



East Lansing Board of Education

509 Burcham Drive, East Lansing, MI 48823

Regular Meeting
October 28, 2024 - 7:00 PM
Board Room
509 Burcham Drive
East Lansing, Michigan 48823



Agenda

I. Opening of Meeting

A. *Call to Order*

B. *Roll Call*

C. *Mission Statement: Nurturing Each Child, Educating All Students, Building World Citizens*

D. *Approval of Agenda*

Motion: I move the Board of Education approve the October 28, 2024 regular meeting agenda, as presented.

E. **Approval of Minutes**

Motion: I move the Board of Education approve the following minutes as presented.

1. September 23, 2024, regular meeting	3
2. September 24, 2024, special meeting	7
3. September 24, 2024, closed session	
4. October 18, 2024, special meeting	11

II. Recognition

III. Student Representative Report

IV. Superintendent's Report

V. Public Comment: This is the opportunity to address the Board. Speakers are to confine their remarks to five minutes. If a speaker requires more than five minutes, after all other persons who have requested to speak during this part of the meeting have spoken, that speaker will be allowed additional time. The Superintendent or other district staff may comment to clear up or avoid significant misunderstandings.

VI. Board Discussion

VII. Closed Session

Motion: I move the Board of Education meet in closed session pursuant to Section

8(h) of the Michigan Opens Meeting Act for discussion pertaining to the Emergency Operation Plans.

VIII. **Action Items**

A. **PA 152 Resolution (80/20 vs Hard Cap)** **13**

Motion: I move the Board of Education adopt the Resolution to Comply with PA 152 of 2011 as presented.

B. **Architect and Construction Management** **17**

1. **Kingscott Associates, Inc** **18**

Motion: I move to approve the AIA (B132) agreement with Kingscott Associates, Inc. as presented.

2. **Clark Construction Company** **50**

Motion: I move to approve the AIA (C132) agreement with Clark Construction Company as presented.

C. **2025 Summer Tax Levy Resolution** **80**

Motion: I move the Board of Education adopt the resolution, as presented, to impose a 100% summer tax levy to collect all school property taxes.

D. **Emergency Operation Plans** **82**

Motion: I move the Board of Education adopt the Emergency Operation Plans, as presented.

IX. **Committee Reports**

- A. Academic and Technology Committee
- B. Facilities Committee
- C. Finance Committee
- D. Intergovernmental Relations
- E. Personnel Committee
- F. Policy Committee

X. **Announcements**

- A. The next regularly scheduled meeting of the Board of Education is November 11, 2024.

XI. **Adjournment**

Respectfully Submitted,

***Dori Leyko
Superintendent***

I. Opening of Meeting

I.A. Call to Order

The meeting was called to order by President Chris Martin at 7:01 pm.

I.B. Roll Call

Dr. Terah Chambers:	Present
Dr. Kath Edsall:	Present
Ms. Tali Faris-Hylen:	Present
Mr. Gary Holbrook:	Present
Dr. Elizabeth Lyons:	Present
Mr. Chris Martin:	Present
Dr. Estrella Torrez:	Present
Student Representative Stella Alfredson:	Absent
Student Representative Holyn Walsh:	Present
Superintendent Dori Leyko:	Present

I.C. Mission Statement: Nurturing Each Child, Educating All Students, Building World Citizens

The mission statement was read by Dr. Elizabeth Lyons.

I.D. Approval of Agenda

Motion: 24-25/020: The Board of Education approve the agenda of the September 23, 2024, regular meeting, as presented.

This motion, made by Dr. Elizabeth Lyons and seconded by Dr. Terah Chambers, Passed.

Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 7, Nay: 0

I.E. Approval of Minutes

Motion: 24-25/021: The Board of Education approve the following minutes.

I.E.1. September 9, 2024, regular meeting

This motion, made by Dr. Terah Chambers and seconded by Mr. Gary Holbrook, Passed.

Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 7, Nay: 0

II. Recognition

No recognition

III. Student Representative Report

- Senior night celebrations for fall sports have begun
- Girls golf CACC Open tournament
- Paint out football game is this Friday
- Powderpuff practices have begun - game is on October 2
- Students for Environmental Action holding a can drive
- Band and Orchestra night fundraiser is this weekend

IV. Superintendent's Report

Click [here](#) for the Superintendent's Report.

V. Public Comment: This is the opportunity to address the Board. Speakers are to confine their remarks to five minutes. If a speaker requires more than five minutes, after all other persons who have requested to speak during this part of the meeting have spoken, that speaker will be allowed additional time. The Superintendent or other district staff may comment to clear up or avoid significant misunderstandings.

- Heather Mueller - ELEA Secretary - Beginning of the school year; 80/20 Insurance Cap

VI. Presentation

VI.A. Dave Nielsen, Maner Costerisan, Audited Financial Statements Year Ended June 30, 2024

Discussion followed

VII. Board Discussion

No Board Discussion

VIII. Action Items

VIII.A. World Language Department trip to Quebec, Canada

Motion: 24-25/022: The Board of Education approve the trip request from Ms. Christopoulos, to travel to Quebec, Canada June 14-20, 2025.

This motion, made by Dr. Terah Chambers and seconded by Dr. Elizabeth Lyons, Passed.

Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 7, Nay: 0

Discussion followed

VIII.B. Audited Financial Statements for the Year Ended June 30, 2024

Motion: 24-25/023: The Board of Education accept the audited financial statements for the year ended June 30, 2024, as presented.

This motion, made by Dr. Kath Edsall and seconded by Dr. Terah Chambers, Passed.

Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 7, Nay: 0

IX. Committee Reports

IX.A. Academic and Technology Committee

- High school math curriculum updates - Algebra
- HIV/Sex Education review
- Conversation regarding new AI policy update/adoption
- Policy Committee will review it once again and then it will be brought to the full Board
- Next meeting is Oct 7 at 12:00 pm

IX.B. Facilities Committee

- Meeting on September 27 at 2:00 pm

IX.C. Finance Committee

- Meeting on October 7 at 1:00 pm

IX.D. Intergovernmental Relations

- No report

IX.E. Personnel Committee

- No report

IX.F. Policy Committee

- Thrun policy updates - final batch around student relation issues
- One more meeting to get through all of the policies
- Next meeting is October 7 at 10:30 am

X. Announcements

X.A. The next regularly scheduled meeting of the Board of Education is October 14, 2024.

X.B. Trustee Edsall recognizes the passing of Chris DeHaan and thoughts go out to his family.

X.C. [ELEF tailgate](#) before the football game vs DeWitt on Friday. Held on the west side of the football stadium from 5:15 – 6:45.

XI. Adjournment

The meeting was called adjourned by President Chris Martin at 7:57 pm.

President

Secretary

I. Opening of Meeting

I.A. Call to Order

The meeting was called to order by President Chris Martin at 2:01 pm.

I.B. Roll Call

Dr. Terah Chambers:	Present
Dr. Kath Edsall:	Present
Ms. Tali Faris-Hylen:	Present
Mr. Gary Holbrook:	Present
Dr. Elizabeth Lyons:	Present
Mr. Chris Martin:	Present
Dr. Estrella Torrez:	Absent
Superintendent Dori Leyko	Present

I.C. Approval of Agenda

Motion: 24-25/024: *The Board of Education approves the agenda of the September 24, 2024, special meeting, as presented.*

This motion, made by Dr. Terah Chambers and seconded by Dr. Elizabeth Lyons, Passed.

Dr. Estrella Torrez: Absent, Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye

Aye: 6, Nay: 0, Absent: 1

II. Appointment of Hearing Officer

Motion: 24-25/025: *The Board of Education moves to appoint attorney Lisa Swem as acting Hearing Officer for the disciplinary hearing.*

This motion, made by Dr. Terah Chambers and seconded by Dr. Elizabeth Lyons, Passed.

Dr. Estrella Torrez: Absent, Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye

Aye: 6, Nay: 0, Absent: 1

III. Public Comment: This is the opportunity to address the Board. Speakers are to confine their remarks to five minutes. If a speaker requires more than five minutes, after all other persons who have requested to speak during this part of the meeting have spoken, that speaker will be allowed additional time. The Superintendent or other district staff may comment to clear up or avoid significant misunderstandings.

No Public Comment

IV. Discipline Hearing for Student #1011608

IV.A. Closed Session

Motion: 24-25/026: Pursuant to Section 8(b) of the Michigan Open Meetings Act and upon the request of the Parent, I move that the Board of Education go into closed session for the purpose of conducting a discipline hearing.

Roll Call Vote

This motion, made by Dr. Terah Chambers and seconded by Dr. Kath Edsall, Passed.

Dr. Estrella Torrez: Absent, Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye

Aye: 6, Nay: 0, Absent: 1

IV.B. Comments from acting Hearing Officer Lisa Swem.

IV.C. Administration's recommendation to the Board of Education.

IV.D. Comments from the student, parent and/or representative.

IV.E. Opportunity for Board members to ask questions.

V. Return to Open Meeting

Meeting returned to open session at 2:30 pm.

Dr. Kath Edsall read the resolution.

VI. Disciplinary Action

Motion: 24-25/027: The Board of Education approves the resolution for disciplinary action for Student #1011608.

This motion, made by Dr. Kath Edsall and seconded by Mr. Gary Holbrook, Passed.

Dr. Estrella Torrez: Absent, Dr. Terah Chambers: Aye, Dr. Kath Edsall: Aye, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye

Aye: 6, Nay: 0, Absent: 1

VII. Announcements

No announcements

President

VIII. Adjournment

The meeting was called adjourned at 2:35 pm.

Secretary

**EAST LANSING PUBLIC SCHOOLS
BOARD RESOLUTION FOR STUDENT DISCIPLINE**

A special meeting of the Board of Education (the “Board”) was held in the Board Room located at 509 Burcham Drive, within the boundaries of the District, on the 24th day of September, 2024, at 2:00 o’clock in the p.m. (the “Meeting”).

The Meeting was called to order by Chris Martin, President

Present: Chris Martin, Elizabeth Lyons, Tali Faris-Hylen, Kath Edsall, Terah Chambers, Gary Holbrook

Absent: Estrella Torrez

The following preamble and resolution were offered by Member Kath Edsall and supported by Member Gary Holbrook :

WHEREAS:

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1. The administration has recommended that, pursuant to Revised School Code Section 1311(2), a student whose identity is known to the Board (the “Student”) be disciplined for possessing a dangerous weapon, (knife with a blade over 3”), in a weapon-free school zone.

2. School administrators notified the Student’s parent/guardian of the specific charge underlying the disciplinary recommendation, as well as the date, time, and place of the disciplinary hearing.

3. Pursuant to the request of the Student’s parent/guardian, and as authorized by Michigan Open Meetings Act Section 8(b), MCL 15.268(b), the disciplinary hearing was conducted in a closed session meeting of the Board.

4. The hearing afforded the Student and the Student’s representatives an opportunity to respond to the charge and to present pertinent evidence for the Board’s consideration.

