



HEMLOCK PUBLIC SCHOOL DISTRICT

HEMLOCK, MICHIGAN 48626

Hemlock Public School District

Request for Proposals

for

Design-Build Services

Issue Date: June 17, 2026

Proposal Due Date: July 15, 2026



HEMLOCK PUBLIC SCHOOL DISTRICT

HEMLOCK, MICHIGAN 48626

ADVERTISEMENT FOR PROPOSAL

PROJECT: Hemlock Public School District
Hemlock Elementary School/Early Childhood Center Expansion and Renovation

OWNER: Hemlock Public School District
1095 N Hemlock Rd
PO Box 260
Hemlock, MI 48626

SCOPE OF WORK:

Hemlock Public School District (the "District" or "Owner") is soliciting proposals from firms to provide comprehensive Design-Build services for the expansion and potential renovation of Hemlock Elementary School/Early Childhood Center. This work will be completed utilizing approximately \$1M in United States Department of Agriculture (USDA) funding. Services will include complete design and construction, from conceptual design through close-out. It is anticipated that as much of the \$1M grant will be allocated to the cost of work, with soft costs coming out of a separate funding source.

In addition, the District will be pursuing a non-qualified bond in November 2026 for approximately \$14M. Upon voter approval, between \$2M and \$3M in additional funding will be put towards extended work scope at Hemlock Elementary School. Upon successful passage of the bond, it is the District's intent to continue with the chosen Design-Build team for the full implementation of the bond program, from pre-design through construction, Owner move-in and close-out.

DUE DATE:

Proposals shall be submitted electronically to Denise Dowdell, Director of Business Operations and Human Resources, at dowdell@hemlockps.com no later than **July 15 at 12:00 pm EST** with the e-mail subject line "HPSD Design-Build RFP Response". The District will not consider or accept proposals received after the specified date and time.

REQUIRED DISCLOSURE STATEMENT:

The bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of Hemlock Public School District Board of Education or Hemlock Public School District Superintendent. The bid shall also be accompanied by a sworn and notarized statement disclosing whether the bidder is an Iran Linked Business in compliance with PA 517 of 2012. The Board shall not accept a bid that does not include these sworn and notarized disclosure items.

RIGHTS RESERVED BY THE OWNER:

Contract award will be with the Design-Builder whose proposal Hemlock Public School District determines to be in their best interest. The District reserves the right to waive any irregularities, reject any or all bids, or accept any bid when in the opinion of the Board such action will best serve the District's interest. The District reserves the right to waive any irregularity in the RFP process or any proposal. The District reserves the right to request additional information from any or all proposers, including an oral interview to discuss, clarify, and answer any questions regarding the proposal.

SECTION I: PROJECT OVERVIEW

PURPOSE:

The District desires to utilize recent Michigan Design-Build legislation to reimagine school construction delivery and is seeking a qualified Design-Build partner to support this innovative turnkey approach from concept through completion.

BACKGROUND INFORMATION/PROJECT SCOPE:

Hemlock Public School District is a general powers public school district located in Saginaw County, Michigan serving approximately 1,200 K-12 students. The District is governed by an elected seven-member Board of Education.

The District has secured a \$1M grant from the USDA to fund improvements to Hemlock Elementary School/Early Childhood Center, located at 200 Wilson Street in Hemlock, Michigan. Work would include the expansion and possible renovation of the southeast wing of the school, adding approximately 3,000 s.f. of building space, and would encompass the following programmatic elements:

- Secure main corridor connection
- Office and student support space
- Two to three new ECC classrooms with attached toilet rooms
- Student toilet rooms
- Re-worked parent drop-off and pick-up loop

This work scope is being thought of as **Phase I**, with a potential second phase if voters approve the bond in the November election. **Phase II** would utilize \$2M to \$3M of the allocated bond dollars to expand the elementary school building by another 9,000 s.f., to include:

- Additional classrooms
- Staff toilet rooms
- Office and intervention spaces
- Flexible learning environments

The overall goal of this expansion is to relocate the early childhood programming to the new wing, to make space to bring 1st grade back to this building. 1st grade classrooms would be relocated to those left by the ECC. A very conceptual plan showing the work scope is included as Appendix 'A'—the Design-Build team will be charged with working through plan concepts with the District to align their Phase I and II wish list(s) with the allocated budget(s). Because work for Phase I will begin prior to knowing the outcome of the bond vote, the team will need to anticipate the Phase II future growth as part of the initial conceptual layout for the school.

The District has engaged Veridus Advisors to serve as its Owner's Representative. Rounding out the current project team are PFM and Thrun as financial advisor and legal counsel, respectively. The chosen Design-Build firm will work closely with this team throughout the course of the project (and into Phase II).

DELIVERY MODEL:

The District intends to utilize a Design-Build delivery method for implementation of the bond program.

PROJECT BUDGET:

The initial project budget is approximately \$1M, funded through a grant provided by the USDA. Upon successful passage of the November bond, another \$2M to \$3M will be allocated to expand the work scope, which will be balanced with the desired work outlined in the larger bond program.

DESIGN-BUILD GMP:

While the District is not requesting a GMP from potential proposers at this time, contracts will eventually be based on same. For purposes of the proposal responses, the District would like to better understand each proposer's fee structure. To this end, the following is being requested:

- For phase I scope of work:
 - A fee range for design services (expressed as a % of the cost of work). Include all disciplines that will be required to complete the work.
 - A fee range for general conditions along with a list of what is included in same (expressed as a % of the cost of work)
 - A fee range for contractor overhead and profit (OHP) (expressed as a % of the cost of work)
 - A % fee for contractor mark-up for changes to the work
- For phase II scope of work (including Hemlock Elementary/ECC addition/improvements as well as all approved bond scope):
 - A fee range for design services (expressed as a % of the cost of work). Include all disciplines that will be required to complete the work.
 - A fee range for general conditions along with a list of what is included in same (expressed as a % of the cost of work)
 - A fee range for contractor overhead and profit (OHP) (expressed as a % of the cost of work)
 - A % fee for contractor mark-up for changes to the work

As the chosen Design-Build team develops project costs and finalizes the project's fixed-fee GMP, **it is expected that they will reflect fees in the percentage ranges noted above** or as negotiated with the District.

NOTE that a GMP for phase I will be established first. Upon successful passage of the bond, the chosen Design-Build team will establish a second GMP for the additional scope of the Hemlock Elementary/Early Childhood Center work. One or more GMPs will be established for the full bond scope as well and may be delivered in multiple bid packages/phases. This will be determined by the team upon voter approval in November.

It is also required that the chosen Design-Builder will competitively bid all trade categories for all work that will be completed on campus in order to meet public bidding requirements and assure that the District is getting the best pricing for each.

The District intends to enter into a contract with the chosen Design-Builder immediately upon the start of work. A fee for design and pre-construction services will be negotiated at the outset and reflected in the initial Agreement. Once the GMP is established after the design and bidding phases, the Agreement will be amended to reflect the final scope and agreed-upon GMP.

SECTION II: PRELIMINARY SCHEDULE

ANTICIPATED PROPOSAL TIMELINE:

- RFP Issued: June 17
- Mandatory Pre-Proposal Meeting: June 30 at 10:30 am EST
- Optional on-site walk-through of phase I work scope: June 30, following the pre-proposal meeting
- Deadline to submit clarifying questions: July 6 at 12:00 pm EST
 - Send questions to Denise Dowdell, Director of Business Operations and Human Resources, dowdell@hemlockps.com
- Responses to questions to be posted: July 7 by end of day
- Proposal Due Date: July 15 at 12:00 pm EST
- Notification of Interviews: July 20
- Interviews: July 28 between 8:00 am and 5:00 pm EST
- Final Decision by Selection Committee: July 31
- Board Meeting for Design-Builder Selection Approval: August 12

The District plans to make a recommendation to the Board of Education at the August regular meeting and will engage the chosen Design-Build team by the end of that week.

MANDATORY PRE-PROPOSAL MEETING / OPTIONAL SITE WALK-THROUGH:

A mandatory pre-proposal meeting will be held on Tuesday, June 30 at 10:30 am EST in the PW Fieldhouse, located at 1029 N Hemlock Rd., Hemlock, MI 48626. This meeting will be both virtual and in person. **Any proposer wishing to bid on the project must be in attendance, either online or in person.** There will be a brief presentation by the Ownership team, and an opportunity for questions during this time.

An optional site walk-through will be conducted directly after the pre-proposal meeting for those teams that wish to see the elementary school in person and review the scope with the Ownership team. Parking will be available in the parking lot east of Hemlock Elementary School/Early Childhood Center. Photos will be allowed.

Responses to questions received at the pre-proposal meeting and walk-through will be formally answered via addendum and will be issued to all firms that participate in the former by the date noted in the timeline above.

INTERVIEW:

The District may invite one or more firms for an interview. Interviews will take place between 8:00 am and 5:00 pm EST on the date indicated in the timeline above. Please plan to include all team members that will be assigned to the project.

ANTICIPATED PROJECT TIMELINE:

Work on Phase I is expected to begin immediately upon Board approval. The following target dates have been established:

- Kick off meeting with entire team: week of August 24, 2026
- Design and Bidding Phases: August 2026 to Spring 2027
- Construction Begins: Spring 2027
- Substantial Completion: Summer 2028
- Open Fall 2028 for 2028-2029 school year

SECTION III: SCOPE OF SERVICES

Hemlock Public School District is looking to contract with a qualified firm to provide Design-Build services throughout all phases of planning, design, construction and closeout services of the project.

While not all services will be required for Phase I, proposers should be able to develop a full team to address all potential aspects of the design work for Phase II, including architecture, interior design, structural, M/E/P/FP, civil and landscape services, technology, security and furniture. A preliminary scoping document is included herein as Appendix 'B'. Please address your ability to provide these services in-house or with trusted consultants, for a full-service approach to the potential work scope.

It is anticipated that a modified version of the AIA A141-2024 *Standard Form of Agreement Between Owner and Design-Builder* will be utilized for both phases of the project. The 2014 version of this contract has been approved by the District's legal counsel as well as the USDA for use on previous projects on campus. A copy of this draft document is included as Appendix 'C'. The District's attorney is currently working with the USDA on the newer version of the contract, which will go into effect on August 1, 2026. This will be shared with proposers if the review process is completed ahead of the last addendum date.

PHASE 1 – HEMLOCK ELEMENTARY/EARLY CHILDHOOD CENTER:

It is expected that the selected Design-Builder will provide a single point of responsibility for both the design and construction of the project through all of the typical phases of both. Work scope will include, but is not limited to the following:

Design

Work with the Ownership team to establish project goals, beginning with programming and conceptual design, preparation of drawings and specifications, coordination with consultants, regulatory agencies, and stakeholders. Provide continued monitoring of the design process to assure alignment with scope, schedule and budget objectives.

Schedule & Budget Planning

Collaborate with the District, Owner's Representative, legal counsel and financial advisors to develop and confirm the project schedule, assist in the development of a total project budget inclusive of construction and non-construction (soft) costs, provide cost estimates at each phase of design to assure continued alignment with same and ultimately, establish a construction GMP.

