder, consultants, agents and employees of the other for damages during or as a consequence of construction covered by any property insurance. The Owner and OR shall each require similar waivers from their contractors, consultants and agents.

#### **8.5**      **Indemnity**

**8.5.1**      The OR hereby indemnifies and holds harmless the Owner and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the OR is liable that arise out of the negligent acts or omissions of the OR in performing the OR Services under this Agreement provided, however, that the OR does not assume any risk of damages to the property that is incorporated in or shall be incorporated in or is located at the Project site which is not within the possession of the OR or under the OR's direction or control. The total liability of the OR to the Owner arising out of this Agreement shall not exceed the amount of total compensation actually paid to the OR by the Owner pursuant to this Agreement.

**8.5.2**      The Owner hereby indemnifies and holds harmless the OR and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from, in whole or in part, wrongful acts or omissions of the Owner, its employees, agents, representatives, independent contractors, material suppliers, the Contractors and Design Professional but not from the OR's own negligence or willful misconduct.

#### **8.6**      **Contractor's Obligation to Insure for Bodily Injury Claims**

Owner will require the Design-Builder and the Contractors responsible for construction to purchase insurance to cover claims and expenses, including costs of defense, asserted against OR, its agents, employees and consultants for bodily injury, sickness, disease or death caused by any negligent act or omission of the Design-Builder, the Contractor, any sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable. Such insurance shall state that: *"The coverage afforded the additional insured shall be primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insured have other insurance, which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this insurance policy shall not be reduced by the existence of such other insurance."*

## **ARTICLE 9 TERMINATION AND SUSPENSION**

#### **9.1**      **Termination**

**9.1.1** This Agreement may be terminated by the Owner for convenience after seven (7) days written notice to the OR.

**9.1.2** This Agreement may be terminated by either party hereto upon seven (7) days written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the other or if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government.

**9.1.3** In the event of termination under Section 9.1.1, the OR shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination, plus an amount computed as a percentage of the total compensation earned at the time of termination computed as follows:

**9.1.3.1** Twenty (20) percent if the termination occurs during the Pre-design Phase, Design Phase or Bidding Phase; or

**9.1.3.2** Ten (10) percent if the termination occurs during the Construction Phase or Post-Construction Phase.

**9.1.4** In the event of termination under Section 9.1.2, the OR shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. No amount computed as provided in Section 9.1.3.1 and 9.1.3.2 shall be paid in addition.

## **9.2** Suspension

**9.2.1** The Owner may in writing order the OR to suspend all or any part of the OR Services for the Project for the convenience of the Owner or for Work stoppage beyond the control of the Owner or the OR. If the performance of all or any part of the Services for the Project is so suspended, an adjustment in the OR's compensation shall be made for the increase, if any, in the cost of the OR's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.

**9.2.2** In the event the Owner's Representative Services for the Project are suspended, the Owner shall reimburse the OR for all of the costs of its construction site staff, assigned Project home office staff and other costs as provided for by this Agreement for the first thirty (30) days of such suspension. The OR shall reduce the size of its staff for the remainder of the suspension period as directed by the Owner and, during such period, the Owner shall reimburse the OR for all of the costs of its reduced staff. Upon cessation of the suspension, the OR shall restore the construction site staff and home office staff to its former size.

**9.2.3** Persons assigned to another project during such suspension periods and who are not available to

return to the Project upon cessation of the suspension, shall be replaced. The Owner shall reimburse the OR for costs incurred in relocating previous staff persons returning to the Project or new persons assigned to the Project.

**9.2.4** If the Project is suspended by the Owner for more than three (3) months, the OR shall be paid compensation for Services performed prior to receipt of written notice from the Owner of the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension. If the Project is resumed after being suspended for more than six (6) months, the OR shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a suspension of the Project does not void this Agreement.

## **ARTICLE 10**

### **DISPUTE RESOLUTION AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE**

#### **10.1**      **Dispute Resolution**

All claims, disputes and other matters in question (hereinafter referred to as a "Controversy") between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation in accordance with the Construction Mediation Rules of the American Arbitration Association, or Endispute of Chicago, or any other mutually agreeable mediation firm. Provided, that the mediation process has not resolved the Controversy within thirty (30) days of the submission of the matter to mediation, all Controversies will be decided by arbitration at Chicago, Illinois, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association at Chicago, Illinois. The demand must be made within a reasonable time after the Controversy has arisen. In no event may the demand for arbitration be made after institution of legal or equitable proceedings based on such Controversy that would be barred by the applicable statute of limitations.

No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the OR, the Owner, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any Controversy not described herein.

