

**Board of Education Regular Meeting**

**March 21, 2022 6:30 PM**

Moore Elementary School, 1061 Lewisburg Pike, Franklin, Tennessee 37064

- I. **MEETING CALLED TO ORDER**
- II. **PLEDGE OF ALLEGIANCE**
- III. **RECOGNITIONS/GOOD NEWS AWARDS**
- IV. **PUBLIC INPUT**
- V. **REPORTS/PRESENTATIONS/DISCUSSIONS**
  - V.1. Teaching & Learning Spotlight
  - V.2. Construction Report
  - V.3. COVID Update
- VI. **APPROVAL OF BOARD AGENDA**
- VII. **APPROVAL OF CONSENT AGENDA**
  - VII.1. Minutes of Board Meeting dated February 21, 2022
  - VII.2. Overnight Field Trip Request - MES 4th Grade Walk
  - VII.3. Bid: CNP Kitchen Equipment
  - VII.4. Surplus Property Authorization - 2008 Thomas Type D School Bus
- VIII. **BUSINESS BEFORE THE BOARD**
  - VIII.1. Resolution of the FSSD BOE Requesting No Legislative Action on HB2833/SB2168
  - VIII.2. Nabholz - JES Kitchen Renovation/Expansion and JES Roof
  - VIII.3. Crye-Leike Realtors and Magli Realty Contract Ratification
  - VIII.4. Policy Revision: Teacher Tenure (5.117) - *2nd Reading*
  - VIII.5. Policy Revision: Board Members Legal Status (1.102) - *1st Reading*
  - VIII.6. Process for Acceptance of Offers for FSSD Property Sales
- IX. **DIRECTOR OF SCHOOLS REPORT**
- X. **UPDATES**
  - X.1. Teaching and Learning

**X.2. Finance and Administration**

XI. **ANNOUNCEMENTS**

XII. **ADJOURNMENT**

# Franklin Special Board of Education

Monitoring: <b>Review: Annually, in July</b>	Descriptor Term: <b>Appeals to and Appearances Before the Board</b>	Descriptor Code: <b>1.404</b>	Issued Date: <b>08/08/16</b>
		Rescinds: <b>1.404</b>	Issued: <b>09/14/98</b>

## 1 APPEALS TO THE BOARD

2 Any matter relating to the operation of the school system may be appealed to the Board. However, the Board  
3 desires that all matters be settled at the lowest level of responsibility and will not hear complaints or concerns  
4 which have not advanced through the proper administrative procedure from the point of origin. If all steps of the  
5 administrative procedure have been pursued and there is still a desire to appeal to the Board, the matter shall be  
6 referred in writing to the office of the director of schools and the Board shall determine whether to hear the appeal.

## 7 APPEARING BEFORE THE BOARD

8 Individuals desiring to appear before the Board must submit a written request with descriptive materials to the  
9 office of the director of schools six (6) days before the meeting. If the request is approved by the Executive  
10 Committee, the item will be placed on the agenda. Individuals placed on the agenda will be recognized at the  
11 beginning of the meeting and given time to speak when their topic of interest is addressed on the agenda. All  
12 requests submitted will be included in the board packet.

13 If an individual wishes to address the Board on an item on the agenda, he/she may sign up on the form provided  
14 before the beginning of the board meeting to request time to speak. Delegations must select only one individual  
15 to speak on their behalf unless otherwise determined by the Board.

16 The chair may recognize individuals not on the agenda for remarks to the Board if it is determined that such is in  
17 the public interest. A majority vote of members present can overrule the decision of the chair. Recognition of  
18 individuals who are not citizens of the school system is to be determined by a majority vote of the Board.

19 Individuals speaking to the Board shall address remarks to the chair and may direct questions to individual board  
20 members or staff members only upon approval of the chair. Each person speaking shall state his name, address,  
21 and subject of presentation. Remarks will be limited to three (3) minutes unless time is extended by the Board.  
22 The chair shall have the authority to terminate the remarks of any individual who is disruptive or does not adhere  
23 to Board rules.<sup>1</sup> Members of the Board and the director may have the privilege of asking questions of any person  
24 who addresses the Board.

25 Individuals desiring additional information about any item on the agenda shall direct such inquiries to the office  
26 of the director of schools.

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### Legal References

1. TCA 39-17-306

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### Cross References

- School Board Meetings 1.400
- Agendas 1.403
- Complaints About School Personnel 5.502

# FSSD Teaching and Learning

Excellence in Teaching and Learning for All



Date: March 1, 2022  
 To: David Snowden, Director of Schools  
 From: Mary Decker, Associate Director of Schools for Teaching and Learning  
 Subject: Summary of Teaching and Learning Activity for the March Board Meeting



**Spotlight:**

**FSSD i-Ready Data and Its Implications**

i-Ready Math is a digital component of our mathematics core adoption for grades K-8, and we have also implemented i-Ready ELA in grades 3-4 as a supplemental resource. Before the district-wide i-Ready Math rollout, we were very mindful about the process of piloting it for two years in specific grade levels at a limited number of schools. Data gathered from this endeavor confirmed i-Ready’s impact on student achievement and teacher efficacy, as did linking studies conducted by its publisher, Curriculum Associates. The findings of these studies, including a very recent one that incorporated FSSD specific data, show a high correlation between i-Ready diagnostic scores and TCAP results.

- In fall 2021, Curriculum Associates conducted a study examining the correlation between the i-Ready Diagnostic and Tennessee Comprehensive Assessment Program (TCAP) based on data from the 2020–2021 school year.
- 2021 A total of 578 students from Franklin Special School District have test scores for both the spring i-Ready Diagnostic and EOY TCAP in English Language Arts (ELA). A total of 1,649 students from Franklin Special School District have test scores for both the spring i-Ready Diagnostic and EOY TCAP in Mathematics.<sup>2</sup>
- The tables below show the correlations and sample sizes by subject and grade, based on the district’s study sample.