Bidding & Construction

Lead the bidding process, procure and manage subcontractors; obtain appropriate permits and approvals; provide construction oversight and coordinate field activities; manage project close out.

Project Oversight & Advisory Support

Lead and document design and construction meetings; provide regular updates to the District's Building Committee and Board; work with the District to coordinate any Owner-provided vendors during the design and construction process.

PHASE 2 – POST-BOND IMPLEMENTATION SERVICES:

Contingent upon successful bond passage, the District intends to continue engagement with the selected Design-Builder for full implementation services of the bond scope. Services will be similar to those outlined above for Phase I and will be contracted separately.

SECTION IV: PROPOSAL REQUIREMENTS

Please provide the following information, keeping simplicity top of mind as you prepare your response:

1. Cover letter – **1 page limit**
 - a. Please include name and address of submitting firm, along with phone and e-mail address for primary contact person.
 - b. Proposals should be signed by an official authorized to bind the Professional to its provisions.
2. Firm Background – **1 page limit**
3. Project Understanding – **1 page limit**
 - a. A summary of your understanding of the full scope of the project and how your team plans to address the main issues outlined.
4. Similar Project Experience (no more than 5 project examples) – **5 page limit**
 - a. Demonstrate relevant experience and qualifications for the proposed scope of work, including the Design-Build delivery model and K-12 experience.
 - b. Include references for each project.
 - c. Indicate whether any of the proposed team members were involved and if so, their role.
5. Brief List of Services – **2 page limit**
 - a. As part of this list, as noted in Section III above, address your team's ability to provide all of the anticipated consultant services for both Phase I and II.
6. Describe Project Approach – **1 page limit**
 - a. Provide a proposed work plan and timeline showing how your team will meet the target dates outlined above, based on a start date the week of August 24.
7. Team Organization Chart – **1 page limit**
8. Resumes of Key Personnel – **1 page maximum per person**
9. Fee Proposal – **no page limit**
 - a. Provide fee percentages as outlined in the **Design-Build GMP** paragraph in Section I above.
10. Acknowledgements – **1 page limit**
 - a. Please acknowledge any addenda in your response.
11. Please provide sample Certificate of Insurance showing current insurance coverages – **no page limit**
12. Required forms as outlined in Section VIII below.

SECTION V: SELECTION PROCESS

SELECTION CRITERIA:

Proposals will be evaluated based on **experience and qualifications** of the firm and personnel, **cost-effectiveness** of the proposal, **project approach/work plan** and **understanding of the project** and scope of work.

SECTION VI: INSTRUCTIONS

1. RFP CLARIFICATIONS

Any and all clarification questions pertaining to this RFP must be submitted in writing via dowdell@hemlockps.com and will be answered and posted so all bidders are notified. Bidders who do not comply may be disqualified from the proposing process. It is the bidder's responsibility to check for any changes, posted questions and answers, and/or addenda to this solicitation. Bidders are responsible for checking this website prior to proposal submission. *Failure to acknowledge all addenda may result in rejection of your proposal as being non-responsive.*

2. BUILDING CLOSURE

In the event the submittal of additional paper documentation is required to be delivered to Hemlock Public School District Administration Building, and the District, and/or district building, is closed due to unforeseen circumstances on the day proposals are due, proposals will be due at the same time on the next day that the District and/or district building is open.

3. COMMUNICATION WITH HEMLOCK PUBLIC SCHOOL DISTRICT STAFF

Any and all communication shall go through the Director of Business Operations and Human Resources. If a bidder works with Hemlock Public School District on other projects and must communicate with an individual that is involved with this RFP, the bidder must contact the Director of Business Operations and Human Resources for approval. Failure to comply with this may be grounds for disqualification.

4. EXCEPTIONS

Proposals must meet or exceed all requested services detailed herein. Any and all deviations must be clearly detailed otherwise, it will be considered that items offered are in strict compliance with the RFP, and the successful Design-Builder will be held responsible thereof.

5. WITHDRAWAL OF PROPOSALS

Any bidder may withdraw their proposal at any time prior to the opening of proposals. All proposals shall remain firm for acceptance for a period of 180 (one hundred eighty) days beyond the proposal opening. The awarded Design-Builder shall honor the proposal pricing for a period of one hundred eighty (180) days.

6. BIDDER QUESTIONS

Each bidder is required to respond to the questions where specified. If you would like to attach documentation to support your other answers, please do so. Responses should be concise and stand on their own. The quality of the response to the RFP will be viewed as an example of the bidder's capabilities.

7. PROPOSAL COSTS

All costs incurred in preparing the proposal, providing reasonably requested or required presentations, or in negotiating applicable contracts shall be the sole responsibility of the proposer. Hemlock Public School District shall not be responsible for any cost or expense the bidder incurs during the preparation or award of the proposal.

8. PROPOSAL ACCEPTANCE/REJECTION

The Board of Education reserves the right to accept any item in the proposal; to accept or reject any or all proposals; to waive any informality; or for reasons of establishing uniformity, to award the contract to other than the lowest bidder in the sole discretion of the district.

9. INTEREST

No member of Hemlock Public School District Board of Education, Hemlock, MI or any officer, employee or person whose salary is payable in whole or in part from the treasury of said Board of Education is directly or indirectly interested in this proposal or in the supplies, materials, equipment, work, services or any portion of the profits thereof to which it relates.

10. GIFTS, GRATUITIES OR KICKBACKS

Acceptance and the offering of gifts, gratuities or kickbacks from bidders or the Design-Builder to District employees and their family members or the members of the Board of Education are prohibited.

11. VERBAL REPRESENTATIONS

Proposals must contain in writing all the terms and conditions of the offer being made. Verbal representations made before or after proposals are submitted will not be considered unless they are made in answer to questions asked by the District or its representatives and are followed up in writing.

12. SOLE BIDDER

If only one proposal is received in response to the RFP, a detailed cost proposal, if requested by Hemlock Public School District, will be required of the single bidder. A cost/price analysis and evaluation and/or audit shall be performed of the cost proposal in order to determine if the price is fair and reasonable.

13. BIDDER INTERVIEWS AND DEMONSTRATIONS

Hemlock Public School District may, at its option, elect to conduct interviews and/or demonstrations with selected bidders, or request to visit the bidder's site for bidders that are under active consideration. Hemlock Public School District is not required to hold such presentations and is not obligated to provide all bidders with such an opportunity.

14. MISREPRESENTATIONS

If it is discovered, prior to an award, that a proposal contains false, misleading, or otherwise inaccurate information, the proposal will immediately be disqualified. If it is discovered, after a contract has been executed, that the Design-Builder had provided false, misleading, or otherwise inaccurate information, the contract may be terminated.

15. PROPRIETARY OR CONFIDENTIAL INFORMATION

Any proprietary or confidential material (financial statements, etc.) that was submitted by a bidder and is clearly marked as such will be returned upon request. Marking the entire proposal as confidential will not be accepted or honored. Remaining non-confidential material in the proposal, including proposed costs and compensation, will be maintained for the official files and will be subject to the Freedom of Information Act, MCL 15.231 et. seq.

16. NOTIFICATION OF AWARD

Upon approval by the Board of Education, Hemlock Public School District will notify awarded bidder.

17. RELEASE

Each proposer submitting its proposal releases the District from any and all claims arising out of, and related to, the RFP process and selection of the Design-Builder.

SECTION VII: GENERAL TERMS & CONDITIONS

1. CONTRACT

The contract will be in the form attached as Attachment B (the "Contract"), except that the District may elect in its sole discretion to further negotiate the terms of same with bidder. The bidder shall be deemed to agree with the attached document in its entirety, except and to the extent the bidder specifically objects in writing to any provision therein and attaches the objection(s) as a separate document to its response to this RFP, along with a proposed alternative. The absence of any such written objection shall constitute an agreement to all proposed Contract terms. Notwithstanding anything herein to the contrary, the District shall have the ability, in its sole discretion, to negotiate any term of the Contract. The award of the Contract shall be contingent upon the successful negotiation of any such issues identified by the District.

2. GRANT/BOND PROGRAM

All proposers are placed on notice that the scope of the USDA grant project and 2026 bond and may be revised, expanded or reduced based on voter-approval, market conditions, received bids, value engineering, schedule changes, and other similar variables. In the event that the 2026 bond program is not approved by voters, the District may no longer have a need for Design-Builder services. Accordingly, the District reserves the right to rescind this RFP, cancel any award, and terminate any Contract entered into with a proposer in the event this occurs.

3. CONFIDENTIALITY

The proposers must ensure that suitable measures will be taken to assure the confidentiality of Hemlock Public School District and its member schools' data.

4. FREEDOM OF INFORMATION ACT

The proposals and supporting materials become the property of Hemlock Public School District and are subject to public access according to the Freedom of Information Act, MCL 15.231 et. Seq.

5. NEWS RELEASES

Proposers will at no time make any news or advertising releases pertaining to the proposal document for any purpose without the prior approval of, and in coordination with, Hemlock Public School District.

6. SMOKING/ALCOHOL ON SCHOOL PREMISES

Smoking, the use of tobacco products or alcohol shall not be permitted on the school property at any time.

7. INSURANCE REQUIREMENTS TO BE MET BY THE SUCCESSFUL DESIGN-BUILDER

Design-Builder agrees, at its sole cost and expense, to purchase, prior to the commencement of services, and maintain the following insurance coverages in the minimum amounts indicated for the entire duration of the contract. All coverage shall be with insurance carriers licensed and admitted to do business in Michigan and acceptable to Hemlock Public School District.

- a. Commercial General Liability Insurance with limits of three million dollars (\$3,000,000) aggregate and not less than one million dollars (\$1,000,000) per occurrence for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage;
- b. Professional Liability Insurance (Errors & Omissions) of one million dollars (\$1,000,000) each occurrence;
- c. Workers' Compensation including Employer's Liability Coverage of one hundred thousand dollars (\$100,000) per occurrence for all employees engaged in services or operations under the Contract in accordance with state law;
- d. Automobile Liability with limits of one million dollars (\$1,000,000) each occurrence combined single

limit of liability for bodily injury, death, and property damage, including owned and non-owned automobile coverages, as applicable.

The required coverage as described above shall include an endorsement stating the following: "It is understood and agreed that thirty (30) days advance Notice of Cancellation, Non-Renewal, Reduction and/or Material change shall be sent to: Director of Business Operations and Human Resources, Hemlock Public School District, PO Box 260, 1095 N Hemlock Rd., Hemlock, MI 48626. If such insurance is not in force, Hemlock Public School District may, at its option, terminate and cancel the contract.

8. BACKGROUND CHECKS

The Design-Builder, and any team members who will regularly and continuously work at the District, must present themselves for fingerprinting upon award of the Contract so that Hemlock Public School District is able to request from the Criminal Records Division of the Department of State Police (1) a criminal history check and (2) a criminal records check through the Federal Bureau of Investigation and receive from the Department of State Police reports concerning the same. Neither the Design-Builder nor sub-contractor thereof of any degree shall assign any individual, and Hemlock Public School District shall not allow any individual, to regularly and continuously work under contract in any of its schools or in the schools of a constituent district that is being served by the Design-Builder pursuant to this Agreement if the reports on an individual's criminal history or criminal records check have not been received or if those checks would disclose or do disclose that individual has been convicted of a "listed offense" as that term is defined in Section 2 of the Sex Offenders Registration Act, 1994 PA 295, as amended, or which disclose that individual has been convicted of a felony other than a "listed offense" unless the Superintendent and the Board of Hemlock Public School District each specifically approve of the work assignment in writing.