#### **10.2**      **Timing of Dispute Resolution Procedures**

With regard to the timing of initiation or prosecution of claims governed by this Article, any and all disputes between Owner and OR arising out of or relating to this Agreement or the Project shall be as follows. If either party's claims against the other involve claims by or against one or more third parties, by joinder or otherwise,

Owner and OR agree: (i) to stay any claims between them until after the final resolution, by judgment or settlement, of all related claims by or against any third parties arising out of the same transaction or occurrence; (ii) that any applicable statute of limitations shall cease to toll during the period of time described in Section (i) above that the claims between the parties are stayed; and (iii) to work together on a voluntary and cooperative basis to further the interests of Owner or OR, as the case may be, in the litigation or other dispute resolution processes involving third parties. With regard to any claims by Owner or OR against the other that do not involve third parties, or for which the third parties' involvement has been completed and terminated, the parties shall resolve their claims in accordance with the procedures set forth above in this Article.

## **ARTICLE 11**

### **ADDITIONAL PROVISIONS**

#### **11.1 Confidentiality**

**11.1** The OR shall not disclose or permit the disclosure of any information designated by the Owner as confidential, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties under this Agreement.

#### **11.2 Limitation and Assignment**

**11.2.1** The Owner and the OR each binds themselves, their successors, assigns and legal representatives to the terms of this Agreement.

**11.2.2** Neither the Owner nor the OR shall assign or transfer its interest in this Agreement without the written consent of the other.

#### **11.3 Governing Law**

**11.3.1** Unless otherwise provided, the law of the state where the Project is located shall govern this Agreement.

#### **11.4 Extent of Agreement**

**11.4.1** This Agreement represents the entire and integrated agreement between the Owner and the OR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the OR. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Professional are not intended third party beneficiaries of this Agreement.

#### **11.5 Severability**

**11.5.1** If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provisions.

**11.6**      **Meaning of Terms**

**11.6.1**      References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

**11.6.2**      The meaning of terms used herein shall be consistent with the definitions commonly understood in the construction industry.

**11.7**      **Notices**

**11.7.1**      All Notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Mail, first class, postage prepaid, or by national overnight carrier, addressed as follows:

**On Behalf of the Owner:**

Dr. Kurt Valentin  
Libertyville School District 70  
1381 West Lake Street  
Libertyville, Illinois 60048

**To the Owners Representative:**

Mr. Peter Graves  
GravesDesignGroup, LLC  
2231 Trailside Lane  
Wauconda, Illinois 60084

**11.8**      **Limited Liability of a Corporation**

The Owner acknowledges that the OR is a corporation and agrees that any claim made by the Owner arising out of any act or omission of any director, officer or of the employee of the OR, in the execution or performance of this Agreement, shall be made against the OR and not against such director, officer or employee.

**11.9**      **Indemnity from Contractor Required in Construction Contract**

Owner will cause the following four (4) clauses to be inserted in all construction contracts:

**11.9.1**      To the fullest extent permitted by law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Owner, the Owner's Representative and their agents and employees and consultants from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and economic or consequential damages, arising out of or



resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of any Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Agreement.

**11.9.2** In any and all claims against the Owner or Owner's Representative or any of their agents or employees and consultants by any employee of the Contractor or Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph agreement shall not be limited in any way by any limitation on the amount or type damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

**11.9.3** "Claims, damages, losses and expenses" as these words are used in this Agreement shall be construed to include, but not limited to (1): injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants, or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, including those covered by any applicable scaffolding act whether or not the same be owned, furnished or loaned by Owner; (2): all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by the Supplementary General Conditions; and (3): time expended by the party being indemnified and their employees, at their usual rate plus costs of travel, long distance telephone and reproduction of documents.

**11.9.4** This indemnity agreement shall not require the Contractor to indemnify the Owner, Owner's Representative, their consultants, agents or employees against their own negligence. The Owner's Representative is intended to be a third-party beneficiary of all provisions of this contract.

**11.10 Credit and Publicity**

Owner agrees, and will obtain a similar agreement from the Contractor, to the effect that the OR will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit Owner's Representative to photograph and make other reasonable use of the Project for promotional purposes.

This Agreement is executed as of the \_\_\_\_\_ of \_\_\_\_\_, 2019.

**OWNER**

**Signature of Owner:** \_\_\_\_\_

**NAME AND TITLE:** \_\_\_\_\_

**OWNER'S REPRESENTATIVE**

**Signature of Authorized Representative:** \_\_\_\_\_

**NAME AND TITLE:** \_\_\_\_\_