**ELA Correlations**

Grade	3	4
Correlation	.84*	.83*
Number of Students	299	279

*\*Correlations statistically significant*

**Mathematics Correlations**

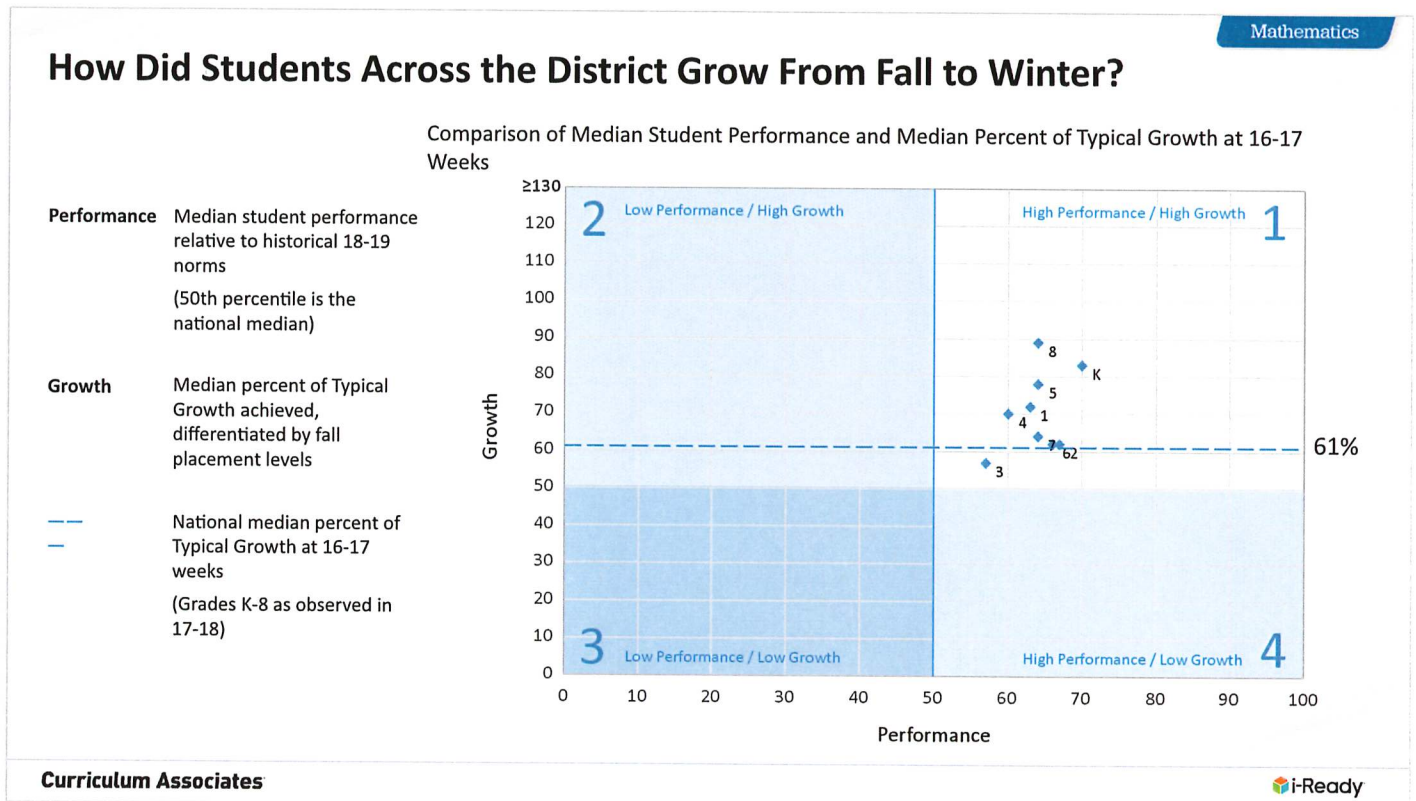
Grade	3	4	5	6	7	8
Correlation	.86*	.87*	.87*	.90*	.87*	.75*
Number of Students	311	300	256	272	259	251

*\*Correlations statistically significant*

These correlations support a strong relationship between students’ performance on the *i-Ready Diagnostic* and TCAP and meet the .70 standard for correlation generally considered to be strong in education research.

Why did we select i-Ready? It is 100% aligned to the Tennessee Academic Standards and the platform creates a personalized learning path of lessons for every student based on the results of diagnostic assessments administered by teachers three times a year. The content is rigorous, motivating, targeted, and challenges students to not only reach proficiency, but to excel. The instruction aligns with best practices, and teachers have the autonomy not only to intervene as indicated, but to adjust and/or add lessons as needed. Research shows that students who work in their i-Ready path an average of 45 minutes per week show significantly more growth than students who do not, so this piece is a cornerstone of our implementation. Also key to the positive impact of i-Ready on student learning is ongoing, personalized professional learning and a continuing cultivation of a district data culture.

Both during the 2021-2022 school year and currently, we have been extremely pleased to see that through the dedication and hard work of our teachers and school administrators and the support of our parents, FSSD students have achieved outstanding progress in math. This is despite the most challenging circumstances educators have ever encountered. Below is a visual that illustrates FSSD student progress from fall 2021 to winter 2022. Ideally, a grade level will fall in the top right quadrant, indicative of both high achievement and high growth. As you see, all grade levels, K-8, are in that quadrant.



Thanks to the results born of a commitment to optimal student learning, Curriculum Associates selected the FSSD as one of their “i-Ready Math Success Spotlights.” Please read the story below of this recognition that celebrates our incredible students and educators, who persevered in the most difficult of times and continue to keep learning at the forefront.

## Marrying Best-in-Class Curriculum with Ongoing Professional Learning

### How Franklin Special School District Paves the Way for Excellence in Mathematics

Franklin Special School District (FSSD) in Tennessee’s Williamson County is committed to excellence—for its leadership, for its teachers, and for the diverse group of 3,100-plus students it serves.

Unsurprisingly, when it comes to choosing math programs to support teaching and learning in the district, excellence is also the benchmark. To help FSSD continue its trajectory of academic success, the district’s Teaching and Learning team understands a high-quality curriculum, ongoing professional learning, and a student-first focus are all essential.