Any personnel of the Design-Builder or of the sub-contractors thereof of any degree that have been charged with any of the referenced crimes referenced in 2006 PA 680 shall immediately report that circumstance to Hemlock Public School District Superintendent and shall not be permitted to work in any of the District's schools or schools of the constituent districts served pursuant to the Contract during the pendency of the prosecution associated with such charge(s). Hemlock Public School District reserves the right to refuse the Design-Builder's assignment of any individual, agent or employee of the Design-Builder or subcontracted personnel of any degree to render services under the Contract where the criminal history of that individual (including any pending charges) indicate, in Hemlock Public School District's judgment, unfitness to perform services under the Contract. Violation of the above by the Design-Builder or a sub-contractor thereof shall be a basis for immediate termination of the Contract. The Design-Builder shall require language similar to the above in all of its agreements and/or contracts with its consultants, sub-contractors, suppliers and materialmen of any degree.

9. IRAN ECONOMIC SANCTIONS ACT

Public Act 517 of 2012, commonly known as the "Iran Economic Sanctions Act" (the "Act"). The Act provides that beginning April 1, 2013; an "Iran Linked Business" is not eligible to submit a proposal on a request for proposal with a "public entity" (Hemlock Public School District). The Act also requires that a person that submits a proposal in response to Hemlock Public School District's request for proposal must certify to the public entity that it is not an Iran Linked Business. This requirement applies to all requests for proposals issued by Hemlock Public School District, and not just to construction projects.

The Act defines an Iran Linked Business as:

- a. A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran;
- b. A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.

If Hemlock Public School District determines, using credible information available to the public, that a person or entity has submitted a false certification, Hemlock Public School District must provide written

notice to the person or entity of its determination and of its intent not to enter into or renew the contract. The notice must include information on how to contest the determination. The notice must also specify that the individual or entity may become eligible for future contracts with the public entity if the activities that caused it to be an Iran Linked Business are ceased.

SECTION VIII: REQUIRED FORMS

Proposing firms shall complete the forms on the following pages:

- Notarized Familial Disclosure Statement
- Iran Economic Sanctions

NOTARIZED FAMILIAL DISCLOSURE STATEMENT

(Return completed and notarized form with bid)

Pursuant to MCL 380.1267, a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of Hemlock Public School District Board or Hemlock Public School District Superintendent shall be accompanied with the bid. Bids without this disclosure statement will not be accepted. The members of Hemlock Public School District Board are: **Katherine Ellison, Matt Wesener, Jamie Rivette, David Messing, Lindsay Kerry, Kaleigh Berent** and **Kimberly Hoeppner**. Hemlock Public School District Superintendent is **Don Killingbeck**.

The following are the familial relationship(s):

<u>Owner/Employee Name</u>	<u>Related to:</u>	<u>Relationship</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Attach additional pages if necessary to disclose all familial relationships.

☐ There is no familial relationship that exists between the owner or any employee of the bidder and any member of Hemlock Public School District Board, or Hemlock Public School District Superintendent.

The undersigned, the owner or authorized representative of bidder (insert name) _____ does hereby represent and warrant that the disclosure statements herein contained are true.

Print Name

Signature of Bidder

Representative Title

STATE OF MICHIGAN

COUNTY OF _____

The foregoing instrument was acknowledged before me on the _____ day of _____, 20____, by _____.

Notary Public-Signature

Notary Public-Printed Name

My commission expires: ____/____/____ Acting in the
County of: _____

IRAN ECONOMIC SANCTIONS

CERTIFICATION OF COMPLIANCE - IRAN ECONOMIC SANCTIONS ACT Michigan Public Act No. 517 of 2012
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The undersigned, the owner or authorized officer of the below-named Design-Builder (the "Design-Builder"), pursuant to the compliance certification requirement provided in the Hemlock Public School District (the "School District") Invitation For Proposal, hereby certifies, represents and warrants that the Design-Builder (including its officers, directors and employees) is not an "Iran linked business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event the Design-Builder is awarded a contract as a result of the aforementioned RFP, the Design-Builder will not become an "Iran linked business" at any time during the course of performing any services under the contract.

The Design-Builder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the School District's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to proposal on an Invitation for Proposal for three (3) years from the date it is determined that the person has submitted the false certification.

Name of Company

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Date

SECTION IX: APPENDICES

Appendix A: Conceptual Hemlock Elementary School/ECC Work Scope

Appendix B: Bond Scoping Summary

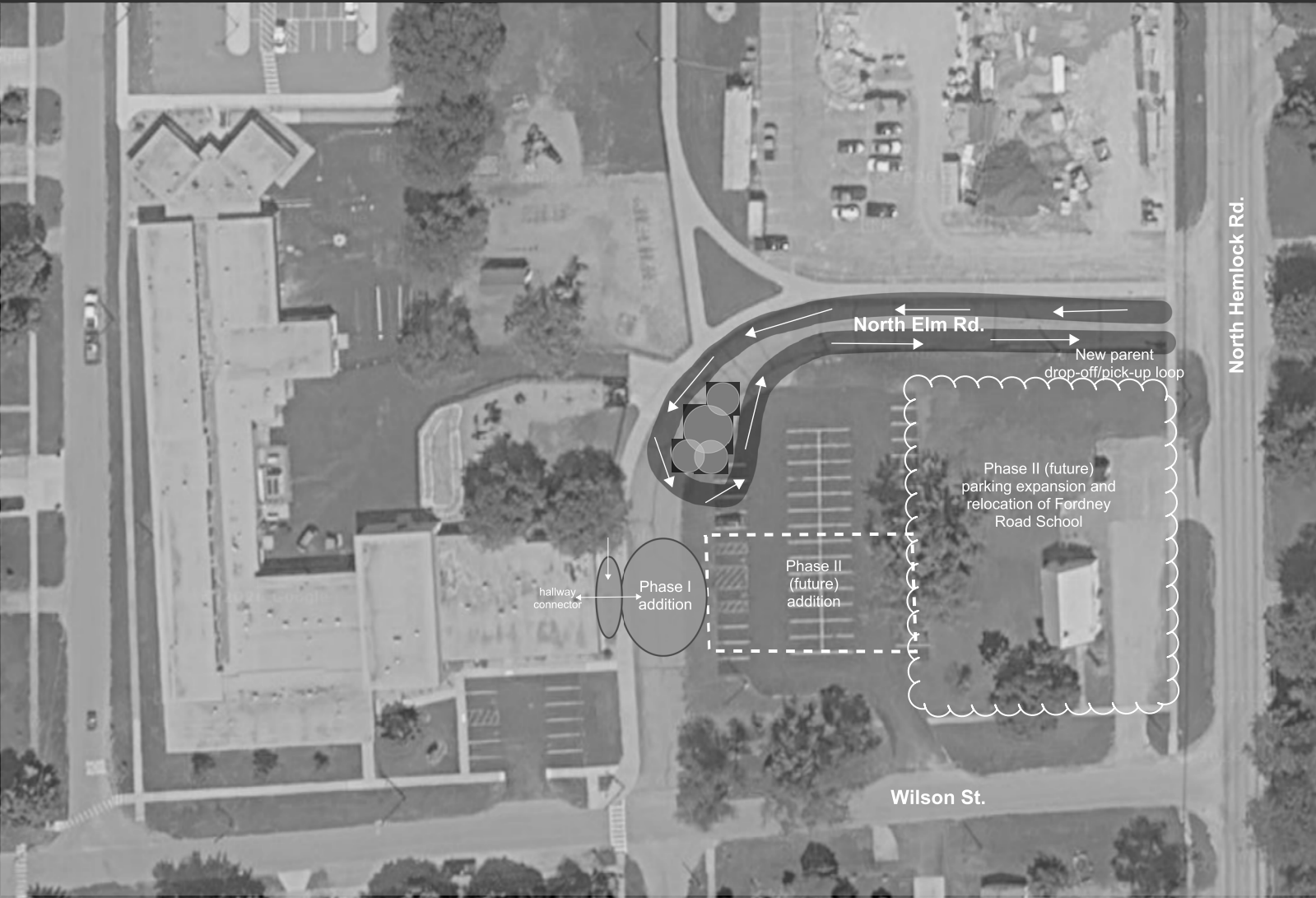
Appendix C: Draft AIA A141-2014

Appendix D: Hemlock Elementary School/ECC Floor Plan and Site Survey



Approximate area
designated for relocated
Fordney Road School
(Phase II)

-- page 2



**HEMLOCK ELEMENTARY SCHOOL / EARLY CHILDHOOD CENTER
CONCEPTUAL SITE PLAN**

Phase I (USDA grant):
~3,000 s.f. addition to southeast side of Hemlock Elementary School/Early Childhood Center + site work to augment the existing entry drive to create new parent pick-up and drop-off loop.

Phase II (future bond allocation):
Further addition (anticipated 9,000 s.f.) to southeast side of Hemlock Elementary School/Early Childhood Center + site work to replace parking spaces lost with addition. To maximize the available space for parking, RELOCATE the Fordney Road School to a site south of the administration building.

Proposed Future Capital Priorities (including but not limited to the following)

Hemlock Public School District

Building on progress. Planning for what is next.

A. Hemlock Elementary Expansion | Phase I

Expand and renovate the southeast wing of Hemlock Elementary to the east as **Phase I**, utilizing approximately **\$1 million in United States Department of Agriculture (USDA) funding**. The project would add approximately **3,000 square feet** and include:

- Secure main corridor connection
- Parent drop-off and pick-up loop with bus/car turnaround
- Office and student support space
- Two to three classrooms with attached restrooms

A+ Alternative | Pending Tax-Neutral Bond Initiative

Pending community support through a future tax-neutral bond initiative, expand an additional **9,000 square feet** to include:

- Additional classrooms
- Student and staff restrooms
- Office and intervention spaces
- Flexible learning environments

This alternative would also include relocating the historic **Fordney Road School** to the area adjacent to the soccer parking lot across from the administration office, adding a basement, outdoor learning space, sidewalks, and site improvements.

B. K.C. Ling Elementary Expansion

Expand the east side of **K.C. Ling Elementary**, turning south and architecturally aligning with the recent gymnasium addition. Potential components include:

- Student and public restrooms
- Four or more office/support spaces
- Open, flexible multipurpose learning area for lunch space for approximately 65 students
- Six or more additional classrooms

An alternative would evaluate reconfiguring the current cafeteria and other spaces to maximize efficiency.