5. The Board has carefully considered all of the evidence produced in this student discipline hearing.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. A preponderance of the evidence establishes on September 13, 2024, the Student possessed a dangerous weapon (knife with a blade over 3”) in a weapon-free school zone.

2. Clear and convincing evidence establishes that the Student did not possess the object or instrument for use as a weapon or for direct or indirect delivery to another person for use as a weapon.

3. Based on careful consideration of all of the following factors, the Board determines that additional suspension is not warranted:

- The Student’s age;
- The Student’s disciplinary history;

- Whether the Student has a disability;
- The seriousness of the behavior;
- Whether the behavior posed a safety risk;
- Whether restorative practices are a better option; and
- Whether lesser interventions would address the behavior.

4. The Student is not subject to any further disciplinary sanctions and may return to school on September 25, 2024.

5. Consistent with Revised School Code Sections 11a and 1311(1), the Board finds that the interests of the District are served by this resolution.

6. Administrators are directed and authorized to implement all terms of this resolution and are delegated all necessary authority to do so.

7. All resolutions and parts of resolutions that conflict with provisions of this resolution are rescinded.

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Ayes: Chris Martin, Elizabeth Lyons, Tali Faris-Hylen, Kath Edsall, Terah Chambers, Gary Holbrook

Nays:

Resolution declared adopted. 6-0

The undersigned, duly qualified and acting Board Secretary, certifies that the foregoing constitutes a true and complete copy of a resolution adopted by said Board at a special meeting held on September 24, 2024, the original of which is part of the Board's minutes. The undersigned further certifies that notice of the meeting was given to the public pursuant to the provisions of the "Open Meetings Act" (Act 267, PA 1976, as amended).

Tali Faris-Hylen, Board Secretary

I. Opening of Meeting

I.A. Call to Order

President Chris Martin called the meeting to order at 1:06 pm.

I.B. Roll Call

Dr. Terah Chambers:	Absent
Dr. Kath Edsall:	Absent
Ms. Tali Faris-Hylen:	Present
Mr. Gary Holbrook:	Present
Dr. Elizabeth Lyons:	Present
Mr. Chris Martin:	Present
Dr. Estrella Torrez:	Present
Superintendent Dori Leyko	Present

I.C. Approval of Agenda

Motion: 24-25/028: The Board of Education approves the October 18, 2024, special meeting, as presented.

This motion, made by Dr. Elizabeth Lyons and seconded by Dr. Estrella Torrez, Passed.

Dr. Terah Chambers: Absent, Dr. Kath Edsall: Absent, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 5, Nay: 0, Absent: 2

II. Public Comment: This is the opportunity to address the Board. Speakers are to confine their remarks to five minutes. If a speaker requires more than five minutes, after all other persons who have requested to speak during this part of the meeting have spoken, that speaker will be allowed additional time. The Superintendent or other district staff may comment to clear up or avoid significant misunderstandings.

No public comment

III. Consent Agenda

Motion: 24-25/029: The Board of Education approves the consent agenda to include the following item:

III.A. Hiring of **Caleb Eubanks** pending clean background check - 1.0 FTE 4th Grade Teacher at Marble Elementary School at BA Step 5 effective October 21, 2024.

This motion, made by Dr. Elizabeth Lyons and seconded by Dr. Estrella Torrez, Passed.

Dr. Terah Chambers: Absent, Dr. Kath Edsall: Absent, Ms. Tali Faris-Hylen: Aye, Mr. Gary Holbrook: Aye, Dr. Elizabeth Lyons: Aye, Mr. Chris Martin: Aye, Dr. Estrella Torrez: Aye

Aye: 5, Nay: 0, Absent: 2

IV. Announcements

No announcements

V. Adjournment

The meeting adjourned at 1:09 pm.

President

Secretary



East Lansing
Public Schools

MEMORANDUM

TO: ELPS Board of Education, Dori Leyko, Superintendent

FROM: Richard Pugh, Director of Finance & Operations

SUBJECT: Action Item – PA 152 Resolution (80/20 vs Hard Cap) Resolution

DATE: October 8, 2024

Recommendation:

It is recommended that the Board of Education adopt the Resolution to Comply with PA 152 of 2011 as presented.

Background:

From the 9-23-2024 BOE packet:

PA 152, of 2011 limited what a public employer may contribute to a medical benefit plan for its employees. This commonly referred to limit is either 80/20 (80% employer share, 20% employee share) or a hard cap. If a public employer fails to elect 80/20 the default is the hard cap limits that are indexed annually. It is recommended we adopt a resolution even though language within our various CBAs state members will be responsible for 20% of plan costs.

Hard cap limits are set annually, on a calendar year basis, by the Michigan Department of Treasury. School Boards may elect to have employees' pay not less than 20% of the healthcare premiums (now referred to as medical benefit plan costs) instead of defaulting to the hard cap. The Michigan Department of Treasury's interpretation of PA 152 is that Districts cannot have some groups under hard cap and others under 80/20. Rather, a District must be all hard cap or all 80/20.

The Board of Education's previous election of 80/20 was through December 31, 2024. I have updated the dates in the attached 80/20 resolution from the one the Board previously adopted.

The Finance Committee will review the PA 152 Resolution at their meeting on October 7, 2024. A recommendation to the Board will follow.

**EAST LANSING PUBLIC SCHOOLS
RESOLUTION TO COMPLY WITH PUBLIC ACT 152 OF 2011**

East Lansing Public Schools, Ingham and Clinton Counties Michigan (the “District”).

A regular meeting of the Board of Education (the “Board”) of the District was held **in the Board Room of the Administrative Office at 509 Burcham Drive, East Lansing, Michigan** on the **28th day of October, 2024**, at 7:00 o’clock p.m.

The meeting was called to order at ___ o’clock, p.m., by _____.

Members Present:

Members Absent:

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS:

1. Public Act 152 of 2011 (the “Act”), commonly referred to as the Publicly Funded Health Insurance Contribution Act, became effective on September 27, 2011 and limits the monetary expenditures which the District may make towards the cost of employee medical benefit plans.

2. Section 4 of the Act allows the Board to comply with the requirements of the Act by paying not more than 80% of the total annual costs of all medical benefit plans that the District offers or contributes to for its eligible employees (and their eligible dependents), including the premium or illustrative rates of the medical benefit plans, as well as all employer payments for reimbursement of co-pays, deductibles, and payments into health savings accounts, flexible spending accounts, or similar accounts used for health care, instead of paying the specific monetary limitations (*i.e.*, “hard caps”) described in Section 3 of the Act.

3. The District offers or contributes to one or more such medical benefits plans for its qualifying employees through insurance policies/contracts between the District and one (1) or more companies or providers.

4. The Board has determined that it is in the District’s best interest to comply with Section 4 of the Act for medical benefit plans beginning on or after December 31, **2024** by paying not more than 80% of the total annual costs of all of the medical benefit plans that it offers or contributes to for its eligible employees (and their eligible dependents) as an alternative to compliance with Section 3 of the Act.

5. The Board recognizes its statutory obligation to bargain in good faith about health care benefits with those labor organizations that represent District employees.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The District declares that for medical benefit plan coverage years beginning on or after December 31, **2024**, and through December 31, **2025**, it shall comply with the Publicly Funded Health Insurance Contribution Act by limiting its payment for employee medical benefit plans to not more than 80% of the total annual costs of all medical benefit plans that it offers or contributes to for its eligible employees (and their eligible dependents), leaving payment responsibility for the remaining amount to the participating employees.

2. The District reserves the right to allocate the employee’s share of those total annual costs of the medical benefit plans among District employees as the District sees fit.

3. This resolution’s expiration date of December 31, **2025** shall not be interpreted to restrict or otherwise limit any subsequent action of the Board to elect to implement the specific monetary limitations (*i.e.*, “hard caps”) described in Section 3 of the Act, or to take any other lawful action related to the medical benefit plans that it offers

or contributes to for its employees. Unless this Board further extends its decision to comply with the Act by establishing the 80% contribution as permitted in Section 4 of the Act, the requirements of Section 3 of the Act shall become effective on January 1, 2026.

4. The Board will continue to bargain in good faith about health care benefits with those labor organizations that represent District employees.

5. The President and Secretary of the Board are authorized and directed to execute any and all documents which are necessary for the District to comply with the Act and to implement this resolution.

6. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are rescinded.

Ayes:

Nays:

Resolution declared adopted.

Secretary, Board of Education

The undersigned, duly qualified and acting Secretary of the Board of Education of the East Lansing Public Schools, Ingham and Clinton Counties Michigan, certifies that the foregoing constitutes a true and complete copy of a resolution adopted by said Board of Education at a regular meeting held on **October 28, 2024**, the original of which is part of the Board's minutes. The undersigned certifies that notice of the meeting was given to the public pursuant to the provisions of the Michigan Open Meetings Act, 1976 PA 267, as amended.

Secretary, Board of Education



MEMORANDUM

TO: ELPS Board of Education, Dori Leyko, Superintendent
FROM: Richard Pugh, Director of Finance & Operations
SUBJECT: Action Item – Architect and Construction Management Services
DATE: October 21, 2024

Recommendation:

First motion:

- I move to approve the AIA (B132) agreement with Kingscott Associates, Inc. as presented.

Second motion:

- I move to approve the AIA (C132) agreement with Clark Construction Company as presented.

Background:

From the 10-14-2024 BOE packet:

With the assistance of Thrun Law Firm administration is close to finalizing the AIA contracts with Kingscott and Clark Construction for professional services related to the bond project. Attached are the respective fee proposals. Both fee proposals, excluding estimated reimbursable expenses, are below the estimates included in the Preliminary Qualification Application. Below is a summary of fee proposals compared to the PQ App:

	Est. fee per PQ App.	Fee per Proposal	Difference	Est. Reimbursables
Kingscott	\$1,453,553	\$1,372,378	(\$81,175)	\$63,340
Clark Construction	\$2,016,461	\$1,916,496	(\$99,965)	\$186,096

The Finance Committee reviewed the fee proposal on October 7, 2024. I anticipate AIA contract language to be finalized soon with Board action anticipated on October 28, 2024.



AIA[®] Document B132™ – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the 8 day of May in the year 2024
(In words, indicate day, month, and year.)

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

East Lansing Public Schools
501 Burcham Drive
East Lansing, Michigan 48823

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

Kingscott Associates, Inc.
950 Trade Centre Way, Suite 130
Portage, MI 49002
Telephone: 269-381-4880

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

East Lansing Public Schools 2024 Bond Project in accordance with applicable laws, approved plans and specifications, the Owner's fixed budget, the Preliminary Qualification of Bonds Application No. 33-010-4-K12-16-01, and as otherwise approved by the Owner.

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

Clark Construction Company
3535 Moores River Drive
Lansing, Michigan 48911

The Owner and Architect agree as follows.

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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4	SUPPLEMENTAL AND ADDITIONAL SERVICES
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11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

To be determined by the Owner in writing after advice and input from the Architect, Construction Manager, and any others deemed appropriate by the Owner, in accordance with the Application for Preliminary Qualification of Bonds No. 33-010-4-K12-16-01 ("PQ Application").