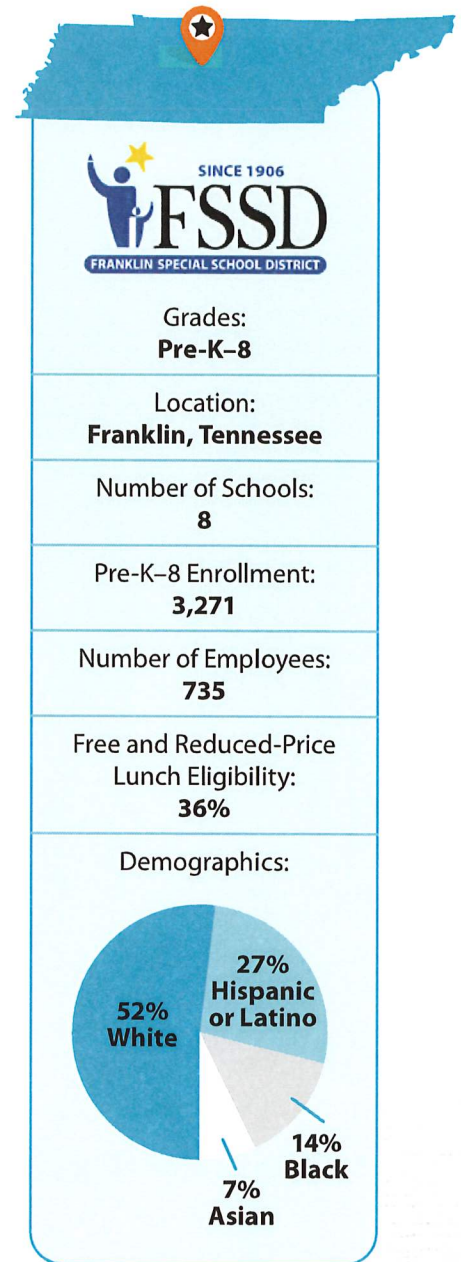
### Understanding What’s Needed for a Successful Implementation


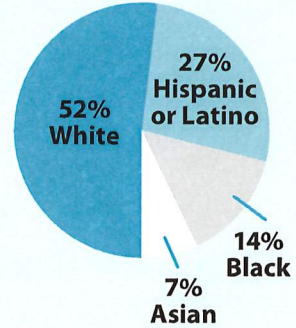
During the last textbook adoption process, the district’s adoption committee—composed of administrators, teachers, and parents—was tasked with selecting a core math program. The district sought a comprehensive program that would help drive instruction and help students master the Tennessee Academic Standards for Math.

Regardless of what program was chosen from the state-approved list, the Teaching and Learning team knew robust professional development would be needed to ensure a successful implementation.

“We are very intentional about having strategic and ongoing support for our teachers and administrators,” said Mary Decker, Ed.D., associate director of schools for teaching and learning at FSSD.

“We are very intentional about having strategic and ongoing support for our teachers and administrators.”  
—Mary Decker,  
Associate Director of Schools for Teaching and Learning




Grades: <b>Pre-K–8</b>
Location: <b>Franklin, Tennessee</b>
Number of Schools: <b>8</b>
Pre-K–8 Enrollment: <b>3,271</b>
Number of Employees: <b>735</b>
Free and Reduced-Price Lunch Eligibility: <b>36%</b>
Demographics: 

## Providing Teachers with the Gold Standard

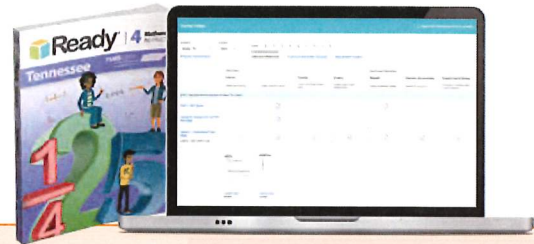
After a thorough evaluation, the adoption committee almost unanimously voted to implement Curriculum Associates' *Ready Tennessee Mathematics*, along with the accompanying Teacher Toolbox, across its schools. Beyond the program's ability to help students develop strong mathematical skills and habits, the Teaching and Learning team was highly impressed by the company's commitment to delivering professional development and support from the start.

"The professional learning support from Curriculum Associates is the gold standard," said Gina Looney, Ed.D., reading and RTI coordinator at FSSD. "It's timely, it's knowledgeable, and it supports the work we are doing with teachers to get to the next step."

To complement its use of *Ready Tennessee Mathematics*, the district fully implemented *i-Ready*® in 2017. This decision came after the Teaching and Learning team piloted the online program and analyzed its linking scores to the Tennessee Comprehensive Assessment Program.

"We were missing that diagnostic piece that told teachers exactly what they needed to focus on," said Amber Whitley, instructional technology specialist at FSSD. "*i-Ready* was a natural fit for us."

"We knew we were choosing a best-in-breed program, but we didn't realize just how well it would actually align," added Josh Bracamontes, instructional technology specialist at FSSD. "In looking at the data, the growth for those classrooms in the initial pilot was crazy."



**We knew we were choosing a best-in-breed program, but we didn't realize just how well it would actually align.**

**—Josh Bracamontes,**  
Instructional Technology Specialist

## Poised for Continued Success

Since implementing these programs with fidelity, FSSD has continued to experience impressive achievement in mathematics, including high growth and high proficiency across its schools. This success, which has led to a number of state recognitions, can be attributed to a number of factors, including its focus on ongoing professional learning and developing a data culture throughout the district.

"Our principals are always looking at Curriculum Associates' data around program usage and student growth," said Summer Carlton, curriculum and professional learning supervisor. "This is a main focus in their meetings as well as in our professional learning communities. It's just part of our culture."

**With the data from *i-Ready*, teachers can fill in gaps and deliver truly differentiated instruction, which is a big focus of mine when working with our middle school teachers.**

**—Shelly Robinson,**  
Instructional Technology Specialist

Using *Ready Mathematics* and *i-Ready* data, the Teaching and Learning team and teachers throughout the district are able to engage in collaborative dialogue targeted around the areas teachers—and students—need support in the most. "This could be about remediation or reteaching, you name it," said Carlton.