C. Campus Outdoor Learning and Recreation Corridor

Reimagine the shared outdoor space between K.C. Ling and the middle school to create a connected, student-centered activity corridor, including:

- Enhanced outdoor gathering and learning spaces
- New basketball and pickleball courts
- Improved soccer field amenities
- Renovated kickball/Little League field
- Safe pedestrian walkways connecting both campuses

D. Parking, Traffic Flow, and Site Infrastructure

Continue improving district-wide infrastructure through:

- Expanded parking near soccer, baseball, and softball facilities
- Creative infill parking opportunities across campus
- Internal and external sidewalk improvements
- Enhanced traffic flow, lighting, and accessibility upgrades

E. Safety and Security | Priority One

Continue investing in district-wide safety and security improvements, including:

- Secure entries and access control
- Camera and monitoring systems
- Emergency communication systems
- Site visibility and traffic safety enhancements

F. Technology, Transportation, and Furnishings

Continue district investment in:

- Classroom and instructional technology
- Fleet modernization, including buses and service vehicles
- Student and staff furnishings
- Flexible learning environments

DRAFT AIA® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

« Hemlock Public School District »
« 733 N. Hemlock Road, Suite 100 »
« Hemlock, Michigan 48626 »

and the Design-Builder:
(Name, legal status, address and other information)

« »
« »
« »

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

« Hemlock Childcare Facility Project as described in Exhibit C in accordance with the Owner's fixed budget, the approved plans and specifications, and as otherwise approved by the Owner. »
« »
« »

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

« See the Design Builder's Proposal dated _____ (Exhibit C). »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« See Exhibit C. »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« See Exhibit C. »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« To be determined »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

« To be determined »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« See Exhibit C. »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« To be determined »

.2 Submission of Design-Builder Proposal:

« To be determined »

.3 ~~Phased completion dates~~ Construction Start date:

« To be determined. »

.4 Substantial Completion date:

« To be determined. »

.5 Other milestone dates:

« To be determined »

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

« To be provided by Design-Builder »

.2 Consultants

« To be determined »

.23 Contractors

« To be selected in accordance with applicable laws, including competitive bidding required by MCL 380.1267 and MCL 380.1274. For all Contractors and every category of Work, the Design-Builder will implement, coordinate, and manage a competitive bidding process in accordance with MCL 380.1267 and MCL 380.1274 on behalf of the Owner. The Owner will award competitively bid contracts in accordance with applicable law and, immediately after award, assign such contracts to the Design-Builder. »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« To be determined »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict in writing.

§ 1.1.11 If there is a substantial change in the Owner's Criteria, the Owner and the Design-Builder ~~may~~ shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they may ~~shall endeavor to establish~~ necessary protocols governing such transmissions. ~~Unless otherwise agreed, the parties will use AIA Document E203™ 2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

« Superintendent »
« Hemlock Public School District »
« 733 N. Hemlock Road, Suite 100 »
« Hemlock, Michigan 48626 »
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

« State of Michigan, any others deemed advisable by the Owner's Board of Education, and any others required by law. »

§ 1.2.3 The ~~Owner-Design-Builder~~ will retain any necessary ~~the following~~ consultants and separate contractors to timely and satisfactorily complete the Project, including:

(List discipline, scope of work, and, if known, identify by name and address.)

<< >>

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

<< _____ >>
<< _____ >>
<< _____ >>
<< >>

§ 1.2.5 ~~Neither the Owner's nor the~~The Design-Builder shall not change its's representative shall be changed without ten days' the Owner's prior written consent~~notice to the other party~~ unless the Design-Builder's representative is unavailable due to death, illness, injury, retirement, or termination. In the event the Design-Builder's representative is unavailable for the aforementioned reasons, the Design-Builder shall propose an alternative representative, subject to the Owner's ability to reject the proposed representative.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

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

- [☐] Arbitration pursuant to Section 14.4
- [☒] Litigation in a court of competent jurisdiction
- [☐] Other: (Specify)
- << >>

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed specifically incorporated by reference in this Agreement; the Owner's Criteria, including changes to the Owner's Criteria proposed by the Design-Builder, if any, that are accepted by the Owner; the Owner's request for proposals to procure the Design-Builder; Owner-accepted portions of the Bid; the Construction Documents prepared by the Design-Builder; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. The parties expressly acknowledge and agree that the Scope of Work and Specifications will be reviewed and refined periodically and as necessary throughout the Project to add specificity thereto and as necessary to satisfy plan review requirements of the State of Michigan. Any such additions, clarifications, and refinements must be approved by the parties in writing but are not necessarily Modifications. If there should be a conflict between two or more of the Design-Build Documents, the following order of interpretation shall apply.

- .1 Where requirements specifically set forth in the Agreement are in conflict with other Design-Build Documents, the Agreement shall govern.
- .2 In all other instances, the conflict shall be resolved by complying with the provision that is most favorable to the Owner, as determined in the Owner's sole discretion.
- .3 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Design-Build Documents, the Design-Builder shall be responsible for furnishing such material or equipment and deciding which Subcontractor(s) shall furnish the same.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents

shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder and all work incidental or reasonably inferable that is necessary to produce the results intended by the Design-Build Documents. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture or professional engineering, as the case may be, in the applicable jurisdiction. The term “Architect,” whether singular or plural, includes all persons or entities providing design services for the Design-Builder, including, without limitation, professional architects, professional engineers, or other design consultants. The Architect is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder is solely responsible to the Owner for the actions, inactions, and services of the Architect for this Project.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The Design-Builder is solely responsible to the Owner for the actions, inactions, and services of the Contractor for this Project.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential-” or that is protected under law, such as the Family Educational Rights and Privacy Act (FERPA).

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for satisfactory performance of the Work after execution of the Design-Build Amendment, in accordance with the as identified in Article A.1 of the Design-Build Amendment and which shall not exceed the Owner’s budget as identified in Section 1.1.6.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

« The total compensation to the Design-Builder is a guaranteed maximum price of _____ Dollars (\$ _____), payable in accordance with Section 2.1.4.2. See also Exhibit C. »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« Design-builder shall be responsible for all payments to the Design-Builder’s Architect, Consultants, and Contractors. In no event shall the Design-Builder charge the Owner for costs or fees incurred by, or payable to, the Design-Builder’s Architect, Consultants, and/or Contractors unless such cost or fee is identified and included in the Contract Sum. »

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative fee of « zero » percent (« 0 » %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s invoice. Undisputed Aamounts 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 Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

« Five percent (5%) per annum. See MCL 438.31. » % « zero »

§ 2.1.4.2 Payments to the Design-Builder by the Owner shall be made in proportion to the Work actually performed. The Design-Builder expects to submit an application for payment monthly beginning with the commencement of work. The last application for payment is expected to only include final retainage. Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with ~~any~~ all applicable licensing, review, and reporting requirements in the jurisdiction where the Project is located. See, e.g., MCL 339.2011, MCL 380.1, et seq., MCL 388.851, et seq.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, ~~Owner policies, or~~ and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction, including any extra costs incurred by the Owner as a result. The Design-Builder shall comply with, and ensure that its subcontractors comply with, the Michigan Prevailing Wage Act, MCL 408.1101, et seq. or the federal Davis-Bacon Prevailing Wage Act (collectively, the "Prevailing Wage Laws"), if applicable to this Project. The Design-Builder shall indemnify and hold the Owner harmless from any claim, damage, loss, or expense incurred by the Owner, including but not limited to actual attorneys' fees, in any way related to failure of Design-Builder or its subcontractors to comply with the Prevailing Wage Laws.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder ~~shall~~ may execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of all of the Design-Builder's agents and contractors and subcontractors, including, but not limited to Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings, at least monthly, with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The ~~Owner parties acknowledge understands and agrees that the services of the Design-Builder's Architect, Contractors, and the Design-Builder's other Consultants are performed on this Project in the sole interest of, and for the ultimate exclusive benefit of the Owner, the Design-Builder.~~ The Design-Builder shall ensure that the Owner is a third-party beneficiary of all agreements between the

Design-Builder and its Architects, Contractors, and other Consultants. Except for the Owner, no third-party beneficiaries are intended or created by this Agreement.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project. The Design-Builder shall have the primary responsibility to complete the required documents and ensure that they are properly filed on behalf of the Owner.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated 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 outstanding Submittals;
- .4 Responses to requests for information ~~to be provided by the Owner;~~
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date and all other elements to complete the Project, including, ~~but not limited to,~~ the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; ~~and~~
- .12 Additional information as agreed to by the Owner and Design-Builder;
- .13 Any revisions to the Design-Build Documents that the Design-Builder believes are necessary; and
- .14 Any Work that does not conform to the requirements of the Design-Build Documents or the Owner's Criteria.

§ 3.1.8.2 ~~In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price,~~
‡The Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, or the Owner's Criteria, shall be revised at appropriate intervals as required by the conditions of the Work and Project, but not less than bi-weekly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. In no event shall the Design-Builder's schedule be extended due to action or inaction of the Design-Builder, except with the prior written approval of the Owner, in the Owner's sole discretion.

§ 3.1.9.2 The Design-Builder shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to the Owner. Prior to implementation of the Work, the Design-Builder must develop and provide the Owner with an installation/implementation schedule for each site. The Owner shall review and approve the proposed schedule for implementation at each site, which approval shall not be unreasonably withheld.

§ 3.1.9.3 The Owner shall have the ability to defer installation of equipment or materials on a building by building basis, in the sole and complete discretion of the Owner, if the Owner deems such deference necessary so as not to disrupt the school environment. Because other activities of the Owner may be proceeding at the same time as Work covered in this Agreement, the Design-Builder shall cooperate with the Owner to ensure that all Work progresses in a manner that does not conflict with other activities.