§ 1.1.2 The Project's physical characteristics:

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

To be determined by the Owner in writing after advice and input from the Architect, Construction Manager, and any others deemed appropriate by the Owner, in accordance with the PQ Application.

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

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

A fixed sum to be established by the Owner as a condition of this Agreement in accordance with the PQ Application.

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

.1 Design phase milestone dates, if any:

To be determined.

.2 Construction commencement date:

To be determined.

.3 Substantial Completion date or dates:

To be determined.

.4 Other milestone dates:

To be determined.

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

Multiple prime contractors, competitively bid in accordance with the Revised School Code and other applicable laws.

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

To be determined

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

NA

~~§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

§

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Dori Leyko, Superintendent
501 Burcham Drive
East Lansing, Michigan 48823
Telephone: (517) 333-7424

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

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

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

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Clark Construction Company
3535 Moores River Dr.
Lansing, MI 48911
(517) 372-0940

.2 Land Surveyor:

To be determined.

.3 Geotechnical Engineer:

To be determined.

.4 Civil Engineer:

To be provided by the Architect as a Basic Service

.5 Other consultants and Contractors:

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

To be determined.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and ~~1.1.12.2~~ 1.1.12.2 and any others
as required to perform Basic Services:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

JDH Engineering
3000 Ivanrest Ave SW
Grandville, MI 49418

Init.

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User Notes:

(1968068143)

(616) 531-6020.

.2 Mechanical Engineer:

Kingscott Associates, Inc.

.3 Electrical Engineer:

To be determined

.4 Acoustical Engineer

To be determined

§ 1.1.12.2 ~~Consultants retained under Supplemental Services:~~ Potential consultants that may be retained under Supplemental Services if there is compliance with the first paragraph of Section 4.1:

To be determined

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

The Architect will be responsible for the services performed by any third-party consultants hired by the Architect. The contract between the Architect and a consultant shall identify the Owner as an intended third-party beneficiary.

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

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

~~**§ 1.3.1** Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the ~~jurisdiction where the Project is located~~ State of Michigan to provide the services required by this Agreement, ~~or and~~ shall cause such services to be performed by appropriately licensed design ~~professionals.~~ professionals, whether provided by the Architect or a consultant.

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

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in ~~AIA Document C132™ 2019, Standard Form of the Agreement Between Owner and Construction Manager as Adviser.~~ The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

§ 2.6 The Architect shall maintain the following ~~insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9, standard insurance until termination of this Agreement or until the date(s) specified in this Agreement, whichever is longer, in the amounts identified below, in an Architect-provided certificate of insurance, or as required by law, whichever is greater.~~

§ 2.6.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000) for each occurrence and Four Million Dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The Architect shall provide umbrella coverage with a policy limit of not less than Five Million Dollars (\$5,000,000.00)

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000) each accident, Five Hundred Thousand Dollars (\$ 500,000) each employee, and Two Million Dollars (\$ 2,000,000) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and Four Million Dollars (\$ 4,000,000) in the aggregate.

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

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services ~~consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services; include usual and customary structural, civil, mechanical, and electrical engineering services; interior, landscape and food service design, all provided by those qualified and experienced in their respective fields,~~

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as needed, to address the requirements of the Project. Services identified in this Agreement, the General Conditions, and any other Contract Document shall be Basic Services unless expressly identified therein as Supplemental or Additional Services. The Architect, in its professional judgement, represents that the list of disciplines is complete for the projects identified in the PQ Application.

§ 3.1.1 The Architect shall manage the Architect's services, administer the Project, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services and those of its consultants with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants, subject to the Architect's professional judgment, experience, and expertise. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Owner's and Construction Manager's review and the Owner's approval, a written schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, review and for the Owner's provision of information, for the Construction Manager's review, for the performance of the Owner's consultants, for a master design schedule for planning, schematics, design development, and construction documents phases, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, cause and with mutual written agreement of the parties, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services and the Project as a whole. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services and the Project as a whole.

§ 3.1.5 ~~The~~ To the extent permitted by law, the Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's review or written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design and regulatory requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist and advise the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project and relating to construction design and performance. The Architect shall have the primary responsibility to complete the required documents and to ensure that they are properly filed on behalf of the Owner.

§ 3.1.8 The Architect acknowledges that the services to be provided by the Architect under this Agreement shall include assisting the Owner in complying with the Owner's obligations set forth in Public Act No. 306 of 1937, MCL 388.851, et seq., and Public Act 299 of 1980, MCL 339.2011 (collectively, the "Acts"). Therefore, the Architect hereby agrees to perform the services that shall or may be performed by an "architect" pursuant to those Acts. The parties acknowledge that nothing in this Agreement shall be construed to limit the Architect's services, duties or obligations under either of those Acts, except that the parties further acknowledge that the Construction Manager will provide construction supervision as required by 1937 PA 306.

§ 3.1.9 Upon request of the Owner, the Architect shall make a presentation or presentations to explain the design of the Project to representatives of the Owner.

§ 3.1.10 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, consult with the Owner regarding same, and shall review and at all times follow all laws, codes, and regulations applicable to the Architect's services and the Project.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project. Selection by the Owner of a "particular material" recommended by the Architect for the Project shall constitute approval of that "particular material" by the Owner for aesthetic purposes only.

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of and to comply with MCL 339.2011, the Architect shall review for accuracy, modify as necessary, and adopt as its own the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.2.9 The Architect shall specifically request and obtain the Owner's written approval of the Schematic Design Documents and related construction cost estimates before proceeding to the Design Development Phase. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare and provide Design Development Documents for the Owner's and Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon The Owner's approval shall be for general design concept purposes only and shall not be an approval of technical or design details. The Design Development Documents shall take into consideration information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. mechanical, civil, and electrical systems, and other elements identified in Section 1.1.12 or Section 3.1, or otherwise appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project. Selection by the Owner of a "particular material" recommended by the Architect for the Project shall constitute approval of that "particular material" by the Owner for aesthetic purposes only.

§ 3.3.4 The Architect shall specifically request and obtain the Owner's written approval of the Design Development Documents and related construction cost estimates before proceeding to the Construction Documents Phase. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare and provide Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the materials and systems, their quality levels and performance criteria of materials and systems criteria, and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall expressly require in the bid documents and which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms. All such documents shall have been provided in a format that conforms with the terms of this Agreement and the Drawings/Specifications.

including but not limited to dispute resolution provisions, and shall comply with all public bidding, prevailing wage, and contracting laws applicable to Michigan public school districts and this Project.

§ 3.4.3.1 Documents referenced in Section 3.4.3 shall consist of the unabridged AIA contract forms modified as necessary to be consistent with this Agreement. The Architect shall include in bid specifications and in any of the relevant document provisions a statement indicating that modified version(s) of the standard AIA Owner/Contractor Agreement will be utilized. The Architect shall ensure that the form of Owner/Contractor Agreement and General Conditions shall either be prepared by, or reviewed and approved by, Owner's legal counsel.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project. Selection by the Owner of a "particular material" recommended by the Architect for the Project shall constitute approval of that "particular material" by the Owner for aesthetic purposes only.

§ 3.4.6 The Architect shall specifically request and obtain the Owner's written approval of the Construction Documents and related construction cost estimates before Procurement Phase. Approval by the Owner will not constitute approval of the means, techniques, or particular material recommended by the Architect for the Project. The Architect expressly assumes all costs and damages related to its failure to timely and properly obtain the Owner's written approval as required herein.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining ~~either competitive bids or negotiated proposals;~~ competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; ~~and~~ (4) ~~awarding and preparing Contracts for Construction;~~ (4) preparing Contracts for Construction; and (5) rendering interpretations and clarifications of drawings and specifications in appropriate written form. The Owner shall award bids as required by law. See Section 12.10

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective ~~bidders and bidders,~~ providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and providing recommendations for award of bids;
- .4 organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the ~~Owner.~~ Owner and in compliance with applicable competitive bidding laws;
- .5 working with the Construction Manager to determine compliance with competitive bidding laws, including respect to bid advertisements, familial disclosure statements, and Iran Economic Sanctions Act certifications; and
- .6 participating in post-bid conferences with apparent low bidders.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written ~~authorization,~~ authorization and consultation with the Construction Manager, the Architect shall, ~~as an Additional Service,~~ consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents. Documents and shall adhere to competitive bidding thresholds established by applicable law.

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

- .1 facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective Contractors;
- .3 preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and
- .4 if requested by the Owner, participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, consult with the Construction Manager, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. ~~If the Owner and Contractor modify AIA Document A232–2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement Edition, as amended. In the event there is any conflict between this Agreement and AIA Document A232-2019, as amended, the terms of this Agreement shall prevail. Otherwise, both documents shall govern.~~

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

§ 3.6.1.3 ~~Subject to Section 4.2, and except as provided in Section 3.6.6.5, the~~ The Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates ~~on the date the Architect issues the final Certificate for Payment at the end of the Contractors' applicable warranty periods (not less than 1-year after substantial completion).~~

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, ~~or as otherwise required in Section 4.2.3,~~ to become generally familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies, to comply with statutory obligations, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, subject to Section 3.1.8, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the

authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. 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 Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations ~~and decisions~~ of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such ~~interpretations and decisions~~, interpretations, the Architect shall endeavor to secure faithful performance by the ~~Owner and Contractors, shall not show partiality to either,~~ and shall not be liable for results of interpretations ~~or decisions rendered in good faith. The Architect's decisions rendered in good faith and without negligence. The Architect's~~ interpretations on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. It is acknowledged and understood that the Architect's obligation to provide "decisions" in the General Conditions, as a condition precedent to dispute resolution, shall be satisfied by the interpretations referenced herein.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial ~~decisions written interpretations~~ on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 ~~Not more frequently than monthly, the~~ The Architect shall review and certify an application for payment. Within payment within seven days after the Architect receives an application for payment forwarded from the Construction Manager, unless the circumstances require a shorter time period. The Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the ~~Architect.~~ Architect in writing and accompanying the relevant certification.

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

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for ~~Payment.~~ Payment, copies of which shall be sent to the Owner.

§ 3.6.4 Submittals

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

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, including those that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall ~~only~~ be for the ~~limited~~ purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's review and approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Subject to its professional experience and expertise, the Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager or otherwise for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted, or modified.