"With the data from *i-Ready*, teachers can fill in gaps and deliver truly differentiated instruction, which is a big focus of mine when working with our middle school teachers," added Shelly Robinson, instructional technology specialist at FSSD. "It's really a dream program."

The wealth of instructional resources provided by Curriculum Associates is something that impresses the Teaching and Learning team and something that continually helps teachers with delivering rigorous, standards-based differentiated instruction.

"Between *Ready Mathematics* and *i-Ready*, I can't think of a time teachers couldn't find the resources they needed for their lessons," said Carlton. "There's no need for them to go searching on the internet—it's all right here."

Now, as the district looks toward the rest of this school year and beyond, it remains steadfast in continuing to deliver the highest-quality professional learning and resources to support its teachers and to best serve its students. "Everyone from the top down is truly invested in the ongoing success of our students," said Carlton.

"Even with great support and programs such as what is provided by Curriculum Associates, you need district champions and a great team to make it all work," added Bracamontes. "And that's what we have here at FSSD."



**Between *Ready Mathematics* and *i-Ready*, I can't think of a time teachers couldn't find the resources they needed for their lessons.** There's no need for them to go searching on the internet—it's all right here.

—**Summer Carlton,**  
Curriculum and Professional Learning Supervisor



## ***Instructional Technology – Josh Bracamontes***

### **CogAT**

- The Cognitive Abilities Test was administered to second grade students during the February 28-March 11 screening window as part of the process to identify students in need of accelerated learning services. This assessment measured students' reasoning and problem-solving abilities through a battery of verbal, quantitative, and nonverbal test items. All students were assessed using Chromebooks in an appropriate academic setting within each school to ensure test security and reliability of results. Reports from those proctoring the sessions stated that the testing event went smoothly and in an efficient manner.

### **Building-Level Instructional Technology Leader Program**

- On March 4 the building-level instructional technology leaders (BLITLs) joined the district's instructional technology specialists in a day of learning and collaboration. With the stated purpose *to promote the success of all students through providing high-quality support to their teachers*, this event placed focus on professional learning with technology resources. Each BLITL prepared a 15 to 20-minute professional learning session that they have used or would like to use with teachers in their school, presented it to the group, and received feedback on the presentation. The presentation was then made available to the BLITLs at all schools so they may turn it around with their teachers where necessary. Time was saved for a discussion about best practices at every school, as well as updates on each school's journey to the annual Common Sense Schools certification. Earning the Common Sense School distinction is a symbol of each school's dedication to helping students think critically and use technology responsibly to learn, create, and participate.

### **Summer Learning Camp Enrollment**

- Summer Learning Camp registration will soon be underway as it will run concurrently with registration for the 2022-2023 school year. In accordance with [Tenn. Code Ann. §§ 49-6-1501-1511](#), each school will contact the families of priority students who will register for the Summer Learning Camp using Google Forms in a similar manner as the prior year. This process has been improved this year to streamline paperwork and ensure necessary student information is readily accessible for the teachers and administrators serving the students through this program.

## ***Curriculum & Professional Learning – Summer Carlton***

### **Quarter Three Lunch & Learn/Discuss & Design Meetings**

- Mrs. Carlton and Dr. Decker met with committees at each campus for the Quarter Three Lunch & Learn/Discuss & Design meetings. Principals selected members of their committee to represent all grade levels, core content areas, related arts, special populations, counselors, and paraprofessionals. The focus of Quarter Three Lunch & Learn/Discuss & Design was data-based professional learning needs for spring and summer 2022. The feedback provided will guide continued support for the remainder of the year at each campus and the planning of our professional learning opportunities during the summer of 2022.

### **District Improvement Plan**

- Mrs. Carlton worked with a committee of district leaders to complete our District Improvement Plan for the 2022-2023 school year. Mrs. Carlton focused on our goal regarding Educator Professional Development. Strategies and Action Steps for this goal were developed along with benchmark and performance measures.

### **Math and Literacy Coaches Meeting**

- In collaboration with Dr. Looney, Mrs. Carlton facilitated a combined math and literacy coaches' meeting. An i-Ready linking study that examined the correlation between the i-Ready Diagnostic and Tennessee Comprehensive Assessment Program (TCAP) based on FSSD data from the 2020–2021 school year was shared and discussed. The FSSD mid-year district data results were shared. Coaches were provided time to individually analyze their school's data to identify needs and develop action steps and to collaborate around successes and challenges.

### ***Communications – Susannah Gentry***

#### **Communications Items**

- Susannah is working to create a presence on the website for the FSSD Performing Arts Center, as well as assisting the PAC Operations Manager to plan for a grand opening in late spring.
- In collaboration with the district nursing supervisor, a video highlighting Amy Fisher, RN, was produced for submission to the Department of Education for the Supervisor of the Year competition.
- Susannah is serving on a small committee intended to recognize community organizations that have positively impacted families working with the FSSD social workers.

#### **Additional Communications Endeavors**

- Voluntary pre-K enrollment information and website update
- Columbia State Community College visit for our eighth-grade students
- Press release about the Teachers and Supervisor of the Year
- Updating school flags across the district
- Preparing to update the middle school course offerings guide
- Preparing to contract with a videographer for several district projects
- Work on the District COVID Team and updates to the COVID Dashboard
- Additions to the FSSD website (testing updates, updated health guidelines, Young Scholars Institute information, Summer Learning Camp information)
- Coordination of the district-wide March 21 Down Syndrome Day with the Special Populations Department
- Summer Learning Camp communications and enrollment
- April as the district enrollment period for the 2022-2023 school year

### ***Attendance – Celby Glass***

#### **Attendance Items**

- New Student Online Enrollment (NSOE) and re-registration planning and preparations are underway! Celby, Robb Walters, and Mark Anderson recently worked with former Database Manager Drew Bingham to review this area of focus.
- Celby and Robb are working with FSSD Food and Culinary Services on a state report related to students that were absent due to COVID during the 2021-2022 school year. This report will identify all free and reduced students that missed school due to COVID, and will be tied to monetary reimbursements for these students/families.