§ 3.1.10 Certifications. ~~Upon the Owner's written request, the~~ The Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Owner's Criteria and Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall ~~be in its sole discretion not unreasonably be delayed or withheld.~~ The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has ~~approved-reviewed~~ the respective Submittal. It is acknowledged that the Owner is not a construction or mechanical equipment professional and is relying on the Design-Builder to both design and construct the Project. Accordingly, any review or approval by the Owner of the Design-Builder's Submittals shall be for the sole purpose of keeping the Owner informed about the Project as it progresses. The Design-Builder is solely responsible for the content of Submittals and acknowledges that such Submittals must be consistent with the Design-Build Documents and the Owner's Criteria.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents and the Owner's Criteria. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's ~~approval-review~~ of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work ~~or otherwise expressly permitted by the Design-Build Documents~~. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, by entitles other than the Design-Builder and its agents, consultants, contractors, and anyone else for whom the Design-Builder is responsible; alterations to the Work not executed by the Design-Builder or its agents, consultants, contractors, or anyone else for whom the Design-Builder is responsible, improper or insufficient maintenance not performed by the Design-Builder or its agents, consultants, contractors, or anyone else for whom the Design-Builder is responsible, improper operation not by the Design-Builder or its agents, consultants, contractors, or anyone else

for whom the Design-Builder is responsible, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranty under this Section 3.1.12 is separate and distinct from its obligation to correct defective Work under Section 11.2.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and its separate contractors and consultants harmless from loss on account thereof, including, but not limited to, attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe or should have understood that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to actual attorneys' fees, in any way related to arising out of or resulting from performance of the Work, or duties or obligations of the Design-Builder under this Agreement, or the failure of the Design-Builder or the Work to conform with the Design-Build Documents, but only to the extent caused in whole or in part by (1) the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts any of them they may be liable; or (2) the Design-Builder's breach of this Agreement. The Design-Builder shall further indemnify the Owner and its agents and employees from and against all amounts such parties may be required to pay in attorney fees in order to pursue enforcement of this provision against the Design-Builder or otherwise obtain indemnification from the Design-Builder provided under the terms of this section. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. To the fullest extent permitted by law, the Design-Builder shall indemnify the Owner and save the Owner harmless against all loss by fines, penalties, or corrective measures resulting from acts or omissions of the Design-Builder or its Subcontractors, agents, employees or assigns, with respect to the violation of safety requirements of the Design-Build Documents, including reasonable attorney fees. The Design-Builder shall not be obligated to indemnify the Owner for the Owner's own negligent acts and omissions. In such event the Design-Builder shall remain responsible to indemnify and hold harmless the Owner on a comparative basis to the fullest degree of its fault.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and but not its obligations, other than payment obligations, under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement ~~shall~~may be equitably adjusted as negotiated by the parties~~for increases in cost resulting from the suspension.~~

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. ~~If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.~~

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner, consistent with the Owner's Criteria and the Bid, on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and ~~factors related to~~ construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

« »

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not ~~be understood to~~ modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;

- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. The Owner's approval of the Preliminary Design shall be for general design concept purposes only and shall not be an approval of technical or design details.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
 - .2 A professional cost estimate for the Project, at least in accordance with MCL 339.2011; The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
 - .3 The proposed date the Design-Builder shall achieve Substantial Completion;
 - .4 An enumeration of any qualifications and exclusions, if applicable;
 - .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
 - .6 Outline specifications and drawings describing the construction materials and the Project in greater detail than in the Preliminary Design and sufficient for the Owner's approval.
- The date on which the Design-Builder's Proposal expires; and
Outline specifications and drawings describing the construction materials and the Project in greater detail than in the Preliminary Design and sufficient for the Owner's approval.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has (1) reviewed the Owner's Criteria, (2) visited the site and become familiar with local conditions under which the Work is to be completed; and (3) determined the Owner's Criteria can be implemented, and implemented within the Owner's fixed budget, except as stated in the Design Proposal.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required and their quality levels. The Construction Documents shall be consistent with the Design-Build Documents. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work. The Construction Documents shall also provide information for the use of those in the building trades and include documents required for regulatory agency/governmental approvals.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure

of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents. The Construction Documents are provided to the Owner for information only, and the Owner has no duty to review the Construction Documents. Further, any such review by the Owner shall not be for the purpose of discovering errors, omissions, inconsistencies or adequacy under any applicable laws, regulations, codes, or rules.

§ 5.2 Construction

§ 5.2.1 Commencement. ~~Except as permitted in Section 5.2.2~~ Unless otherwise agreed by the Owner and Design-Builder, construction shall not commence prior to Owner's acceptance ~~execution~~ of the Design-Build Amendment.

§ 5.2.2 ~~If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.~~

§ 5.2.3 The Design-Builder shall supervise and direct the Work, ~~and provide cost estimates, using the Design-Builder's best skill and attention and as otherwise necessary to comply with MCL 339.2011.~~ The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. The Design-Builder shall evaluate the jobsite safety and shall be fully and solely responsible for jobsite safety. If any means, methods, techniques, sequences or procedures deviate from the Design-Build Documents.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine if they comply with the requirements of the Design-Building Documents and that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. The Design-Builder shall pay all state and federal taxes levied on its business, income or property and shall make all contributions of social security and other wage or payroll taxes. The Design-Builder shall be solely responsible for such payments and shall indemnify and hold the Owner harmless from the same.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 ~~Unless otherwise provided in the Design-Build Documents, the~~ The Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work. The Design-Builder, Architect, Contractors, Subcontractors, and Consultants shall act in conformity with all applicable laws, ordinances, codes, rules, and regulations. The Design-Builder will require that the foregoing sentence be included in any agreement between the Design-Builder and an applicable party related to the Project.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14. The requirements of Section 2 of 1998 PA 57, as amended, are hereby incorporated into this Agreement.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors, Architects, Consultants, or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection. The Design-Builder must comply with all applicable laws, regulations, and rules when contracting with these entities. It is further understood that the Owner will have the ultimate authority to select and reject any Contractor(s) in accordance with applicable competitive bidding laws and policies.

§ 5.7.2 ~~If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier 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.~~ Omitted.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment Documents, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 Subject to Section 5.7.1, if the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required. The Owner's failure to reject a person or entity proposed by the Design-Builder to perform Work or any other services on behalf of the Design-Builder shall not be an approval of the proposed person or entity. Further, the Owner's approval of a person or entity proposed by the Design-Builder shall in no way relieve the Design-Builder of any of its responsibilities under this Agreement or the Design-Build Documents.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder

promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14. The Design-Builder shall be responsible for coordinating the Project with the separate contractors so as to complete the Project in accordance with the applicable Project Schedule.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Design-Builder” or “Contractor” in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 ~~The Owner shall provide for coordination of the activities of the Owner’s own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.~~

~~**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.~~

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder’s construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder’s Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder’s Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs, including the costs of redesign, corrective work, and attorneys’ fees, that are payable to a separate contractor because of the Design-Builder’s delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.~~

§ 5.14.4 The Design-Builder shall promptly remedy damage that the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 ~~Each The Owner and each separate contractor of the Design-Builder~~ shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to ~~the construction of the Owner or separate contractors in Section 5.10.~~

§ 5.15 Owner’s Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible, which allocation shall be made in the Owner’s sole discretion. The Owner’s allocation shall be conclusive.

§ 5.16 ASBESTOS-FREE PRODUCT INSTALLATION.

1. It is hereby understood and agreed that no product and/or material containing asbestos, including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any combination of these materials that have been chemically treated and/or altered shall be installed or introduced into the Work by the Design-Builder or its employees, agents, subcontractors or other

individuals or entities over whom the Design-Builder has control. The Design-Builder shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the Work will be asbestos-free.

2. The Design-Builder also shall be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products to be asbestos-free.

3. The Design-Builder shall complete and submit to the Owner a certification evidencing asbestos-free product installation prior to issuance of the final payment, in a form acceptable to the Owner.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. ~~The Owner may issue a Change Directive without agreement by the Design-Builder.~~

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation,~~ or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation,~~ and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation,~~ the adjustment shall be based on one of the following methods ~~in the Owner's discretion~~:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents ~~or subsequently agreed upon,~~ and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any,

provided in the Change Directive for determining the proposed adjustment in the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.~~

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and~~ Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation,~~ the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation,~~ shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation,~~ on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum ~~or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation~~ and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner in light of its status as a public body subject to the Open Meetings Act and other similar laws, ~~and in accordance with the Design-Builder's schedule agreed to by the Owner.~~ The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

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

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the

responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers. However, the Owner has no affirmative duty to verify the completeness or accuracy of Submittals and its review of submittals is not conducted for the purpose of discovering errors or omissions in the Submittals. The Owner's review and approval of Submittals shall, in no event, reduce the Design-Builder's obligations.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten~~three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies and any associated damages or fees incurred by the Owner by reason of the Design-Builder's failure to correct such deficiencies, including attorneys' fees incurred by the Owner to enforce this provision. Alternatively, in lieu of a Change Order, the Owner may withhold the correction costs identified in the immediately preceding sentence (including attorneys' fees) from any progress payments then or thereafter due the Design-Builder. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. This Section 7.9 allows the Owner to withhold payments for the non-performance of the Design-Builder irrespective of the termination procedure identified in Section 13.2.2, and the Owner may pursue either remedy, or both. Further,

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 Without altering the applicability and obligations of Section 8.1.3, the Design-Builder shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Owner may direct so as to promote the general progress of the entire construction. The Design-Builder shall not, by delay or otherwise, interfere with or hinder the Work of any other contractor. Any supplies, materials, tools and/or equipment that are to be furnished by the Design-Builder hereunder shall be furnished in sufficient time to enable the Design-Builder to perform and complete its Work within the time or times provided for herein. If the Design-Builder shall, through its negligence or failure, including the negligence or failure of its Contractors, Consultants, or suppliers, fail to furnish the necessary labor and/or supplies, materials, tools and/or equipment to meet construction needs in accordance with the established Schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the Work up to the proper schedule.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine in its reasonable discretion, provided the Design-Builder submits a written request for an extension not more than fourteen (14) days after the occurrence that gives rise to the delay. Failure of the Design-Builder to submit a timely request for an extension shall irrevocably waive the Design-Builder's right to such extension of time. If the Contract Time is subject to extension pursuant to this subsection, such extension shall be the exclusive remedy of the Design-Builder, and the Design-Builder shall not be entitled to recover damages from the Owner.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages by the Owner for the Design-Builder's delay by either party under other provisions of the Design-Build Documents.

§ 8.3 Delay Damage Claims

§ 8.3.1 If the Design-Builder shall fail to complete its Work on time, resulting in loss or damage to the Owner, whether or not liquidated damages are called for in the Design-Build Documents, the Owner shall be entitled to recover any damages caused by the Design-Builder's breach, including overhead, profit, extended general conditions, actual attorney fees, etc.

§ 8.3.2 In the event the Design-Builder is hindered in the commencement or progress of the Work, by the Work or the lack thereof of a person or entity that is not a contractor or affiliate of the Design-Builder, and claims damages as a direct and proximate consequence thereof (including, but not limited to, extended general conditions, overhead, profit, overtime, interest, supervision or other costs of profits whatsoever), then the Design-Builder shall not assert such claims against the Owner, and as to the Owner, the Design-Builder's claims of delay damages are hereby waived. The Design-Builder's sole and exclusive remedy regarding such claims for such delay damages shall be to

pursue such claims directly against any person or entity (other than the Owner) on the job site which caused the delay.

§ 8.3.3 For any delay claims raised against the Owner, the Design-Builder's sole and exclusive remedy is an extension of time to perform the Work not to exceed the time frame of any proven delay. Under no circumstances is the Design-Builder entitled to monetary delay damages from the Owner, and the Design-Builder shall make no claim against the Owner for delay damages.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 Irrespective of the issuance of a Certificate for Payment or the Owner's decision to withhold a Certificate for Payment, the Owner may withhold amounts from any progress payment as a setoff or recoupment for damages or losses incurred due to the Design-Builder's negligent acts or omissions or the Design-Builder's failure to perform under the requirements of the Design-Build Documents. Such withheld amounts shall not constitute retainage.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to

furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner, ~~except those arising from~~

- ~~.1 ——— liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
- ~~.2 ——— failure of the Work to comply with the requirements of the Design-Build Documents; or~~
- ~~.3 ——— terms of special warranties required by the Design-Build Documents.~~

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

§ 10.2.8 Injury or Damage to Person or Property. If the ~~Owner or~~ Design-Builder suffers injury or damage to person or property because of an act or omission of the ~~other Owner~~, or of others for whose acts ~~such party~~ the Owner is legally

responsible, written notice of the injury or damage, whether or not insured, shall be given to the ~~other party~~ Owner within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the ~~other party~~ Owner to investigate the matter. If the notice required under this Section 10.2.8 is not provided within 21 days after discovery, the Design-Builder irrevocably waives its ability to assert a claim arising out of such injury or damage against the Owner.