§ 3.6.5.2 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted, or modified.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work. The Architect shall contemporaneously review with the Owner all changes and potential changes in the Work for any reason, cause, cost and responsibility. Said issues shall be recorded and reported in a Change Management Log for the Project, the review and approval of which by the Architect shall evidence concurrence in the resolution of the issue as identified therein. § 3.6.6

Project Completion

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager; upon Substantial Completion, jointly with a relevant Contract and the Construction Manager, prepare a list of incomplete or unsatisfactory items and schedule their completion;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected. The Architect shall be solely responsible for the inspection and the Owner shall be solely an observer.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance for the purpose of identifying potential warranty issues and to verify adequacy of the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 ~~The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and Supplemental Services or Additional Services may be provided by the Architect and compensated by the Owner as Supplemental or Additional Services if: (a) required for the Project, (b) the Owner authorizes the performance of same in writing prior to the Architect's provision of any such service, and (c) the Architect provides a good faith estimate of the cost of same prior to the Owner's authorization. For properly authorized Supplemental Services or Additional Services, the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The Owner shall not be obligated to pay for any Supplemental Services or Additional Services in the absence of the foregoing, nor shall the Architect furnish said services in the absence of the Owner's written approval. Supplemental Services or Additional Services do not include those items listed below and identified as Basic Services, which shall be provided as Basic Services.~~

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

Supplemental Services		Responsibility <i>(Architect, Owner or Not Provided)</i>
§ 4.1.1.1	Assistance with selection of Construction Manager	<u>Not Provided</u>
§ 4.1.1.2	Programming	<u>Basic Service</u>
§ 4.1.1.3	Multiple preliminary designs	<u>Basic Service</u>
§ 4.1.1.4	Measured drawings	<u>Basic Service</u>
§ 4.1.1.5	Existing facilities surveys	<u>Basic Service</u>
§ 4.1.1.6	Site evaluation and planning	<u>Basic Service</u>
§ 4.1.1.7	Building Information Model management responsibilities	<u>Basic Service</u>
§ 4.1.1.8	Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9	Civil engineering	<u>Basic Service</u>
§ 4.1.1.10	Landscape design	<u>Basic Service</u>
§ 4.1.1.11	Architectural interior design	<u>Basic Service</u>
§ 4.1.1.12	Value analysis	<u>Basic Service</u>
§ 4.1.1.13	Cost estimating	<u>Basic Service – see 3.2.8</u>
§ 4.1.1.14	On-site project representation	<u>Basic Service</u>
§ 4.1.1.15	Conformed documents for construction	<u>Basic Service</u>
§ 4.1.1.16	As-designed record drawings	<u>Basic Service</u>
§ 4.1.1.17	As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.18	Post-occupancy evaluation	<u>Basic Service</u>
§ 4.1.1.19	Facility support services	<u>Not Provided</u>
§ 4.1.1.20	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.21	Architect’s coordination of the Owner’s consultants	<u>Basic Service</u>
§ 4.1.1.22	Telecommunications/data design	
§ 4.1.1.23	Security evaluation and planning	<u>Basic Service to the extent required by MCL 380.1264</u>
§ 4.1.1.24	Commissioning	<u>See Section 4.1.2.1</u>
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.26	Historic preservation	<u>Not Provided</u>
§ 4.1.1.27	Furniture, furnishings, and equipment design	<u>Basic Service</u>
§ 4.1.1.28	Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.29	Other Supplemental Services	<u>Not Provided</u>

§ 4.1.2 Description of Supplemental Services

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

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

Section 4.1.22 The Architect shall comply with Rule 1098a of the Michigan Energy Code, as applicable, and shall otherwise participate in basic system start-up and balancing as part of its Basic Services.

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

Init.

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

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, without invalidating the Agreement. ~~Agreement, if there has been compliance with the first paragraph of Section 4.1.~~ Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 ~~and~~ and, if necessary, an appropriate adjustment in the Architect's schedule.

§ 4.2.1 ~~Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The following Additional Services shall be provided if there has been compliance with the first paragraph of Section 4.1.1. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:~~

- ~~.1~~ Services Subject to Section 6.6 and Section 6.8, services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, written approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- ~~.2~~ Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- ~~.3~~ Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- ~~.4~~ Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care; which occur after the preparation of such Instruments of Service. The Architect is expected to and shall provide its services in compliance with the most recent codes, laws, regulations, and interpretations;
- ~~.5~~ Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner, acknowledging the Owner's obligations under the Open Meetings Act, or any other failure of performance on the part of the Owner, Construction Manager, Owner or the Owner's other consultants or contractors;
- ~~.6~~ Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- ~~.7~~ Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- ~~.8~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.9~~ Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; thereto or at which the Architect's services are at issue;
- ~~.10~~ Evaluation of the qualifications of entities providing bids or proposals;
- ~~.11~~ Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- ~~.12~~ Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall ~~provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need, promptly comply with the first paragraph of Section 4.1.1 for the following Additional Services.~~ If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall have no obligation to compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice; not accepted in writing by the Owner, nor shall the Architect have any obligation to provide non-accepted services:

- ~~.1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;~~
- ~~.2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the approved by the Owner that exceed the scope of the Work and Project cost and that require substantial preparation or revision of Instruments of Service;~~
- ~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or~~
- ~~.5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors Owner and making subsequent revisions to Instruments of Service resulting therefrom. therefrom after bids are awarded.~~

§ 4.2.3 The Architect shall ~~provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~.1 () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors~~
- ~~.2 () visits to the site by the Architect during construction~~
- ~~.3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 () inspections for any portion of the Work to determine final completion~~

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 ~~Unless otherwise provided for under this Agreement, Upon the Architect's specific written request, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.~~

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2019, Standard Form of the Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. ~~The Owner shall~~ With assistance from the Architect and the Construction Manager, the Owner may update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect

and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall may thereafter agree to a corresponding change in the Project's scope and quality. The parties acknowledge the Owner's fixed limit of construction cost for the Project.

~~§ 5.3.4~~ The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

~~§ 5.4~~ The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the ~~Project.~~ Project, subject to parameters of authority set by the Owner. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's ~~services.~~ services, subject to the Owner's status as a public body, including being subject to the Open Meetings Act.

~~§ 5.5~~ ~~The~~ Where required by the circumstances of the Project and requested by the Architect in writing, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services. The Owner will pay for such services, as applicable.

~~§ 5.6~~ ~~The~~ Where required by the circumstances of the Project and as requested by the Architect in writing, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Architect shall assist the Owner in obtaining such services as a part of the Architect's Basic Services and the Owner will pay for such services, as applicable.

~~§ 5.7~~ The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

~~§ 5.8~~ If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

~~§ 5.9~~ ~~The Owner~~ Architect shall coordinate the services of its own consultants with those services provided by the Architect. Owner's consultants. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall ~~furnish the~~ consider furnishing as part of the Project budget services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service. Service in accordance with Article 4, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Architect shall assist the Owner in selecting a service provider as part of Basic Services. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided. The Architect shall furnish to the Owner copies of its contracts with consultants, if requested by the Owner.

~~§ 5.10~~ The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall assist the Owner in obtaining such services as part of the Architect's Basic Services.

~~§ 5.11~~ 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.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner's failure to do so does not relieve the Architect of its responsibilities, and the Owner assumes no duty of observation, inspection, or investigation pursuant to this section or otherwise. The Architect shall give the Owner prompt written notice if it becomes aware of any fault or defect in the Project or the Instruments of Service.

§ 5.13 The Owner shall endeavor to communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. Documents that may affect the Architect's services. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Project that may affect the Architect's services. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate Architect shall assist the Owner with coordination of the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Upon request, the Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of cost estimating or tracking under this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the profit, the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including consultants, and compensation of the Architect and the Architect's consultants, including respective compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The For purposes of calculating fees or other costs determined on a percentage of the Cost of the Work only, as with this Agreement per Section 11.1.2, Cost of the Work does not include the compensation of the Architect, the Architect or Architect's consultants, the compensation of the Construction Manager or Construction Manager's consultants; work for which the Architect is not providing services (for example, unused contingency dollars, Owner-hired consultants, review/permit fees, and other Owner-purchased equipment); the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Information. A fixed limit of construction costs shall be established by the Owner as a condition of this Agreement in accordance with the relevant application for preliminary qualification of bonds. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional professional and familiar with the construction industry.

§ 6.3 The Owner shall require permit the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of may prepare its own estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may as necessary to perform its Basic Services. See MCL 339.2011. The Architect shall review the Construction Manager's estimates solely for the Architect's guidance in completion of its

services, however, the Architect Basic Services and shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates. The Architect shall ensure compliance with MCL 339.2011.

§ 6.4 ~~If, prior to the conclusion of the Design Development Phase, If at any time the Architect's or the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, and as a Basic Service, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~budget.

§ 6.5 ~~If the Construction Manager's at any time the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall~~

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions ~~in to the Construction Documents Phase~~ as necessary to comply with the Owner's fixed budget for the Cost of the Work ~~at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility as a Basic Service. The Architect is responsible for its revisions to the Construction Documents under this Article 6.~~

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as ~~an Additional a~~ Basic Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, ~~except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~ Work as a Basic Service.

§ 6.8 In the event the lowest bid (or bids) exceed the budget for the Project, the Architect, in consultation with and at the direction of the Owner, shall without additional compensation provide such modifications in the Contract Documents and other services as necessary to bring the cost of the Project within budget.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

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

§ 7.3 ~~The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively.~~ Upon execution of this Agreement, the Owner shall have a nonexclusive, irrevocable license and right to access, use and reproduce the Instruments of Service (in any and every format and regardless of the stage of completion) for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due

~~pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses Project or completing the Project should Architect not provide services through completion. On behalf of, and for the benefit of, the Owner, the Architect shall obtain similar rights from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractors, Construction Manager, Subcontractors, Sub-subcontractors, and Such rights shall, without limitation, authorize the Owner and the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and Separate Contractors, separate contractors and other design professionals, to utilize and to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively Service for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Any termination of this Agreement for any reason or under any condition shall in no way terminate or otherwise diminish the licenses and rights described herein.~~

~~§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. Agreement is terminated prior to Project completion, the Architect will be and remain responsible for its work and documentation up to and including the date of termination. Any replacement architect(s) will be responsible for work occurring subsequent to termination, including reliance upon any documentation prepared by the Architect prior to termination.~~

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein. The parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in this Agreement or any other Contract Document is contrary to this provision, such term is void and unenforceable.~~

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

8.1.3 shall be limited to the available proceeds of the insurance coverage required by Agreement or the Architect's breach of this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. Agreement, except that either party may, if in good faith, declare a mediation impasse and proceed with litigation after one full day of mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. During the pendency of this alternative dispute resolution process, the parties agree that applicable limitations periods shall be tolled

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

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

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

§ 8.3 Arbitration

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

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim,~~

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dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

§ 9.3 If the Owner voluntarily suspends the Project for more than 90 cumulative ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or if the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services ~~performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~ timely and properly performed prior to termination, and Reimbursable Expenses then due.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 — Termination Fee:

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

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement ~~are set forth in Article 7 and Section 9.7.~~ continue and shall not be terminated or diminished in any manner.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, ~~except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager as modified on behalf of the Owner. In the event of any inconsistency between this Agreement and the General Conditions, the terms of this Agreement shall govern.~~

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, ~~except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, and including any payments due to the Architect by the Owner prior to the assignment.~~ other.