- The Skyward discipline feature has been fully implemented at all 5-8 campuses. It provides a new process that allows Celby to view discipline entries from teachers and administrators, and will help immensely as she works with families regarding attendance issues as well as safety matters. For certain court hearings that Celby attends, this documentation can be helpful for the judge as s/he makes decisions regarding which resources to provide for a family.
- During the most recent attendance secretaries' meeting, Robb Walters was introduced to the group. Topics such as registration, the progressive truancy tier process, and individual student attendance scenarios were discussed. Each attendance secretary has been provided a scanner (purchased with ESSER funds). The scanners are a much-needed addition and will allow the attendance secretaries to scan in registration documents including proof of residency, birth certificates, immunization forms, and residency affidavits (if applicable).

### **Safety Items**

- Celby and Pax Wiemers are working together to secure 80+ 2-way radios with ESSER funds. This purchase will ensure that every teacher in the district has a 2-way radio with which to communicate. The radios at PGES and PGMS proved extremely valuable during a recent safety emergency.
- Celby continues to attend a weekly safety meeting with the Williamson County Schools (WCS) Safety and Security Department and the Williamson County Sheriff's Department. Recently, Williamson County Juvenile Court Assistant District Attorney Jay Fahey participated in a discussion around their process and how we can all best work together to support families.
- Celby is working with the WCS Safety and Security Department on the planning of the annual administrator safety training. Every summer, all FSSD administrators attend this 4-hour session at the Williamson County Public Safety Center. Dr. Esslinger and Dr. Snowden have also attended in past years and have actively participated in table top exercises around school safety.

### ***Student Support Services – Lee Kirkpatrick***

#### **Voluntary Pre-K**

- Online applications are now being accepted and parent application appointments have been set for the first week of April. Parents will submit all required application paperwork to determine eligibility to the Office of Student Support Services at the Central Office Annex. FSSD VPK consists of approximately 90 students in five pre-K classes, one in each elementary school. Eligibility criteria are as follows: (Tier 1) First priority goes to families meeting state of Tennessee established income guidelines. (Tier 2) Students may qualify when an IEP team determines a pre-K class is the least restrictive educational environment for a student with an identified disability, a student who is an English Learner, a student in state custody or determined to be a victim of abuse or neglect. (Tier 3) If space remains in the program, the LEA may enroll any child that meets the age requirement and the requirements set forth by the Community Pre-K Advisory Council (CPAC). Income-qualifying families with a three-year-old child may also be served by VPK. These students are considered unserved or underserved and may be enrolled by the process established by the advisory council.
- The Community Pre-K Advisory Council met on February 15 to discuss the VPK Grant Application process. The Voluntary Pre-K Grant Application was submitted to the TDOE on

February 28. The district should receive a grant award letter by April 15. Dr. Kirkpatrick would like to extend a word of thanks to the VPK teaching team for their active participation and expertise provided during the grant writing process. Appreciation is also extended to Board Member Mr. Kevin Townsel for his support and participation on the Community Pre-K Advisory Council.

### **District Translator and Parent Liaisons**

- Parent liaisons experience a busy season in the spring as they assist families with online registration via Skyward. Beginning April 1, they will translate Blackboard Connect messages and documents, provide interpretation for parent meetings, and ensure schools are able to communicate clearly and effectively with Spanish speaking families. The FSSD parent liaisons play an integral role in breaking down language barriers so that school personnel are able to fully include all students and families whose primary language is one other than English.

### **School Counselors and Social Workers**

- We recognized FSSD School Social Worker Ms. Amanda Fisher during *National School Social Work Week March 6-12, 2022*. The theme this year was "Time to Shine." From the School Social Work Association of America, we concur that, "School social workers shine brightly for their students, families, and school communities. Shining hope. Shining understanding. Shining respect."

We invited all to send words of appreciation to Ms. Fisher and follow the recognitions on social media and share throughout the week #TimetoShine #SSWWeek2022.

### **Mercy Community Healthcare**

- The FSSD continues to grow its partnership with Mercy Community Healthcare to provide year-round counseling services for identified students who have intensive mental health needs. The goal of the partnership is to make mental health counseling easily accessible to students, minimize barriers that can make it difficult for students to receive needed services, and positively influence their school experience. For those who do not have health insurance or TN Care, Mercy provides a sliding scale that creates affordable services for families who require this level of care.

### **Reading & Rtl Coordinator – Gina Looney**

#### **Reading Update**

- K-2 teachers across the district are working to implement the 95% Phonics Core program with the support of their literacy coaches and through videos provided by the district. Professional learning was also provided on the January 3 district professional learning day. Many schools are having great success with this. Teachers are reporting that the implementation is becoming smoother and students are benefitting from these materials. The phonics portion of our adopted reading series for K-2, McGraw-Hill Wonders, doesn't contain explicit phonics lessons like the ones we are now using from 95% Group. Teachers are no longer using that portion of Wonders, but are expected to use all other portions not related to foundational literacy.
- Our ELA pacing guides will require updates based on the addition of the 95% materials in K-2. The changes will be made this summer and reflected in the pacing guides next year. In addition, teachers have asked that we include more specific dates on a supplementary pacing tool.
- We currently have a list of district-approved interventions for general education. A similar list is being created for special education for students with specific learning disabilities. Dr. Looney

will assist Dr. Robey with this document. Our hope is that we can clarify which interventions are best suited for which grade levels.

- Dr. Looney participated in conversations with Dr. Decker, teaching and learning, coaches, and administrators around whether to continue the STAR Enterprise assessment in grades K-4 and Achieve 3000 in grades 5-8. The decision was made to discontinue the STAR Reading assessment in K-4 and continue Achieve 3000 in 5-8.
- Dr. Looney provided mid-year assessment results to administrators and coaches, including fall to winter changes. In addition, she shared specific congratulations where significant gains were noted.

## ***PAC Operations Manager – Jeremy Maxwell***

### **Teacher PAC Tours**

- Building on the one-on-one conversations he had with performing arts teachers in January and February, Mr. Maxwell, along with members of the Nabholz team, led tours of the PAC for teachers to foster further conversations and answer questions about the functionality of the PAC. These tours generated very productive and positive feedback as well as a sense of excited anticipation for future performances to take place at the PAC.
- Mr. Maxwell also met with art teachers to discuss options for displaying student artwork in the Connector Gallery of the PAC. The potential for digital and framed displays is under discussion.