§ 10.2.10 If the Design-Builder or any Contractor, subcontractor, Architect, Consultant, supplier or other person or entity working at the direction of Design-Builder chooses to use any systems, equipment, facilities or services which have been incorporated into the Project as a permanent part thereof by any other, the Design-Builder shall assume full responsibility for physical/property damages caused to said systems, equipment, facilities or services and have any such damages repaired, so that in no case will the performance of the used systems, equipment, facilities or services be diminished from the specified criteria as a result of such use.

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. The Design-Builder expressly acknowledges that the Owner is a Michigan general powers school district who lacks the authority to indemnify contractors as a matter of law.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

~~§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.~~

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder ~~shall~~may execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time or the Contract Sum unless the condition was ~~solely~~ caused by the Owner ~~or a separate contractor~~ in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, and any related damages incurred by the Owner, including fees of consultants or legal counsel secured to enforce this provision, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found ~~not to be defective, non-performing, or not~~ in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.~~

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to ~~other~~ obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the Owner may seek a Claim for damages against the Design-Builder for its obligation-failure to comply with Section 3.1.12 or the Design-Build Documents may be sought to be enforced, n or to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, 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 Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. The Owner shall be permitted to retain copies including reproducible copies of the all Drawings, Specifications, and other Instruments of Service; whether created by the Design-Builder, Architect, or other Consultant; for information and reference in connection with the Owner's use and occupancy of the Project, modifications, renovation or additions to the Project, and to complete the Project in the event the Design-Builder, Architect, or other Consultant is not retained through completion.

§ 12.2 The Design-Builder 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.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner ~~an limited~~, irrevocable and non-exclusive license to access, use, and reproduce the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner ~~substantially performs its obligations, including has made all undisputed prompt payments of all sums when due, under the Design-Build Documents.~~ The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate. Any termination of this Agreement for any reason or under any condition shall in no way terminate or otherwise diminish the licenses described.

§ 12.3.1 ~~On behalf of and for the benefit of the Owner, The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause~~any reason, to obtain ~~an limited~~, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect,

Consultant or Contractor 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 alteration or use of the Instruments of Service.

~~§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Build, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Build, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, 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 alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.~~

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension ~~Prior to Execution of the Design-Build Amendment~~

~~§ 13.1.1 If the Owner fails to make undisputed payments to the Design-Build for Work actually and satisfactorily performed as provided in this Agreement prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Build's option, cause for suspension of performance of services under this Agreement. If the Design-Build elects to suspend the Work, the Design-Build shall give seven days' written notice to the Owner and give the Owner an opportunity to cure its nonpayment before suspending the Work. In the event of a suspension of the Work, the Design-Build shall have no liability to the Owner for delay or damage caused by the suspension of the Work but only to the extent the suspension or delay arises solely out of the Design-Build's suspension of services due to the Owner's nonpayment of undisputed amounts. Before resuming the Work, the Design-Build shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Build's Work. The Design-Build's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~

~~§ 13.1.2 If the Owner suspends the Project, the Design-Build shall be compensated for the Work satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Design-Build shall be compensated for expenses incurred in the interruption and resumption of the Design-Build's Work. The Design-Build's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~

~~§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative consecutive days for reasons other than the fault of the Design-Build, the Design-Build may terminate this Agreement by giving not less than seven days' written notice.~~

~~§ 13.1.4 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.~~

~~§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Build for the Owner's convenience and without cause.~~

~~§ 13.1.6 In the event of termination not the fault of the Design-Build, the Design-Build shall be compensated for Work satisfactorily performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Build is not otherwise compensated. In no event shall the Design-Build's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.~~

~~§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment~~

~~§ 13.2.1 Termination by the Design-Build for Cause~~

~~§ 13.2.1.1 The Design-Build may terminate the Contract as provided in Section 13.1.1 or if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Build, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Build, for any of the following reasons:~~

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; ;
- ~~.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or~~
- ~~.4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, ~~costs incurred by reason of such termination, and damages.~~

§ 13.2.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.~~

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder fails to substantially perform, including but not limited to instances where the Design-Builder:

- .1 fails to submit the Design Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 ~~repeatedly~~ refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents, fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Agreement, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors or becomes insolvent.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven-three days' written notice, terminate ~~employment of the Design-Builder's right to proceed with the Work~~ and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

In the event the Design-Builder's performance bond requires notice of an intent to declare a default of the Design-Builder and if such notice is provided by the Owner, such notice shall be adequate to satisfy the three-day written notice described above.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner in pursuing termination and completion of Work, including related legal fees and costs, and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

~~**§ 13.2.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent~~

- ~~.1 ——— that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or~~
- ~~.2 ——— that an equitable adjustment is made or denied under another provision of the Contract.~~

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work satisfactorily executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law the Michigan statute of limitations, MCL 600.5839, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Project delay shall not be a basis for a Claim for additional cost. Delay claims against the Owner may be remedied only through an extension of time per Section 8.3.3.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, additional written notice as provided herein shall be given in addition to the general requirements for making a Claim. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work due to the increase in the Contract Time sought. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

To the extent permitted by law, ~~The~~ Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder ~~initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement,~~ unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the ~~notice required under Section 14.1.3.1~~ Owner's assertion of the Claim. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: ~~(1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.~~

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial

decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may ~~file for request~~ mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party ~~file for request~~ mediation within 60 days of the initial decision. If such a demand is made ~~by the Owner and the party receiving the demand~~ Design-Builder fails to ~~file for agree to~~ mediation within the time required, then ~~both parties~~ the Design-Builder waives ~~their~~ its rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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. During the pendency of the mediation process, all limitations periods, whether statutory or contractual, shall be tolled.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim 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 the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 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 would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 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).

§ 14.4.4.2 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law ~~of the State of Michigan of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.~~

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution.

The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be made by electronic mail requesting confirmation of receipt with such confirmation actually sent.

§ 15.4 Rights and Remedies

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

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the ~~Owner or~~ Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the ~~transmitting party~~ Design-Builder is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental

entity. A party receiving Confidential Information may also disclose the Confidential 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 Confidential Information as set forth in this Contract. In the case of the Owner, which is a public body, the Owner may also disclose Confidential Information to the extent the Owner believes necessary, in its sole discretion, to comply with the Freedom of Information Act, the Open Meetings Act, or any other law the Owner believes requires its disclosure.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 The Design-Builder agrees that neither it nor its Subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder, as modified.
- .2 Attachment to AIA Document A141™–2014, as modified.
- .32 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed.
- .4 The Owner’s RFP for Collaborative Design-Build Services dated _____.
- .35 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
6. Design-Builder’s Proposal, Exhibit C, dated _____.
- .4 AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

- .6 Other:

« »

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

HEMLOCK PUBLIC SCHOOL DISTRICT

OWNER (Signature)

« Don Killingbeck » « Superintendent »

(Printed name and title)

DESIGN-BUILDER (Signature)

« » « »

(Printed name and title)

ATTACHMENT TO AIA DOCUMENT A141-2014, *Standard Form of Agreement Between Owner and Design/Builder*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement between Owner and Design/Builder*", AIA Document A141 - 2014 Edition. The provisions contained in this Attachment will supersede any conflicting provisions of the AIA Document. The term "Agency", as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

When the project is not subject to the Build America, Buy America Act the provisions in bold do not apply.

ARTICLE 1: General Provisions

Modify paragraph 1.1 by inserting the words "and is concurred with by the Agency" after "Owner's Criteria" in the first sentence.

Modify paragraph 1.1.7 by inserting the following sentences in subparagraph 1.1.7.4:

If the Work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, the Design/Builder shall pay to the Owner liquidated damages in the sum of One Hundred Dollars~~(\$100.00)~~ for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Design/Builder under the Contract or may be collected from the Design/Builder's surety.

Modify paragraph 1.1.11 by inserting the words ", the Agency," after "Owner" in the second sentence.

Add the following subparagraphs and clauses to paragraph 1.4:

1.4.16 Agency

The term "Agency", as used in this Attachment, shall mean the United States of America, acting through United States Department of Agriculture.

1.4.17 Independent Inspector

The term "Independent Inspector," as used in this Attachment, shall mean the Inspector independent from the Design/Builder hired by the Owner to represent the Owner's interests. The Agency requires a construction inspector independent of the Design/Builder.

1.4.17.1 The Independent Inspector shall be a representative of and shall advise and consult with the Owner during construction until final payment is due to the Design/Builder,

and at the Owner's direction during the period of correction of the Work described in the design/build documents. The Independent

Inspector shall furnish consultations necessary to identify construction defects and correct unforeseen conditions encountered during this period. The Independent Inspector shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

1.4.17.2 The Independent Inspector shall conduct an inspection prior to the issuance of the Acknowledgement of Substantial Completion and shall submit a written report to the Owner, Agency and the Design/Builder about Work to be completed prior to final acceptance. Such services shall be coordinated with the Agency. Prior to submitting the final Application for Payment, the Independent Inspector shall conduct an inspection, submit a Statement of Completion, and receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Design/Builder.

1.4.17.3 Visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Design/Builder and Agency. Visits to the site shall be in accordance with Agency requirements and procedures.

1.4.18 Build America, Buy America Act (BABAA) - Requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

1.4.18.1 Construction Materials - Those articles, materials, or supply - other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives - that are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.

1.4.18.2 Manufactured Product - Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.

1.4.18.3 Manufacturer's Certification - Documentation provided by a Manufacturer, certifying that the items provided by Manufacturer meet the domestic preference requirements of BABAA.

Modify subparagraph 2.1.4.1 by inserting the following in the appropriate space:

~~Interest at 1% per month or 12% per year for pay estimates outstanding for 60 days will be paid to the Design/Builder. Five percent (5%) per annum. See MCL 438.31.~~

ARTICLE 3: DESIGN/BUILDER

Add the following subparagraph to subparagraph 3.1.3:

3.1.3.3 The Design/Builder shall advise the Owner of required tests, inspections and reports, shall furnish coordination of such tests and inspections, and shall advise the Owner and Agency of the results of same. Copies of test results shall be furnished to the Owner, Owner's Independent Inspector and Agency, as appropriate.

Add the following sentence to subparagraph 3.1.4: "Any extra cost that may result from any such acts and omissions will be the responsibility of the Design/Builder."

Add the following sentence to paragraph 3.1.5: The Design/Builder shall conduct a Preconstruction Conference prior to the beginning of construction to familiarize all parties involved with the necessary work. This meeting shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate. The Agency 'Record of Preconstruction Conference' may be used to document the meeting.