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. The Architect shall obtain the Owner's approval prior to disclosures of information for purposes of verifying that such disclosures contain no confidential information (including, for example, information protected by FERPA). This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 ~~If the Architect or Owner receives information specifically designated as receives information that is known to be "confidential" or "business proprietary," the receiving party Architect shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.~~

§ 10.8.1 ~~The receiving party Architect may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, Owner, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party Architect to defend itself in any dispute and the Owner has consented to such disclosure. The Architect may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.~~

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

§ 10.10 The Architect agrees to retain permanent records relating to the services performed for a period of at least six (6) years following submission of the construction documents, during which period the records will be made available to the Owner upon request. The Architect shall notify the Owner in writing at least ninety (90) days before disposing of any referenced records for any reason at any time, to afford the Owner sufficient notice to take possession of such records if required or desired.

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

ARTICLE 11 COMPENSATION

§ 11.1 ~~For the Architect's Basic Services described under Article 3, timely and proper performance of Basic Services,~~ the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

One Million, Three Hundred Seventy-Two Thousand, Three Hundred Seventy-Eight Dollars and No Cents (\$1,372,378.00)

- .2 Percentage Basis

Init.

(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as defined in Section 6.1 and calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

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

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

As mutually agreed by the parties in writing prior to the performance of service in accordance with the hourly rates set forth in Section 11.7.

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

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

As mutually agreed by the parties in writing prior to the performance of service in accordance with the hourly rates set forth in Section 11.7.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (—%)~~, or as follows: without mark-up.

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

As mutually agreed by the parties in writing prior to the performance of service in accordance with the hourly rates set forth in Section 11.7.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows. Compensation is due and payable in monthly progress payments for services properly completed and authorized expenses incurred. As a guideline for anticipating payments, architectural services are approximately apportioned as follows:

Schematic Design Phase	<u>Fifteen</u>	percent (<u>15</u>)	(%)
Design Development Phase	<u>Twenty</u>	percent (<u>20</u>)	(%)
Construction Documents Phase	<u>Forty</u>	percent (<u>40</u>)	(%)
Procurement Phase	<u>Five</u>	percent (<u>5</u>)	(%)
Construction Phase	<u>Twenty</u>	percent (<u>20</u>)	(%)
<hr/>					
Total Basic Compensation	one hundred	percent (100)	(%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, ~~progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation~~ compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

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

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

Employee or Category	Rate (\$0.00) per hour
<u>Principal</u>	<u>\$225.00</u>
<u>Project Director/Planner</u>	<u>\$190.00</u>
<u>Architect</u>	<u>\$160.00</u>
<u>Interior Designer</u>	<u>\$130.00</u>
<u>Engineer</u>	<u>\$175.00</u>
<u>Designer</u>	<u>\$125.00</u>
<u>Construction Administration</u>	<u>\$180.00</u>
<u>CAD Operator</u>	<u>\$125.00</u>
<u>Clerical</u>	<u>\$ 80.00</u>

§ 11.8 Compensation for Reimbursable Expenses

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

- ~~.1~~ Transportation and authorized out-of-town travel and subsistence; Authorized out-of-town travel (not including travel to and from the project site(s));
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project;Project. The Architect will pay initial deposits for plan reviews as a reimbursable expense. Invoices for the balance of such fees may be forwarded to, and paid directly by, the Owner;
- ~~.4~~ Printing, reproductions, plots, and standard form documents;documents for use and review by Owner and governmental agencies;
- ~~.5~~ Postage, handling, and delivery;
- ~~.6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.7~~ Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project; and
- ~~.8~~ If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses;
- ~~.11~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- ~~.12~~ Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred. Reimbursable expenses shall not exceed Sixty-Three Thousand, Three Hundred Forty Dollars and No Cents (\$63,340.00) without the prior written consent of the Owner.

The Architect's total compensation package, including fee and reimbursable expenses, shall not exceed \$1,435,718.00.

§ 11.9 Architect's Insurance

~~If the~~ The types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

~~(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)~~ this Agreement, including Section 2.6 shall be provided as part of the Architect's Basic Services.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero Dollars (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

~~**§ 11.10.2.1** Unless otherwise agreed, payments for Payments for undisputed services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation ~~Undisputed payments are due and payable within thirty (30) days of the Owner's receipt of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect, below.~~
(Insert rate of monthly or annual interest agreed upon.)~~

~~%—5 % (see MCL 438.31)~~

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

~~**§ 12.1** The Architect shall perform its duties, responsibilities and services in a manner consistent with the professional standards of the architectural profession in the State of Michigan and familiar with school construction.~~

~~**§ 12.2** The Architect shall not be entitled to additional compensation in the event it is necessary to extend the contract completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, disease outbreak, etc.~~

~~**§ 12.3** The Architect shall immediately notify the Owner, in writing, of the presence of any hazardous material in connection with this Project of which the Architect is aware, acknowledging that the Architect is not a hazardous materials expert. The Owner, at its cost, shall be responsible for analysis, design, removal, remediation or other action related to any asbestos or hazardous substances.~~

§ 12.4 (a) If errors and omissions in the Project are detected in the plans and specifications before the work is bid, the cost of any re-design required to incorporate the item or feature omitted or to correct the error shall be borne by the Architect. Any additional construction costs in this instance resulting from the inclusion of the omitted item or feature or to correct the error shall be borne by the Owner, except, in the instance of negligent errors or omissions, for increased construction costs due to a delay in bidding, or construction resulting from the negligent error or omission or its redesign.

(b) If errors and omissions in the Project are detected in the plans and specifications after the Work has been bid, and if revision, removal or replacement of a portion of the Work is required, the Architect shall pay the cost of redesign and, if the Architect's error or omission was due to professional negligence, as determined on a case-by-case basis, then the Architect shall pay for the cost of the revision, removal, and the reconstruction required to incorporate the omission or to correct the error in addition to any other damages recoverable under law.

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

§ 12.6 The Architect will, as part of Basic Services, attend the Owner's Board of Education meetings and staff meetings (in person or via communication media) as reasonably requested by the Owner.

§ 12.7 The Architect shall provide the following services as part of its Basic Services: (i) preparing designs and documentation for alternate bids or proposal requests proposed by the Owner, as reasonably required, and in consultation with the Construction Manager, as a means of managing the Owner's budget, (ii) preparing for, and attending, a public presentation, meeting, or hearing related to the Architect's services for the project, (iii) evaluating the qualification of entities providing bids or proposals, (iv) reviewing all contractor's submittals, (v) responding to all contractor's requests for information, and (vi) evaluating all Claims as Initial Decision Maker.

§ 12.8 The Architect agrees to provide assistance for at least one (1) year beyond the date of substantial completion of the final project(s) as a part of Basic Services, as well as a post-occupancy evaluation of the building thirty (30) days prior to the expiration of the warranty period. This review shall include architectural, plumbing, mechanical, electrical, civil and structural review of the Project, to determine whether the Project components are performing as specified prior to the expiration of the relevant warranty.

§ 12.9 The Owner reserves the right to approve the identity of the Architect's project representative(s) and to require their replacement upon two (2) weeks' notice. The Architect shall make available the services of Brendon Pollard, and other such individuals as may be required to provide the services defined as Basic Services or needed in the course of the Project to complete the Project as described in the Agreement. In the event that any individual identified above is discharged, dies, is disabled or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Architect shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement of the Owner.

§ 12.10 The Architect will assist the Construction Manager in all contract award services, including but not necessarily limited to, conducting pre-award conferences with apparent low bidders, reviewing bids or negotiated proposals, and advising the Owner whether such bids and proposals are responsive and acceptable in the context of the Project requirements.

§ 12.11 The Architect shall not utilize photographs of this Project for any advertising or promotional purpose that includes the image of any student of the Owner without the express written permission of the parent or guardian of that student if that student is a minor. If the student is of the age of majority or is an emancipated minor, the Architect must obtain express written permission from that student. Such express written permission shall acknowledge the Architect's intent for use of those images. The Owner, in its discretion, may assist the Architect in securing such permission.

§ 12.12 The Architect, with the assistance of the Construction Manager, shall include in bidding information, plans or specifications a requirement that the successful Contractor(s) shall provide operation manuals to the Owner and Contractor(s) shall provide adequate training for the Owner in the operation of any and all facility systems installed by the Contractor(s) including mechanical, civil, electrical, HVAC systems and any other building systems.

§ 12.13 The Architect agrees that it will be the Architect responsible for the construction described in this Agreement and shall not specify as a building material in any Construction Document for the Project any material which the Architect knew or reasonably should have known was an asbestos containing building material (ACBM), as defined in Section 763.83 of 40 CFR Part 763, as amended. Upon the issuance of the final certificate for payment, the Architect shall furnish the Owner a signed statement (dated current) that, to the best of Architect's knowledge, no asbestos containing building material was used as a building material in the Project. The Architect shall include in specifications that no ACBM shall be used in the construction of the school building and that each contractor shall certify to the School District and Architect that none was used in the construction; the Architect shall cooperate with the Owner and the Construction Manager in obtaining such Contractor certifications.

§ 12.14 The Owner reserves the right in its discretion to require consolidation or any joinder of mediation arising out of or relating to this Agreement with another mediation involving a person or entity not a party to this Agreement, in the event the Owner believes such consolidation or joinder is necessary.

§ 12.15 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provisions of this Agreement shall be deemed to be void and non-existent in the event the Owner, in its discretion, determines the other party should become a party to that dispute by joinder or otherwise.

§ 12.16 In the event of mediation arising out of or relating to this Agreement, the Owner reserves the right to require that the mediation hearing be conducted in the general area where the Owner's principal place of business is located.

§ 12.17 The Architect will provide a full set of all drawings and specifications to the Owner upon completion of the Project. Further, the production of original drawings and specifications, as well as all construction bulletin drawings and specifications in both pdf and any other form reasonably requested by the Owner shall be a part of Basic Services and shall be made available to the Owner upon request at any time after they have been created regardless of whether completed. Additionally, the Architect shall assemble and deliver all field drawings used for the Project as part of Basic Services.

§ 12.18 The Architect, without additional cost to the Owner, shall maintain in force insurance coverage as set forth in Section 2.6. Insurance shall be either (a) occurrence-based and shall be maintained in force during the life of the Project and for a period of no less than twelve (12) months after the relevant date of Substantial Completion of the Project, or (b) claims-made and shall be maintained in force during the life of the Project and for a period of no less than seven (7) years after the relevant date of Substantial Completion of the Project. The Architect shall notify the Owner thirty (30) days in advance if the coverage becomes unavailable or if the coverage amount is substantially changed. The Architect shall provide the Owner with certificates of insurance evidencing the insurance coverage required of the Architect, which certificates shall be attached to the Agreement. The Owner shall be listed as an "additional insured" on all applicable insurances.

§ 12.19 The Architect and Construction Manager shall provide the Owner the necessary bidding information and shall assist the Owner in the preparation of the General Conditions of the contract and the Form of Agreement Between Owner and Contractor. The referenced documents shall consist of the unabridged AIA contract forms which the Architect shall either obtain from the Owner's legal counsel or modify as necessary to be consistent with this Agreement and the laws of the State of Michigan, including, but not limited to dispute resolution procedures. The Architect shall include in bid specifications, and in any of the relevant document provisions indicating that modified version(s) of standard AIA Owner/Contractor Agreement(s) will be utilized; such contract shall be subject to the Owner's approval.