### **Rental Policies**

- Work continues on the creation of rental policies for internal and external use of the PAC, with the intention of creating a system where FSSD events and productions are prioritized over outside rentals.

### **Vendors**

- The FSSD PAC has a piano! After thorough research, meetings with vendors, visits to showrooms, and consultations with Dr. Esslinger, approval was granted for the purchase of a 7' Kawai RX-6 Semi-Concert Grand Piano in like-new condition from Steinway Gallery. This piano perfectly fits scope of the new auditorium, with the resonance to blend with any size orchestra.
- We are close to a deal with Wenger Corp. to provide student chairs, music stands, acoustic shells, and choral risers for the new facility.
- We are also close to an agreement with a ticketing software company that would allow for online ticket sales, custom seat maps for the creation of events, dynamic pricing, and reporting. This software could also handle the sale of concessions, and feasibility research is ongoing.

### **Visits to Neighboring PACs**

- Mr. Maxwell reached out to the operations and technical managers of other recently opened PACs in the area to discover best practices and discuss the operational logistics of an educational PAC that doubles as a rental facility. He was accompanied by Susannah Gentry to Battleground Academy and Christ Presbyterian Academy campuses and went solo to Ensworth's campus for very productive and informational conversations.

## **Budgets**

- Mr. Maxwell is acclimating to the budget process, both for the annual budget as well as the furniture, fixtures, and equipment budget for the PAC. Thanks to Dr. Esslinger for his help and patience in this process!

## ***Special Populations –Cheryl Robey***

### **School Psychologist Intern Interviews**

- FSSD school psychologists and Dr. Robey interviewed applicants from UTC, MTSU and Gonzaga Universities interested in the FSSD School Psychologist Internship Program. School psychologist interns bring great knowledge and experience to the district and are a tremendous benefit to our school psychologists through their assistance with testing, observations, etc. School psychologist interns can be considered for future district school psychologist positions. We are hopeful to have one or two school psychologist interns for the 2022-23 school year.

### **LEA/APR Planning Meeting**

- TDOE Core special education interventionists offered virtual office hours to support special education supervisors in addressing the missed targets on the Annual Performance Report (APR). This support was offered several times during the month of February and was very helpful in providing assistance as to how to address the targets in the district improvement plans.

### **District Special Education Mentor Meeting**

- The district sped mentors and Dr. Robey met to discuss and plan for upcoming professional learning opportunities specific to special education teachers. The team continued discussion around IEP Compliance Monitoring and how to address the issues that surfaced during the monitoring process.

### **School Personnel Development Grant (SPDG) Discussion**

- The FSSD SPDG facilitators and Dr. Robey met to reflect on and discuss next steps with SPDG implementation. The SPDG training has gone well and has been received well by JES and MES administration and staff. However, there is still a lot of work to be done. The SPDG facilitators and Dr. Robey met with JES and MES administrators on March 8 to discuss data collection and various ways to monitor the implementation of the SPDG training.

### **School Personnel Development Grant (SPDG) Partnership Meeting**

- Kim Raybon, CORE Special Education Interventionist, and Dr. Robey met to recap the facilitators' training reflection, revisit the district's goals and benchmarks, develop a communication plan and determine next steps for SPDG implementation.

### **School Personnel Development Grant (SPDG) Training**

- Via Zoom at their individual sites, JES and MES participated in their final SPDG training on February 21, a school professional learning day. Participants at both sites were very engaged in the professional learning and provided useful feedback to assist with future planning of SPDG training sessions.

### **Middle Tennessee Special Education Supervisors Study Council**

- Middle TN Special Education Supervisors met for continued discussion around the Annual Performance Report (APR). Supervisors also discussed possible changes to EasyIEP/EdPlan, CCEIS monitoring, private school day placements for students with disabilities and the September 2022 SOS Conference at Fall Creek Falls.
- The TDOE shared information regarding LEA planning, the Annual Performance Report (APR) and the expectations around the Indicator 8 parent survey.

### **Special Education Supervisors Call**

- Special education supervisors participated in a call with Jennifer Jordan, Commissioner of Special Education and other TDOE representatives (Michael Holman, April Ebbinger, Allison Gauld and Susan Usery) on March 1. John Staubitz from TRIAD also joined the call. The focus of the discussion was on *Intense Behavior: SEBSA Updates and Behavioral Intervention Strategies*. The group also discussed alternative assessment tools, the restraint and isolation rubric, regional trainings for school psychologists and Medicaid reimbursements.

### **Certified Restraint Training**

- A Certified Restraint Training was provided on February 16 for staff members that needed recertification. All staff members chose to participate in the half-day training and to schedule the hands portion of the training at a later date. Twelve FSSD staff members and administrators attended the training.

### **Special Education Newsletter**

- The March FSSD Special Education newsletter may be accessed at the following links:  
<https://www.smore.com/a20g6>

### ***Instructional Technology – Shelly Robinson***

#### **Building Level Instructional Technology Leaders**

- Shelly Robinson worked with Mr. Bracamontes and Mrs. Whitley to organize the second annual training for our building level instructional technology leaders (BLITLs). For the session, led by Mrs. Robinson and Mr. Bracamontes, each BLITL was asked to create a 15–20-minute presentation to share with the group. The purpose was to give everyone the opportunity to work on their professional learning skills, as well as to compile a collection of presentations to share amongst all schools. In addition, each school's progress toward digital citizenship education was reviewed, and other instructional technology-related topics were discussed.

#### **GoGuardian Training for Paraprofessionals**

- Shelly Robinson worked closely with all paraprofessionals at a middle school to provide them with training on GoGuardian. GoGuardian is a device management platform that assists educators in monitoring technology use and helps ensure student safety and engagement. In the session, Shelly showed the paraprofessionals basic features of the platform and answered questions.

#### **i-Ready Mid-Year Data Review**

- Shelly Robinson, Mr. Bracamontes, Mrs. Whitley, Mrs. Carlton, and Dr. Looney met with two representatives from i-Ready to review our winter 2022 data. In this data presentation, we saw the progress and growth our students have made over the past several years, as well as the projected growth for the remainder of this school year. From there, Shelly Robinson, Mr.