Add the following subparagraph to subparagraph 3.1.7:

3.1.7.1 The Design/Builder shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

Add the following clauses to subparagraph 3.1.8.1:

3.1.8.1.13 The Design/Builder shall conduct on-site pay/progress meetings no less than once a month during the periods of active construction. These meetings shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate, to review and discuss the application for payment, work progress schedule, construction problems or disputes and other appropriate matters.

In subparagraph 3.1.11.3, add the words "and written concurrence by the Agency has been issued" after "Owner has approved the respective Submittal" and add the following sentence after the first sentence: Two (2) sets of submittals for the Agency are required.

ARTICLE 4: Work Prior to Execution of the Design-Build Amendment

Modify paragraph 4.4.1.2 by deleting "The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;". ~~Insert a period after method.~~ Add the following: "A professional cost estimate for the Project, at least in accordance with MCL 339.2011."

ARTICLE 5: Work Following Execution of the Design-Build Amendment

In subparagraph 5.3, add the following subparagraphs:

5.3.4 The Design/Builder shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in federally assisted construction projects for to whom the Owner has made reasonable objection. The Design/Builder shall not be required to contract with anyone to whom the Design/Builder has reasonable objection.

5.3.5 The Design/Builder shall comply with the Federal Requirement for Domestic Preference: Iron and steel products, Manufactured Products, and Construction Materials used in this project shall comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.

ARTICLE 6: CHANGES IN THE WORK

Insert the word "Agency," after the word "Owner" in its first occurrence in subparagraph 6.1.2.

Delete subparagraph 6.2 and substitute the following:

6.2 A change order is a written order to the Design/Builder utilizing Form RD 1924-7, "Contract Change Order," signed by the Owner, Independent Inspector, Design/Builder, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Design/Builder's signing of the change order indicates complete agreement therein.

Add the following sentence to the end of subparagraph 6.3.1: "A Construction Change Directive may be used only for a change in response to an emergency, as described in Paragraph 10.4."

Delete subparagraph 6.3.3.

Delete subparagraph 6.3.5.

Delete subparagraph 6.3.7.

ARTICLE 7: OWNER

Add the following sentence to the end Paragraph 7.1.1:

The Owner shall provide the Design/Builder with Agency standard Contract Document Guides.

ARTICLE 9: PAYMENT APPLICATIONS AND PROJECT COMPLETION

Add the words, "using AIA Document G-702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Application for Payment" in the first sentence of subparagraph 9.3.1.

Under subparagraph 9.3.1, add the following subparagraph:

9.3.1.3 The Design/Builder shall obtain Agency concurrence on all Applications of Payment before payment is made.

Add the following sentence to the end of paragraph 9.4: "Agency concurrence is required on all Certificates of Payment before payment is made."

Add the following subparagraphs to paragraph 9.6:

9.6.8 The amount retained shall be 10% of the value of Work until 50% of the Work has been completed or a withholding of equal or greater value, such as, 5% for the full duration of the project. If 10% is held, at 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding satisfactorily but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of Work completed. Alternate industry-standard retainage proposals may be considered by RD when:

.1 The retainage proposal is mandated by the State in which the project is located.

.2 The retainage proposal does not add risk to the applicant and the Agency.

9.6.9 No progress payments will be made that deplete the retainage, place in escrow any funds that are required for

retainage, or invest the retainage for the benefit of the Design/Builder.

Replace the word "seven" with the word "ten (10)" in the first sentence of subparagraph 9.7.

Add the words ", in collaboration with the Agency Architect or Engineer," after "prepare" in the first sentence of subparagraph 9.8.5.

Delete subparagraph 9.8.6 and substitute the following:

9.8.6 The certificate of substantial completion shall be submitted by the Design-Builder to the Owner and the Agency for written acceptance of responsibilities assigned to it in the certificate. When the Work has been substantially completed, except for the work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed.

Delete subparagraph 9.9.1 and substitute the following subparagraphs:

9.9.1 The Design/Builder agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

9.9.1.1 A Certificate of Substantial Completion shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Inspecting Architect, the Design/Builder is chargeable with unwarranted delay in completing the Work or the Contract requirements, the signature of the Design/Builder will not be required. The Certificate of Substantial Completion shall be accompanied by copies of Design/Builder's insurance policies, written endorsements of the Design/Builder's insurance carrier, and the surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.

9.9.1.2 Occupancy by the Owner shall not be construed by the Design/Builder as being an acceptance of that part of the Project to be occupied.

9.9.1.3 The Design/Builder shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

9.9.1.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims on behalf of the Owner or Design/Builder against each other.

9.9.1.5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to

occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

Add the following subparagraph to the beginning of subparagraph 9.9.2:

With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Design/Builder of the responsibility to maintain all insurance and bonds required of the Design/Builder under the Contract Documents until the Project is completed and accepted by the Owner.

Delete subparagraph 9.10.1 and substitute the following:

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Owner's Independent Inspector and Agency representative shall promptly make such inspection and, and when the Owner finds the Work acceptable under the Design/Build documents and fully performed, the Owner with Agency concurrence shall, subject to Section A.9.10.2, promptly make final payment to the Design/Builder.

Delete the second and third sentences of subparagraph 9.10.2.

~~ARTICLE 14: CLAIMS AND DISPUTE RESOLUTION~~

~~In subparagraph 14.4.1, delete "shall" and replace with "may" in the first sentence.~~

~~Delete subparagraph 14.4.1.1 and substitute the following subparagraphs:~~

~~14.4.1.1 The arbitration provisions in this subsection may be initiated by either party to this Contract by filing with the other party a written request for arbitration. The other party may accept or reject the request by filing a written answering statement with the requesting party within fourteen (14) calendar days of the receipt of such request. If the request is accepted the provisions of this section shall apply. If the request is rejected or an answering statement is not filed within the fourteen (14) day period, the provisions in this subsection will not apply.~~

~~14.4.1.2 Within fourteen (14) calendar days or any mutually agreeable time period thereafter, each party to this Contract will appoint one arbitrator. Within fourteen (14) calendar days or any mutually agreeable time period thereafter, the two arbitrators will select a third arbitrator. Failure to appoint an arbitrator within the mutually agreeable time periods will terminate further actions under this subsection.~~

~~14.4.1.3 The arbitrators will select a hearing location as close to the Owner's locale as possible.~~

Modify paragraph 15.2.1 by inserting the following at the end:

This Agreement will not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of this attachment to the Agreement. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for payment hereunder.

But in the event such financial assistance is provided, the Agency concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.

15.10 STATUTES

15.10.1 The Design/Builder and each subcontractor shall comply with the following statutes (and the regulations issued pursuant thereto, which are incorporated herein by reference):

15.10.2 The Design/Builder agrees to abide by the requirements of 2 CFR part 417 and under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation exceeds \$25,000, the Design/Builder shall complete the relevant certification form provided by the Owner.

15.10.3 If applicable, the Design/Builder shall comply with Section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (2 CFR part 418 and DR 2400-5). This Law pertains to restrictions on lobbying and applies to the recipients of Contracts and Subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Design/Builder must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding for this Contract. The certification and disclosure forms shall be provided by the Owner.

15.10.4 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

15.10.5 Clean Air Act (42 U.S.C. 7414), section 114, and the Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 CFR part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

15.10.5.1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities,

15.10.5.2 Certify that any facility to be utilized in the work by any nonexempt contractor or subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.

15.10.5.3 Include or cause to be included the above criteria and requirements of clauses A.13.3.5.1 and A.13.3.5.2 in every nonexempt Subcontract, and that the Contractor will take such actions as the Agency may direct as a means of enforcing such provisions.

15.10.6 Build America, Buy America Act

Domestic Preference Requirements for Federal Financial Assistance to Non-Federal Entities. Federal Financial Assistance to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA), under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 177-58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at USDA Buy America Waivers for Federal Financial Assistance | USDA.

15.10.6.1 This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's regulation (reference 2 CFR 200) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

15.10.6.2 The Design/Builder shall be responsible for:

- .1 Providing costs and revisions thereof that reflect compliance with BABAA requirements.
- .2 Determining and certifying that to the best of Provider's knowledge and belief all iron and steel products, manufactured products, and construction materials referenced in any technical analysis/report; the plans, specifications, and bidding documents; any bid addenda; and change orders comply with all federal requirements, including BABAA.

- .3 Providing only iron, steel, construction materials and manufactured products that meet BABAA requirements. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.
- .4 Including manufacturer's certification for BABAA requirements with all applicable submittals. If a specific manufacturer is used in the bidding, a statement that the manufacturer will comply with BABAA requirements must be included with the bid submission. Design/Builder shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.
- .5 Providing manufacturer's certification for BABAA requirements with any change order for any new construction materials or manufactured products required by the change.
- .6 Certifying by submitting an application for payment, based in whole or in part on furnishing construction materials or manufactured products; that such materials and products, to the Design/Builder's knowledge, are compliant with BABAA requirements.
- .7 Ensuring that the Architect / Engineer has been provided an approved manufacturer's certification or waiver prior to items being delivered to the project site.
- .8 Certifying upon completion that all work and materials are in compliance with BABAA requirements.

15.11 ENVIRONMENTAL REQUIREMENTS

15.11.1 Mitigation Measures - The Design/Builder shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

15.11.2 The Design/Builder, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

15.11.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology – Any excavation or other earth moving activity by the Design/Builder that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Design/Builder to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

15.12 Compliance with all Federal, State, and local requirements effective on the contract execution date will be the responsibility of the Design/Builder.

15.13 RECORDS

15.13.1 If the Contract is based on a negotiated Bid, the Owner, the United States Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Design/Builder which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Design/Builder shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

ARTICLE 16: Scope of the Agreement

Modify subparagraph 16.1.6 by inserting the following in the appropriate space:

Payment Bond
Performance Bond
Disclosure of Lobbying Activities (SF-LLL)
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

March 25, 2025

Exhibit B: INSURANCE AND BONDS

B.2.1 Add subparagraph B.2.1.1.6:

B.2.1.1.6 The Owner shall be named as co-insured on the liability insurance.

Add the following clauses to B.2.1.

B.2.1.11 The insurance required in subparagraph B.2.1 shall be written for not less than the following limits, or greater if required by law:

.1 Workers' Compensation:

- (a) State: Statutory
- (b) Applicable Federal Statutory
(E.g. Longshoremen's)
- (c) Employer's Liability: \$ _____ per Accident
\$ _____ Disease, Policy Limit
\$ _____ Disease, Each Employee

.2 Comprehensive or Commercial General Liability (Including Premises-Operations; Independent Design/Builders' Protective; Products and Completed Operations; Broad Form Property Damage):

- (a) Bodily Injury: \$ _____ Each Occurrence
\$ _____ Aggregate
- (b) Property Damage \$ _____ Each Occurrence
\$ _____ Aggregate
- (c) Products and Completed Operations to be maintained for years after final payment: \$ _____ Aggregate
- (d) Property Damaged Liability Insurance shall provide X, C and U coverage.
- (e) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

- (a) Bodily Injury \$ _____ Each Occurrence
\$ _____ Aggregate
- (b) Property Damage \$ _____ Each Occurrence
\$ _____ Aggregate

.4 Personal Injury, with Employment Exclusion deleted:
\$ _____ Aggregate

.5 Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Bodily Injury \$ _____ Each Person

(b) Property Damage \$ _____ Each Occurrence
 \$ _____ Each Occurrence

.6 If the General Liability Coverages are provided by a Commercial Liability policy, the:

- (a) General Aggregate shall be not less than \$ _____ and it shall apply, in total, to this Project only.
- (b) Fire Damage Limit shall be not less than \$ _____ on any one fire.
- (c) Medical Expense Limit shall be not less than \$ _____ on any one person

.7 Umbrella Excess Liability:

\$ _____ over primary insurance
 \$ _____ retention for self-insured hazards each occurrence.