§ 12.20 The Architect will not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

§ 12.21 The parties acknowledge that the Owner is a Michigan general powers school district and is therefore subject to legal requirements and restrictions that may not apply in the private sector.

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

§ 12.23 The Architect will notify the Owner in writing of any instances of delegated design.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified.
- .2 Building Information Modeling Exhibit, if completed:

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

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

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

AIA Document A232-2019, General Conditions of the Contract for Construction, as modified

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

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

EAST LANSING PUBLIC SCHOOLS,

KINGSCOTT ASSOCIATES, INC.,

OWNER *(Signature)*

Dori Leyko Superintendent
(Printed name and title)

ARCHITECT *(Signature)*

Robert Atkins, PE, President
(Printed name, title, and license number, if applicable)

Modified: 10/15/2024 8:57 AM

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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 this certification at 08:57:16 ET on 10/15/2024 under Order No. 3104240363 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document C132® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the 8th day of May in the year 2024
(In words, indicate day, month and year.)

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

East Lansing Public Schools
501 Burcham Drive
East Lansing, Michigan 48823

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

Clark Construction Company
3535 Moores River Drive
Lansing, Michigan 48911

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

East Lansing Public Schools 2024 Bond Project in accordance with applicable laws, approved plans and specifications, the Owner’s fixed budget, the Preliminary Qualification of Bonds Application No. 33-010-4-K12-16-01, and as otherwise approved by the Owner.

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

Kingscott Associates, Inc.
259 E. Michigan Avenue, Suite 308
Kalamazoo, Michigan 49007

The Owner and Construction Manager agree as follows.

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

As expressly approved by the Owner in writing after advice and input from the Architect, Construction Manager, and any others deemed appropriate by the Owner, in accordance with the Application for Preliminary Qualification of Bonds No. 33-010-4-K12-16-01 ("PQ Application").

§ 1.1.2 The Project's physical characteristics:

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

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

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

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

A fixed sum to be established by the Owner as a condition of this Agreement in accordance with the PQ Application.

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

.1 Design phase milestone dates, if any:

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

To be determined

.4 Other milestone dates:

To be determined

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

Multiple prime contractors, competitively bid in accordance with the Revised School Code and other applicable laws.

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

To be determined.

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

~~§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235 2019 is incorporated into this Agreement, the Owner and Construction Manager shall incorporate the completed E235 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

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

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

Dori Leyko, Superintendent
501 Burcham Drive
East Lansing, Michigan 48823
Telephone: (517) 333-7424

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

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

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

.1 Land Surveyor:

To be determined.

.2 Geotechnical Engineer:

To be determined.

.3 Civil Engineer:

To be determined

.4 Contractors, as defined in Section 1.4:

Awarded through competitive bidding procedures.

.5 Separate Contractors, as defined in Section 1.4:

To be determined.

.6 Other, if any:

(List any other consultants retained by the Owner.)

To be determined

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

Dave Reece
Clark Construction Company
3535 Moores River Drive
Lansing, Michigan 48911
Telephone:

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

To be determined

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

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

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

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

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

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

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

§ 2.4 The Construction Manager shall coordinate its services and those of its consultants with those services provided by the Owner, the Architect, the Contractors, and the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate ~~Contractors.~~ Contractors, subject to the Construction Manager's professional judgment, experience, and expertise. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

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

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. ~~Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members,~~ the The Owner may reply to the

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Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. ~~Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.~~ The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

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

§ 2.8 The Construction Manager shall maintain ~~the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager as set forth in section 11.7.~~ insurance of types and amounts set forth below, as required by law, or as set forth in any Certificate of Insurance provided by the Construction Manager, whichever is greater.

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

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

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

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

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

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

§ 2.8.7 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section ~~2.8.2.8~~ at or before the time of execution of this Agreement.

§ 2.8.8 Prior to the commencement of any Project, the Construction Manager shall notify the Owner in writing of its proposed insurance coverages and amounts, even if they are the same as identified in this Section 2.8, which coverages and amounts shall be subject to the Owner's reasonable approval, and such coverages will not be terminated, non-renewed, or reduced without at least 30 days prior written notice to the Owner.

§ 2.9 The Construction Manager shall assist the Owner, Architect, and other Project participants in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models, building information modeling and digital data protocols for the Project.

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager shall be responsible for managing and maintaining the centralized electronic document management system. ~~The centralized electronic document management system shall include the following: (List any items that are to be included in the centralized electronic management system.)~~ system at no additional cost to the Owner, except as specifically identified and agreed in Article 11.

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

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

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Article 3, ~~and include usual and customary Preconstruction and Construction Phase Services. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager, and Contractors 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.~~ Agreement, AIA Document A232-2019, as modified, and any other Contract Document, unless such services are expressly designated as Additional Services. Basic Services shall include, but not be limited to, usual and customary construction coordination, scheduling, constructability review, cost estimating, and allocation and supervision of construction activities among the Contractors.

§ 3.2 Preconstruction Phase

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

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work. The Construction Manager shall ~~periodically~~ update the Construction Management Plan ~~Plan monthly, or as otherwise appropriate,~~ for the Owner's approval, over the course of the Project. The Construction Manager acknowledges that the Owner is not a construction professional and that approval by the Owner is for general concepts only.

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

completion. The anticipated construction schedule, including critical and long-time items, should be taken into account.

§ 3.2.5 The Construction Manager shall update the Project schedule to include the components of the Work, including but not limited to phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, materials and equipment, including but not limited to those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.

§ 3.2.6 Based on the preliminary design, design criteria, and other information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, including but not limited to the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.7 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; sequencing for phased construction; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Such reviews do not alter the Architect's responsibility for its design.

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

§ 3.2.9 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, ~~at appropriate intervals agreed to by the Owner, Construction Manager and Architect, in writing, at least monthly or as otherwise agreed by the Owner and Construction Manager,~~ an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for further development of the design, bidding or negotiating, price escalation, and market conditions. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of Cost of the Work exceeds the latest approved Project budget, and shall make recommendations for corrective action.

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

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

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

§ 3.2.13 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated,

(2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

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

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

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

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

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

§ 3.2.19 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall ~~assist the Owner and the Architect with the development of the Bidding Documents, develop the Bidding Documents in compliance with applicable laws,~~ which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to ~~bidders-bidders, prepare and publish necessary bid notices and advertisements,~~ and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda. All bid documents shall acknowledge that modified forms for the Owner/Contractor Agreement and General Conditions forms shall be used.

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

§ 3.2.21 ~~The-After the Owner receives bids, the~~ Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, conduct post-bid interviews with apparent low bidders, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.22 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors. As part of its assistance, the Construction Manager shall contact the Owner's legal counsel to receive AIA Document A232-2019, General Conditions of the Contract for Construction, as modified, and the form of AIA Document A132-2019, Contractor Agreement, as modified, and shall use such forms in finalizing each Contractor Contract.

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

§ 3.2.24 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 3.2.25 The Construction Manager shall keep the Architect and the Owner informed of any changes in requirements, general market conditions or in construction materials, systems or equipment as the Drawings and Specifications are developed.

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™ 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. ~~If the Owner and Contractor modify AIA Document A232 2019, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.~~ Edition, as modified for the Project.

§ 3.3.2 Subject to Section 4.2 and ~~except as provided in Section 3.3.30, the~~ The Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the later of the date the Architect issues the final Certificate for Payment. ~~Payment or 30 days after final payment to all Contractors is due.~~

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. See also Section 12.4 and Section 12.18.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule ~~and the Contract Documents.~~ schedule, Project cost estimates and the Contract Documents. The Construction Manager shall verify that each Multiple Prime Contractor has provided performance and payment bonds in compliance with the Contract Documents and applicable laws before that Contractor begins Work.

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

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

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

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

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

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

§ 3.3.11 ~~The Construction Manager shall develop~~ On a monthly basis or as otherwise expressly agreed by the parties in writing, the Construction Manager shall develop and deliver to the Owner cash flow reports and forecasts for the Project and include them in the Construction Manager's progress reports, reports, and shall advise the Owner and Architect as to variances between actual costs and budgeted or estimated costs.

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

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

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

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

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality and quantity of the Work is in accordance with the Contract ~~Documents~~ Documents and has been performed in a good and workmanlike manner, and the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the ~~Construction Manager~~ Manager, identified in writing along with the relevant certification. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques,

procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate each Contractor's right to payment; or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum. Nothing in this Section 3.3.12.4 shall be interpreted to reduce or eliminate the Construction Manager's duties set forth in Section 12.18.

§ 3.3.13 The Construction Manager shall obtain and review the safety programs developed by each Contractor solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any additional safety measures to be considered in the Work of the Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall advise the Owner and Contractor of safety violations, if observed by the Construction Manager, and shall verify Contractor's correction of the same. Such duties and responsibilities of the Construction Manager shall in no way waive, limit or excuse the Contractor's duty and liability with regard to safety.

§ 3.3.14 The Construction Manager shall determine ~~in general~~ that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents using the best efforts consistent with the standards of the construction industry for a construction manager-adviser and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. ~~The Construction Manager shall have the authority to~~ Subject to the authority of the Owner, the Construction Manager shall reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures. See Section 12.2.

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

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

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

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.Claims.

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

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

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

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

§ 3.3.21.1 The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports prepared and submitted in accordance with section 3.3.21.2.

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

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

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

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

§ 3.3.22 ~~Utilizing the documents provided by the Contractors, the~~ The Construction Manager shall make available, at the Project site, the Contract Documents, including Drawings, Specifications, addenda Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required

submittals. ~~These shall be~~ The Construction Manager shall maintain records, in duplicative, of principal building layout lines, evaluations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make available all such records in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the ~~Owner.~~ Owner in reasonable condition and in good order.

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

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

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

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

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

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

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

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

ARTICLE 4 — SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 3.3.31 As part of Basic Services, the Construction Manager shall be prepared to serve, and shall serve when requested by the Owner, as a witness in connection with any public hearing, arbitration proceeding, mediation, legal proceeding or administrative law proceeding.

§ 3.3.32 To the extent required by law or as required by the Owner, the Construction Manager shall require each Contractor for each separately bid portion of the Work to obtain and maintain a performance bond and payment bond in an amount covering the Contractor in a form and with a surety acceptable to the Owner in connection with its

obligations thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any work at the Project site.

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. (Designate the Construction Manager's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Construction Manager or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.) Supplemental Services or Additional Services may be provided by the Construction Manager and compensated by the Owner as a Supplemental Service or Additional Service if: (a) required for the Project, (b) the Owner authorizes the performance of same in writing prior to the Construction Manager's provision of any such service, and (c) the Construction Manager provides a good faith estimate of the cost of same prior to the Owner's authorization. The Owner shall not be obligated to pay for any Supplemental Service or Additional Service in the absence of the foregoing. For a properly authorized Supplemental Service or Additional Service, the Owner shall compensate the Construction Manager as provided in Sections 11.2 through 11.4.