Bracamontes, Mrs. Whitley, Mrs. Carlton, Dr. Looney, and Dr. Decker turn-keyed the data presentation to the FSSD Leadership team. In addition to the Leadership team, Mrs. Robinson shared, discussed, and analyzed the data with a group of middle school math teachers.

### **Conversation with Ken Williams**

- The teaching & learning team worked together to analyze data and conduct research on the topic of student retention. As part of the research, Shelly Robinson reached out to Ken Williams, a former educator, author, speaker, and consultant who promotes equity with his message to “start with the crown.” While Mrs. Robinson was originally seeking a written statement regarding his views on retention, he kindly offered to have a full conversation via Zoom. Members of the teaching and learning team had the privilege of participating in this discussion with him on March 8.

## ***Student Performance & Federal Programs –Pax Wiemers***

### **Student Performance**

- WIDA Access testing for our active ELL students began on February 14 and will continue until March 26. Most of the students’ tests are administered online via the secure WIDA DRC site. Lower elementary students take paper tests. Each student must complete four domains of testing: Listening, Speaking, Reading, and Writing, all of which assess students’ English language proficiency. For these four domains, students will receive individual scores by domain that will be calculated into a literacy score and a cumulative score. In order to exit ELL services, students must score at least a 4.2 on their literacy proficiency and at least a 4.4 overall. At this point, most students have completed their testing, and ELL teachers are finishing up the remaining tests at their schools. Materials will be returned in late March, and we should receive final results around the end of the school year.
- We are in full preparation mode for TCAP testing in mid- to late April. The building testing coordinators (BTCs) have been meeting with Dr. Wiemers monthly as they work through state updates and procedures. This year we have a narrow window for testing from April 18 to April 29 - only two weeks. Our schedule will begin on Tuesday, April 19, with ELA subpart 1, the writing test. This year, EOC courses, Algebra I and Geometry, will test online via the secure Pearson platform. As such, the BTCs at Freedom Middle and Poplar Grove Middle have been working with Dr. Wiemers to ensure that we are ready for this new testing mode. The BTCs and Dr. Wiemers will work with the teachers who will be serving as test administrators in April to make sure that they feel prepared for online testing.
- During the week of February 22- 25, students at FIS, FMS, and PGMS had the opportunity to take the IAAT (Iowa Algebra Aptitude Test) and the MLAT-E (Modern Language Aptitude Test, Elementary) to qualify for Algebra I and world language courses, respectively. The assistant principals organized these tests at their schools, scored the assessments, and input their students’ scores in our shared spreadsheet. Qualifying scores were highlighted in our sheet, and we are currently printing and preparing letters to send to families in late March that indicate whether their child qualified for specific honors classes. These letters also contain an opt out form (for opting out of specific honors classes) and a reconsideration form (for requesting reconsideration for specific honors classes). School-level honors parent meetings will occur in April and May.
- Dr. Wiemers also been involved in some other projects related to his work. One such project was a survey of all of our certified teachers in the district on their self-efficacy and collective efficacy, two high-impact indicators for student achievement. The results of this survey were analyzed and shared with district and school administrators to inform their practices and

professional learning focus. Secondly, he has been a part of a team from teaching and learning that has led professional learning sessions across the district on retention and the work of John Hattie. On March 11, the group presented/facilitated a second session at FMS on the highest indicators for student achievement according to Hattie's research.

### **Federal Programs**

- This has been the lightest month for ESSER planning and work in the past two years. Our monitoring has been completed and was approved on first submission in January. Recently Dr. Wiemers moved some funds around in our ESSER 2.0 budget so that the district could purchase enough radios to ensure that every staff member at our schools has one. This application was resubmitted and approved and the radios have been ordered.
- It took a giant team effort, but our District Improvement Plan (DIP) was submitted on February 28, one day before the deadline. Prior to its submission, we found a new means of gathering feedback from our families. Dr. Decker and Dr. Wiemers recorded a video in which they presented the highlights of our proposed goals, strategies, and action steps. Diane Price and Dr. Wiemers did the same thing for a video in Spanish. These videos and the presentations were sent via a Blackboard message and email, and parents could submit their feedback and questions on our plan via a Google Form. We received 54 responses in total, and we actually did implement some of our parents' proposals, including a strategy related to diversity, equity, and inclusion and a strategy related to a parent council for parents of students in special education. The state has begun reviewing our DIP and will mark any items for our attention or revision. Our finalized plan is due to be completed in the next month.
- Our annual Consolidated Funding Application (CFA) opened in ePlan on March 1. The CFA is where we complete our annual budgets for Title I, Title II, Title III, Title IV, IDEA, and IDEA Preschool. Dr. Robey, Dr. Kirkpatrick, Summer Carlton, and Dr. Wiemers all have portions of this application to complete before the May 1 deadline. While we do not know our final allocations for these budgets, preliminary work can begin on the narrative portions of the application.



## Bond Fund/Capital Projects Report Status Update – March, 2022

1. PGS Gym/PAC:
  - a. PAC:
    - i. Interior Finishes nearing completion
    - ii. Stage floor installed
    - iii. Roof coping is last exterior item to be completed on building
    - iv. Legacy Gallery installation starting late March
  - b. Gym:
    - i. Interior Finishes nearing completion
    - ii. Roof coping is last exterior item to be completed on building
    - iii. Overhead MPE work continuing nearly complete
  - c. Estimated completion date for both buildings is mid-April, 2022.
2. Liberty:
  - a. Moved into the last classroom phase prior to spring break
  - b. Phase 5 (final phase) scheduled to start March 11, 2022 and includes the cafeteria and kitchen renovation.
  - c. Foodservice will be serving from Multi-Purpose Room beginning Monday 3/21/22
  - d. Several exterior doors were determined to need replacement and are being priced. This will be an additional cost to the project.
  - e. Estimated completion Date is Fall 2022.
3. Central Office Complex:
  - a. Phase 1: Facilities & Transportation Center:
    - i. Phase IA: Exterior & Structural Repairs
      1. 100% Design Development submitted on 2/7/22 to Building and Neighborhood Services. Awaiting comments from review.
      2. The project is currently out to bid by Nabholz with bids due March 17, 2022.
      3. GMP for phase 1A expected by 4/13/22
      4. Work expected to begin 5/5/22
    - ii. Phase IB: Interior Buildout & Sitework:
      1. 100% Schematic Design submitted to Nabholz
      2. 100% Design Development Documents are complete
      3. 80% Construction Documents are due to Nabholz by 4/28/22
      4. GMP for phase 1B expected by 8/1/22
  - b. Phase 2: Central Office:
    - i. 100% Schematic Design are complete
    - ii. 80% Design Development due to Nabholz by 5/27/22 w/ 100% due by 6/24/22
4. Johnson Kitchen Renovation/Expansion and Roof Replacement:
  - a. 100% Schematic Design documents are complete
  - b. 100% Design Development Documents are complete