.8 If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

Add the following subparagraphs to subparagraph B.2.2:

B.2.2.2 The Design/Builder shall furnish the Owner Bonds covering faithful performance of the Contract and payment of obligations arising thereunder with such bonds dated on or before the date of this agreement. The surety company executing the Bonds must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located. The Bonds (using the latest AIA forms) shall each be equal to the amount of the Contract Sum. The cost of these Bonds shall be included in the Contract Sum.

B.2.2.3 The Design/Builder shall require the attorney-in-fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current power of attorney.

B.2.2.4 If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State in which the Work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Design/Builder shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such Bond shall be paid by the Design/Builder. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

Delete the last sentence in subparagraph B.3.2.4.

Delete subparagraph B.3.2.5.

SIGNATURE BLOCK:

Delete the signature block of this Agreement and substitute the following signature block:

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design/Builder, one to the Owner and one to the Agency. Concurrence in the Contract by the Agency is required before the contract is effective.

OWNER:

ATTEST: _____

BY: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DESIGN/BUILDER:

ATTEST: _____

BY: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

OWNER'S ATTORNEY REVIEW:

I have examined this design/build contract and have received verification that the proper performance and payment bond(s) will be issued and executed thereof, and I am of the opinion that each of the aforesaid agreements are adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

By: _____

Print Name: _____

Date: _____

AGENCY CONCURRENCE:

Approved as lender or insurer of fund to defray the costs of this contract and without liability for any payments thereunder, the USDA Rural Development hereby concurs in the award of this contract.

By: _____

Title: _____

Print Name: _____

Date: _____

o0o

March 25, 2025

DRAFT AIA® Document A141® – 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the “Agreement”)
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

Hemlock Childcare Facility Project as described in Exhibit C in accordance with the Owner’s fixed budget, the approved plans and specifications, and as otherwise approved by the Owner.

THE OWNER:

(Name, legal status and address)

Hemlock Public School District
733 N. Hemlock Road, Suite 100
Hemlock, Michigan 48626

THE DESIGN-BUILDER:

(Name, legal status and address)

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[« »] Stipulated Sum, in accordance with Section A.1.2 below

[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[« X »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be « » (\$ « »), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

«—»

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

«—»

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« See Exhibit C. »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » (\$ « \$ »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

« See Exhibit C. »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.4.3.4 Unit Prices, if any: See Exhibit C.

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « first » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « fifteenth » day of the « following » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « forty-five » (« 45 ») days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract

Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~« »~~ percent (~~« »~~ %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~« »~~ percent (~~« »~~ %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through

the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~.1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~.2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.~~
- ~~.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~.3 Add the Design-Builder's Fee, less retainage of « ten » percent (« 10 » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.4 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;~~
- ~~.5 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.~~

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » (« ») days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

« See Exhibit C. »

Section

Title

Date

Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

« See Exhibit C. »

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
-------	------	-------

Other identifying information:

« »

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

« »

.2 Contingencies

« »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

« »

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site and performing Work.

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

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. All other labor costs only as provided for in the subcontracts approved by the Owner.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 With the Owner's prior written approval, Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. Said material procurement shall be subject to competitive bidding requirements of Michigan law and the Owner's written purchasing policies and shall be approved by the Owner prior to procurement.

§ A.5.1.3.2 The Costs and expenses of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, (that are not included within the costs of Section A.5.1.2) shall be billed to the Owner sold by the Design-Builder at the Design-Builder's cost and without

~~markup. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items and Not Otherwise Included in Section A.5.1.2.

§ A.5.1.4.1 Costs of pre-authorized transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value. At final completion, the Owner shall have the option of retaining items purchased for the Project under this Agreement.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 ~~To the extent related to field office activities, costs of~~ Costs of document reproductions, electronic ~~communications,~~ postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior written approval.

§ A.5.1.5 Miscellaneous Costs Not Otherwise Included in Section A.5.1.2.

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work that are not included within competitively bid subcontracts, and for which the Design-Builder is liable. The Design-Builder shall first discuss any such items subject to sales, use, or other similar taxes with the Owner prior to purchase, acknowledging the Owner's tax-exempt status and the potential for purchasing at a reduced cost. ~~Work and for which the Design-Builder is liable.~~

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 ~~Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.~~

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost ~~for causes other than because of the~~ Owner's negligent action or omission. ~~Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~

§ A.5.1.5.8 With the Owner's prior approval, ~~which shall not be unreasonably withheld,~~ legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, ~~or those at which the Design-Builder's services are at issue, that are,~~ reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior and express written approval, items purchased by the Design-Builder on the Owner's behalf for the Project. ~~expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.~~

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, excluding travel between the Project sites and the Design-Builder's office/personal residence.

§ A.5.1.5.11 Any costs within Section A.5.1 (that are not included within Section A.5.1.2.) shall be billed to the Owner by the Design-Builder at the Design-Builder's cost and without markup.

§ A.5.1.6 Other Costs and Emergencies and Not Otherwise Included in Section A.5.1.2.

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a ~~specific~~ responsibility of the Design-Builder or its subcontractors and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

- 1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- 2 Expenses of the Design-Builder's principal office and offices other than the site office;

- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a ~~specific~~ responsibility of the ~~this Agreement or any other Contract Document~~;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 All taxes, except for sales or use taxes described in Section § A.5.1.5.2, including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes. (All such taxes are the sole responsibility of the Design-Builder); and
- .9 Consultants to the Design-Builder not previously approved in writing by the Owner.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below unless in compliance with law and the Owner gives its prior written approval.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of ~~three~~ six (6) years after final payment, or for such longer period as may be required by law. The Design-Builder 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.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

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

HEMLOCK PUBLIC SCHOOL DISTRICT

OWNER *(Signature)*

« Don Killingbeck »« Superintendent »

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)

DRAFT AIA® Document A141® – 2014

Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Hemlock Childcare Facility Project as described in Exhibit C in accordance with the Owner's fixed budget, the approved plans and specifications, and as otherwise approved by the Owner.

THE OWNER:

(Name, legal status and address)

Hemlock Public School District
733 N. Hemlock Road, Suite 100
Hemlock, Michigan 48626

THE DESIGN-BUILDER:

(Name, legal status and address)

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « » day of « » in the year « ».

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

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance from the commencement of services related to the Project until either (i) if occurrence-based until the expiration of the period for correction of Work as set forth in

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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Section 11.2.2.1 of the Agreement, unless a ~~different longer~~ duration is stated below, or (ii) if claims-made, until seven (7) years following Substantial Completion of the Project, unless a longer duration is stated below: (If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.2.1.1 Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations maintained for the full term of the applicable statute of repose; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation with at least statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

« »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. Completed operations pollution coverage to be maintained for the full term of the applicable statute of repose.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. The insurances required under this Article B.2 shall contain a provision that coverages will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to

the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

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

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made. Any limitations period within a bond restricting the timeframe in which the Owner may file an action to enforce the surety's obligations under such bond shall be null and void. The Owner may file an action to enforce a surety's bond obligations within the timeframe identified for contract actions by the Michigan Revised Judicature Act.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

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

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, ~~at the time of execution of the Design-Build Amendment, the Owner shall may~~ purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy ~~form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project and others that the Owner deems appropriate. The property insurance shall may be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall may replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.~~

§ B.3.2.1.1 The insurance ~~required~~ under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements,

and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance ~~required~~ under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance ~~required~~ under Section B.3.2.1 shall may cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance ~~required~~ under Section B.3.2.1, if any, have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall may purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance ~~required~~ in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance ~~required~~ under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall, upon the Design-Builder's written request, inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. ~~The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.~~

§ B.3.2.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and

completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Any reference in the Agreement or its exhibits to a waiver of subrogation rights by the Owner or the Owner's insurance company, or such similar terms, are hereby deleted and shall have no effect.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

« »

[illegible]

 OVERALL FIRST FLOOR PLAN
1/8" = 1'-0"

[illegible]

• STAMP	• FINE	• STAMP	• POWER AND TELEPHONE POLE
• BUSH	• FOUND SURVEY CORNER	• CATCHBASIN	• GUY ANCHOR AND POLE
• SET 1/2" FROM ROAD	• SET 1/2" FROM ROAD	• CATCH BASIN	• TELEPHONE INDUSTRIAL
• SET 1/2" FROM ROAD	• RIGHT OF WAY MARKER	• GAS VALVE	• CABLE TV INDUSTRIAL
• BENCHMARK	• CONTROL POINT	• POWER POLE	• RAILROAD SIGNAL
• SATELLITE DISH	• AIR CONDITIONING UNIT	• POWER POLE	• TRANSFORMER
• MAIL BOX	• MAIL BOX	• BARRIER TREE MARKING	• BARRIER TREE MARKING
• BURIED CABLE LINES	• BURIED CABLE LINES	• CONCRETE SURFACE	• CONCRETE CURB
• RANDED ELECTRICAL LINES	• STORM SEWER LINES	• FENCE LINE	• OVERHEAD POWER LINES
• TELEPHONE LINES	• FIBER OPTIC LINES		
• NOT FIELD LOCATED	• MEASURED DIMENSION		
• MEASURED DIMENSION	• MEASURED DIMENSION		
• MANHOLE	• MANHOLE		
• CATCHBASIN	• CATCH BASIN		
• GAS VALVE	• GAS VALVE		
• POWER POLE	• POWER POLE		
• POWER AND TELEPHONE POLE	• GUY ANCHOR AND POLE		
• TELEPHONE INDUSTRIAL	• CABLE TV INDUSTRIAL		
• RAILROAD SIGNAL	• TRANSFORMER		
• BARRIER TREE MARKING	• CONCRETE SURFACE		
• CONCRETE CURB	• FENCE LINE		
• OVERHEAD POWER LINES			

PREPARED BY: ROGER P. MAHONEY
 PROFESSIONAL SURVEYOR NO. 4001041105
 230 S. WASHINGTON AVENUE
 SAGINAW, MICHIGAN 48607
 TEL. 989-754-4717
 DRAWN BY: J. THERING
 DATE: 9/23/22
 JOB NUMBER: 132745G2022
 WWW.SPIDERGROUP.COM

I hereby certify that I have surveyed the parcel of land hereon shown and described.

Roger F. Mahoney Date: 9-23-2022
 Roger F. Mahoney
 Professional Surveyor No. 400161105

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D-5911-7

RICHLAND TOWNSHIP
SAGINAW COUNTY, MICHIGAN