Supplemental Services	Responsibility <i>(Construction Manager, Owner or not provided)</i>
§ 4.1.1.1 Measured drawings	Owner
§ 4.1.1.2 Tenant-related services	Not Provided
§ 4.1.1.3 Commissioning	Owner
§ 4.1.1.4 Development of a commissioning plan	Owner
§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3	Owner
§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination	Not Provided
§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance	Not Provided
§ 4.1.1.8 Assistance with site selection	Not Provided
§ 4.1.1.9 Assistance with selection of the Architect	Not Provided
§ 4.1.1.10 Furnish land survey	Owner
§ 4.1.1.11 Furnish geotechnical engineering services	Owner
§ 4.1.1.12 Provide insurance advice	Not Provided
§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies	Not Provided
§ 4.1.1.14 Stakeholder relationships management	Owner
§ 4.1.1.15 Owner moving coordination	Owner
§ 4.1.1.16 Coordination of Owner's Separate Contractors	Owner
§ 4.1.1.17 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

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

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

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

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

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager as provided in Section 11.2.

§ 4.2 Construction Manager's Additional Services

§ 4.2.1 The Construction Manager may provide Additional Services after execution of this Agreement, ~~Agreement if~~ done so in compliance with Section 4.1, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any properly authorized Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.2.2 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following Additional Services until the Construction Manager receives the Owner's written authorization: The following Additional Services shall be provided if there has been compliance with Section 4.1:

- .1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project ~~including including~~, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered ~~additional services~~; Additional Services;
- .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3 Services necessitated by decisions of the Owner not rendered in a timely ~~manner-manner~~, acknowledging the Owner's obligations under the Open Meetings Act, or any other failure of performance on the part of the Owner or the Owner's other consultants or contractors;
- .4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .5 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto; thereto, or the Construction Manager's services are at issue;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or Work.
- .8 Assistance to the Initial Decision Maker. Providing Services to manage work that is added to the Program Scope by the Owner arising from realized savings in the originally-allocated budget.

§ 4.2.3 ~~To avoid delay in the Construction Phase, the Construction~~ The Construction Manager shall provide the following Additional Services, ~~notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager of the Owner's determination. The Owner shall compensate the Construction Manager for the services provided prior to the Construction Manager's receipt of the Owner's notice;~~ if there is compliance with Section 4.1:

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

§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, ~~whichever is earlier,~~ the timeframe established in Section 3.3.2, shall be compensated as Additional Services to the extent the Construction Manager's services are affected, the Construction Manager incurs additional cost in providing those Construction Phase Services.

~~§ 4.2.5 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.~~

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information as specifically requested by the Construction Manager in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment; systems; and site requirements, subject to the Owner's status as a public body.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. ~~The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the 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.~~ parties acknowledge the Owner's fixed limit of construction cost for this project.

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

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in ~~AIA Document B132-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition,~~ the Agreement Between Owner and Architect, as modified. The Owner shall provide the Construction Manager with a copy ~~of the scope of services in~~ of the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.

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

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

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

~~§ 5.7 Unless provided by the Construction Manager, As necessary for the Project, the Owner shall furnish services of geotechnical engineers, which may include include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.~~

~~§ 5.8 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.~~

~~§ 5.9 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.~~

~~§ 5.10 The Owner-Construction Manager shall coordinate the services of its own and the Owner's consultants with those services provided by-by, or on behalf of, the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager timely requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner-Construction Manager shall require that its consultants and contractors maintain insurance, including professional liability insurance and other liability insurance, as appropriate to the services or work provided.~~

~~§ 5.11 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Upon request, the Construction Manager will assist the Owner in identifying an entity or entities to provide such services and information.~~

~~§ 5.12 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests-interests, beyond those required of the Basic Services of the Construction Manager.~~

~~§ 5.13 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. Failure of the Owner to provide notice shall not relieve the Construction Manager of its responsibilities. Further, the Owner does not assume any duty of inspection by the inclusion of this section. The Construction Manager shall provide the Architect and the Owner prompt written notice if it becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.~~

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

~~§ 5.15 The Owner shall may communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect-Construction Manager of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project.~~

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~~Communications by and with the Architect's consultants shall be through the Architect that may affect the Construction Manager's services.~~

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

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

~~§ 5.18 Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce lien rights.~~

ARTICLE 6 COST OF THE WORK

~~§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit, overseen/supervised by the Construction Manager. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including Consultants, compensation of the Architect and the Architect's consultants, and compensation of any other Owner-hired consultants, including respective compensation for reimbursable expenses at the job site, if any. In the event the Construction Manager's compensation is stated as a percentage of the Cost of the Work, for that purpose only the Cost of the Work shall exclude compensation of the Construction Manager and the Construction Manager's consultants. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.~~

~~§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2 and 6.4. Information and is a fixed limit of construction cost as a condition of this Agreement. Evaluations of the Owner's budget for the Cost of the Work, and the detailed estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's proposed, established, or approved budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager. The foregoing statement does not waive the fixed limit of construction cost.~~

~~§ 6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.~~

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

~~§ 6.5 If the Construction Manager's at any time the estimate of the Cost of the Work exceeds the fixed limit of the Owner's budget for the Cost of the Work, the Owner shall~~

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

- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or if the bids or proposals received from the prospective Contractors, in the aggregate, exceed the Owner's budget for the Cost of the Work, and the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work, the Construction Manager shall cooperate with the Owner and Architect to develop the necessary revisions, update the cost estimate, ~~and obtain additional bids.~~ obtain additional bids, and take other necessary steps to bring the Cost of Work within the Owner's established fixed limits. The Construction Manager will perform the services described in Sections 6.4 and 6.6 without additional compensation.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by ~~applicable law,~~ but in any case not more than 10 years after the date of Substantial Completion of the Work. Michigan law, but in no case shall a claim or cause of action by the Owner be deemed untimely if filed within six (6) years of Substantial Completion of the overall Project. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 ~~To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein. The parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in this Agreement or any other Contract Document is contrary to this provision, such term is void and unenforceable.~~

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

§ 8.1.4 The Construction Manager ~~and Owner~~ ~~waive~~ ~~waives~~ consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to binding dispute resolution. ~~If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.litigation.~~

§ 8.2.2 The Owner and Construction Manager shall initially endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. Agreement, except that either party may, if in good faith, declare a mediation impasse and proceed with litigation after one full business day of mediation that fails to resolve the dispute at issue. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. During the pendency of any mediation, the parties agree that the applicable claims that are subject to the mediation process or that are related to claims subject to that process, shall be tolled.

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the ~~Project, Project for more than 30 consecutive days,~~ the Construction Manager shall be compensated for services performed prior to notice of such suspension. ~~When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services.~~ The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted, subject to negotiation by the parties.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative consecutive~~ days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager for services ~~performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Construction Manager's termination of consultant agreements.~~ timely and properly performed prior to termination, including any Reimbursable Expenses then due.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager the following termination fee:
(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

Init.

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager and the Architect. as modified. In the event of any inconsistency between this Agreement and the General Conditions, the terms of this Agreement shall govern.~~

~~§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, 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, including any payments due to the Construction Manager by the Owner prior to the assignment.~~

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

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

~~§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Notwithstanding the foregoing, the Construction Manager acknowledges the availability of Owner's environmental reports and Asbestos Management Plan in accordance with law.~~

~~§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. information. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4. Agreement. The Construction Manager shall obtain the Owner's approval prior to disclosures of information for the purpose of verifying that such information disclosures contain no confidential information (including, for example, information protected by FERPA).~~

~~§ 10.8 If the Construction Manager or Owner receives information specifically designated as receives information of the Owner that is "confidential" or "business proprietary," the receiving party Construction Manager shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.~~

§ 10.8.1 ~~The receiving party Construction Manager~~ may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the ~~receiving party to defend itself in any dispute. Construction Manage to defend itself in any dispute and the Owner has consented to such disclosure.~~ The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

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

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

ARTICLE 11 COMPENSATION

§ 11.1 ~~For the Construction Manager's Basic Services described under Article 3,~~ timely and proper performance of Basic Services, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

To be determined in accordance with PQ Application.

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

To be determined in accordance with PQ Application.

§ 11.2 For the Construction Manager's ~~Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3,~~ properly authorized Supplemental Services and Additional Services, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

To be negotiated and agreed upon prior to performance, taking into consideration the hourly rates schedule in Section 11.5.

§ 11.3 ~~For Additional Services that may arise during the course of the Project, including those under Section 4.2,~~ the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager ~~plus percent (—%), or as follows:~~

~~(Insert amount of, or basis for computing, Construction Manager’s consultants’ compensation for Supplemental or Additional Services.)~~ and reimbursed to the Construction Manager with a zero percent (0 %) markup.

§ 11.5 The hourly billing rates for ~~services Supplemental and Additional Services~~ of the Construction Manager and the Construction Manager’s consultants are set forth below. ~~The rates shall be adjusted in accordance with the Construction Manager’s and Construction Manager’s consultants’ normal review practices.~~
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
<u>Project Executive</u>	<u>\$ 217.21 hour</u>
<u>Senior Project Manager Market Leader</u>	<u>\$ 161.20 hour</u>
<u>Project Manager</u>	<u>\$ 105.19 hour</u>
<u>Project Engineer</u>	<u>\$ 80.60 hour</u>
<u>Senior Estimator</u>	<u>\$ 115.70 hour</u>
<u>Superintendent</u>	<u>\$ 107.90 hour</u>
<u>Safety Manager</u>	<u>\$ 103.82 hour</u>
<u>Accounting/Administration</u>	<u>\$ 80.60 hour</u>

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager’s consultants directly related to the Project, as follows:

- ~~.1~~ Transportation and authorized out-of-town travel and subsistence;
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~.4~~ Printing, reproductions, plots, and standard form documents; documents for use and review by Owner and governmental agencies;
- ~~.5~~ Postage, handling, and delivery;
- ~~.6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Owner in writing;
- ~~.7~~ Professional photography, and presentation materials requested by the Owner;
- ~~.8~~ If required by the Owner, and with the Owner’s prior written approval, the Construction Manager’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager’s consultants;
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses; and
- ~~.11~~ Other similar Project-related expenditures. 9 Other similar Project-related expenditures with the Owner’s prior written approval.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses actually incurred by the Construction Manager and the Construction Manager’s consultants ~~plus percent (—%) of the expenses incurred at cost and without markup.~~ Reimbursable expenses, including all General Conditions and supervisory personnel costs, shall not exceed One Hundred Eighty Six Thousand Ninety Six Dollars (\$186,096.00).

The Construction Manager’s total compensation package, including fee and reimbursable expenses, shall not exceed Two Million One Hundred Two Thousand Five Hundred Ninety Two Dollars (\$2,102,592.00).

§ 11.7 Construction Manager's Insurance. ~~If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager for the additional costs incurred by the Construction Manager for the additional coverages as set forth below. (Insert the additional coverages the Construction Manager is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager.)~~

§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

§ 11.8.1.1 An initial payment of zero (\$ 0_) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.8.2 Progress Payments

§ 11.8.2.1 Unless otherwise agreed, payments for undisputed services shall be made monthly in proportion to services performed. ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (—performed, except that the final payment shall not be made until Final Completion of the Project. Undisputed payments are due and payable thirty (30) days of the Owner's receipt of the Construction Manager's invoice unless to the extent reasonably disputed by the Owner in good faith. Undisputed amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~ below.
(Insert rate of monthly or annual interest agreed upon.)

~~%—Five percent (5%) per annum % See MCL 438.31~~

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

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available-forwarded to the Owner ~~at mutually convenient times.~~ with each applicable invoice.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 The Construction Manager shall perform its responsibilities and provide services in a prompt manner and with that degree of care and skill normally exercised by a Construction Manager of recognized experience and expertise that specializes in providing construction management services for the construction of public school facilities.

§ 12.2 On the basis of its regular on-site observations, Construction Manager will report to the Owner any construction means, methods, techniques, sequences, or procedures observed by it that do not appear to conform with industry standards and shall also report to Owner any work that appears not to be in conformance with the Contract Documents. The performance of additional services made necessary by defects or deficiencies in the work of the contract shall not entitle the Construction Manager to additional compensation if such services were of such a nature that they should have been observed by the Construction Manager so that the work would not be necessary.

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

§ 12.4 The Construction Manager shall provide daily full-time on-site field supervision during the entire construction phase. The Owner reserves the right to approve the identity of the Construction Manager's field supervisor and other Project representatives, and to require the replacement of any of them upon two (2) weeks' written notice. The Construction Manager shall make available the services of all personnel and other such individuals as may be required to provide the services defined as Basic Services or needed in the course of the Project to complete the Project as

described in the Agreement. In the event that any individual identified above is discharged, dies, is disabled or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Construction Manager shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement of the Owner.

§ 12.5 The Construction Manager shall, upon completion of the Project, deliver to the Owner all records and files of the Project, which shall have been organized in a reasonable manner by the Construction Manager, including all field marked copies of the Drawings and Specifications.

§ 12.6 The Construction Manager shall observe, inspect, and coordinate the work of the contractors and determine that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and that the work on the Project is progressing on schedule, using the best efforts consistent with the standards of the construction industry for a construction manager-adviser and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. In the event that the quality control testing should indicate that the work, as installed, does not meet the requirements of this Project, the Architect and Construction Manager shall determine the extent of the work that does not meet the requirements and the Construction Manager shall direct the trade contractor(s) to take appropriate corrective action, and advise the Owner of the correction action.

§ 12.7 As part of Basic Services, the Construction Manager shall conduct a post-occupancy inspection at six (6) and eleven (11) months following the Date of Substantial Completion and to provide callback services for one (1) year following the Date of Substantial Completion.

§ 12.8 The Construction Manager shall immediately notify the Owner, in writing, of the presence of any hazardous material in connection with this Project of which the Construction Manager is aware. Except and to the extent caused or exacerbated by the Construction Manager, the Owner, at its cost, shall be responsible for analysis, design, removal, remediation, or other action related to any asbestos or hazardous substances.

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

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

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

§ 12.12 Any service that is deleted from Article 4 shall be deemed a part of Basic Services.

§ 12.13 The Construction Manager will, as part of Basic Services, attend the Owner's Board of Education meetings and staff meetings (in person or via communication media) as reasonably requested by the Owner.

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

§ 12.15 In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provision of this Article shall be deemed to be void and nonexistent in the event the Owner, in its discretion, determines the Construction Manager should become a party to that dispute by joinder or otherwise.

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

§ 12.17 The Construction Manager further agrees to include a similar mediation provision as identified herein in the form Owner/Contractor Agreement and in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultant also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between parties to those agreements. The Construction Manager shall be responsible for ensuring the inclusion of this provision in pertinent bid documents and contract forms, the preparation of which the Construction Manager provides or with which the Construction Manager assists in preparation.

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

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

§ 12.20 The Construction Manager shall not be entitled to additional compensation in the event it is necessary to extend the completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, disease outbreak, etc.

§ 12.21 The Construction Manager will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this Agreement

§ 12.22 The Construction Manager shall not utilize photographs of this Project for any advertising or promotional purpose that include the image of any student of the Owner with the express written permission of the parent or guardian of that student if that student is a minor and Owner. If the student is of age of majority or is an emancipated minor, the Construction Manager must obtain express written permission from that student and Owner. Such express written permission shall acknowledge the Construction Manager's intent for use of those images. The Owner, in its discretion, may assist the Construction Manager in securing such permission.

§ 12.23 INDEMNIFICATION: The Construction Manager shall indemnify and hold harmless the Owner, its Board of Education, its board members in their official and individual capacities, administration, and employees (the "Indemnitees"), from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, to the extent caused in whole or in part by or asserted to arise from (i) the negligent acts or omissions of the Construction Manager, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representative or warranty by the Construction Manager under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which the Owner or one or more of the Indemnitees may be entitled to indemnification under this Agreement. The Construction Manager shall not be responsible for indemnifying an Indemnitee for the Indemnitee's negligence, but shall remain responsible to the fullest degree of Construction Manager's fault.

§ 12.24 The Owner shall be identified as an "additional insured" on all general liability insurance policies held by the Construction Manager which are applicable to the Project. The Construction Manager shall also ensure that the Contract Documents applicable to contractors and subcontractors require that contractors and subcontractors include the Owner as an "additional insured" on all general liability insurance policies applicable to the Project held by contractors and subcontractors. The Construction Manager shall provide (and acquire as necessary) certificates of insurance evidencing the Owner's status as "additional insured" on all required policies, as well as a provision that insurance coverage cannot be reduced or eliminated without 30 days' notice to the Owner.

§ 12.25 The Construction Manager, without additional cost to the Owner, shall maintain in force insurance coverage as set forth in Section 2.8. Insurance shall be occurrence-based and maintained in force during the life of the Project and for a period of no less than twelve (12) months after the relevant date of Substantial Completion of the Project and/or claims-made and maintained in force during the life of the Project and for a period of no less than seven (7)

years after the relevant date of Substantial Completion of the Project. The Construction Manager shall notify the Owner thirty (30 days in advance if the coverage becomes unavailable or if the coverage amount is substantially changed. The Construction Manager's applicable insurances shall be primary.

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™-2019, Standard Form Agreement Between Owner and Construction Manager as Adviser~~Adviser~~, as modified.
- .2 Building Information Modeling Exhibit, if completed:

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this agreement.)

Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

AIA Document A232-2019, General Conditions of the Contract for Construction, as modified

In the event of any inconsistency between this Agreement and any other Contract Documents, this Agreement shall govern and control. In the event of any other inconsistency between or among the various Contract Documents, the terms most beneficial to the Owner (as determined in the Owner's sole discretion) shall control.

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

EAST LANSING PUBLIC SCHOOLS, **CLARK CONSTRUCTION COMPANY,**

OWNER (Signature)

Dori Leyko Superintendent
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Dave Reece Clark Construction COO
(Printed name and title)

Modified: 10/21/2024 1:55 PM

Init.

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 this certification at 13:55:05 ET on 10/21/2024 under Order No. 3104240363 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C132™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



East Lansing
Public Schools

MEMORANDUM

TO: ELPS Board of Education, Dori Leyko, Superintendent

FROM: Richard Pugh, Director of Finance & Operations

SUBJECT: Action Item – 2025 Summer Tax Levy Resolution

DATE: October 17, 2024

Recommendation:

It is recommended that the Board of Education adopt the resolution, as presented, to impose a 100% summer tax levy to collect all school property taxes.

Background:

From the 10-14-2024 BOE packet:

The Board of Education originally adopted a 100% summer tax levy resolution on April 14, 1997 (see Board Policy #3290). As required by the Revised School Code the Board of Education must annually adopt a resolution prior to January 1 to continue the summer tax levy. Attached is the resolution for consideration. Having a 100% summer tax levy is desirable because it enables the District to collect a large portion of its property tax revenue early in the school year. With the early collection of property tax revenue the District is able to earn more interest (when rates are favorable) through investments and also lessens the likelihood of having to borrow early in the school year because of cash flow shortages.

Board action anticipated on October 28, 2024.

Annual Summer Tax Resolution - School District of the City of East Lansing (the “District”)

A regular meeting of the Board of Education (Board) of the District was held in the Board Room at 509 Burcham Drive, East Lansing, Michigan on the 28th day of October, 2024, at 7:00 o'clock in the p.m.

The meeting was called to order by _____, President.

Present: Members

Absent: Members

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, this Board previously adopted a resolution to impose a summer tax levy to collect 100% of annual school property taxes, including debt service, upon property located within the District and continuing from year-to-year until specifically revoked by the Board.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Pursuant to the Revised School Code, MCL 380.1 et seq., the Board invokes for 2025 its previously adopted ongoing resolution imposing a summer tax levy of 100% of annual school property taxes, including debt service, upon property located within the District and continuing from year-to-year until specifically revoked by this Board and requests each city and/or township in which this District is located to collect those summer taxes.

2. The Superintendent or designee is authorized and directed to forward to the governing body of each city and/or township in which this District is located a copy of this Board's resolution imposing a summer property tax levy on an ongoing basis and a copy of this resolution requesting that each such city and/or township agree to collect the summer tax levy for 2025 in the amount as specified in this resolution. Such forwarding of the resolutions and the request to collect the summer tax levy shall be performed so that they are received by the appropriate governing bodies on or before December 31, 2024.

3. Pursuant to and in accordance with Revised School Code Section 1613(1), the Superintendent or designee is authorized and directed to negotiate on behalf of the District with the governing body of each city and/or township in which the District is located for the reasonable expenses for collection of the District's summer tax levy that the city and/or township may bill under Revised School Code Sections 1611 or 1612.

4. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

Ayes: Members

Nays: Members

Resolution declared adopted.

Secretary, Board of Education

The undersigned, duly qualified and acting Secretary of the Board of Education of School District of the City of East Lansing hereby certifies that the foregoing constitutes a true and complete copy of a resolution adopted by the Board at the Meeting, the original of which is part of the Board's minutes. The undersigned further certifies that notice of the meeting was given to the public pursuant to the provisions of the “Open Meetings Act” (Act 267, Public Acts of Michigan, 1976, as amended).

Secretary, Board of Education



East Lansing
Public Schools

MEMORANDUM

TO: ELPS Board of Education, Dori Leyko, Superintendent

FROM: Matt Morales, Director of Health and Safety

SUBJECT: Action Item - Emergency Operations Plan

DATE: October 15, 2024

Recommendation:

It is recommended that the Board adopt the revised Emergency Operations Plan (EOP), as presented.

Background:

The attached Emergency Operations Plan (EOP) is confidential and exempt from FOIA (it should not be shared with the public). We will have a closed session to review the EOP and answer questions from the Board of Education.

The Office of Health and Safety collaborated with ELPD (Scot Sexton) to update the district EOP. The district updated the most recent EOP from a previous version approved in May 2021.