- c. 100% Construction Documents are complete.
- d. We recommend hiring Nabholz as the Construction Manager at Risk for the JES kitchen project. The project is currently estimated to cost \$2,073,931 with FSSD purchasing the kitchen equipment outside of the contract. VE options are currently being considered with Wold HFR.
- e. We are evaluating our options on the roof project due to the current market conditions.

5. Parks and Recreation Master Plan:

- a. Underground storm pipe installation continues
- b. Truss installation to be completed this week at Building A, then will start with plywood decking on the roof.
- c. Truss installation continues at Building B-about 90%.
- d. Electrical/Mechanical above ceiling rough ins continue at Buildings A and B.
- e. Goal is to have both buildings dried in by end of the Month.
- f. Exterior Masonry (Brick) has started at Building A.
- g. Concrete placement for Softball Batting Cage is set for Monday 3/14/22. Slab Prep continues for Baseball Batting Cage and concrete placement to be on 3/23/22. We will then turn our attention to the pavilion slabs at the end of the month.
- h. Project completion expected for Fall 2022.



# Franklin Special School District

SINCE 1906

David L. Snowden, Ph.D., Director of Schools • 507 New Highway 96 West • Franklin, TN 37064 • 615-794-6624 • 615-790-4716 (fax) • www.fssd.org

**TO:** Members of the Franklin Special School District Board of Education and Local News Media  
**FROM:** David L. Snowden, Ph.D., Director of Schools *DL*  
**DATE:** March 11, 2022  
**RE:** Agenda for the Franklin Special School District Board of Education meeting to be held on Monday, March 21, 2022 at 6:30 p.m., to be held at Moore Elementary School, 1061 Lewisburg Pike, Franklin.

*Note: There will be a reception to honor Teachers, Supervisor and Administrator of the Year beginning at 6:00.*

- I. MEETING CALLED TO ORDER 6:30 p.m.
- II. PLEDGE OF ALLEGIANCE 6:32 p.m.
- III. RECOGNITIONS/GOOD NEWS 6:35 p.m.
  1. Teachers, Principal and Supervisor of the Year
- IV. PUBLIC INPUT *Please limit comments to three (3) minutes per speaker* 6:45 p.m.
- V. REPORTS/PRESENTATIONS/DISCUSSIONS 6:50 p.m.
  1. Teaching and Learning Report
  2. Construction Report
  3. COVID Update
- VI. APPROVAL OF BOARD AGENDA 7:00 p.m.
- VII. APPROVAL OF CONSENT AGENDA 7:05 p.m.
  1. Minutes of Board Meeting dated February 21, 2022
  2. Overnight Field Trip Request – MES 4<sup>th</sup> Grade Walk
  3. Bid: CNP Kitchen Equipment
  4. Surplus Property Authorization –2008 Thomas Type D School Bus
- VIII. BUSINESS BEFORE THE BOARD 7:10 p.m.
  1. Resolution of the FSSD BOE Requesting No Legislative Action on HB2833/SB2168
  2. Nabholz - JES Kitchen Renovation/Expansion and JES Roof
  3. Crye-Leike Realtors and Magli Realty Contract Ratification
  4. Policy Revision: Teacher Tenure (5.117) – 2<sup>nd</sup> Reading
  5. Policy Revision: Board Members Legal Status (1.102) – 1<sup>st</sup> Reading
- IX. DIRECTOR OF SCHOOLS REPORT 7:35 p.m.
- X. UPDATES 7:40 p.m.
  1. Teaching and Learning
  2. Finance and Administration
- XI. ANNOUNCEMENTS 7:45 p.m.
- XII. ADJOURNMENT 7:50 p.m.

*All Franklin Special School District meetings are open to the public.*

**Excellence in Teaching and Learning for All**

The Franklin Special School District is an equal opportunity employer

February 21, 2022  
Franklin, Tennessee

The Franklin Special School District Board of Education met at 6:30 p.m. on Monday, February 21, 2022, at Poplar Grove Middle School, 2959 Del Rio Pike, Franklin. A link to the recording may be found at <https://www.youtube.com/watch?v=-FS3cegssGY> .

The following members were present: Chair Robert Blair, Alicia Barker, Allena Bell, Robin Newman, Tim Stillings and Kevin Townsel.

*Others present were:* Dr. David Snowden, Dr. Mary Decker, Dr. David Esslinger, Mark Anderson, Amy Fisher, Celby Glass, Lisa Chatman, Susannah Gentry, Carol Riordan, Dr. Cheryl Robey, Josh Bracamontes, Dr. Pax Wiemers, Dr. Lee Kirkpatrick, Chip Sternberg, Gina Looney, Shelly Robinson, and other district leadership team members and community.

#### **I. MEETING CALLED TO ORDER**

The meeting was called to order at 6:31.

#### **II. PLEDGE OF ALLEGIANCE**

Poplar Grove Middle School Principal Dr. Chris Treadway welcomed those in attendance and led the Pledge of Allegiance. Chair Robert Blair called for a moment of silence before being seated.

#### **III. RECOGNITIONS/GOOD NEWS**

1. **Proclamation in Honor of Pupil Transportation Appreciation Day** – On March 1, 2022 the FSSD Transportation Team will be honored for their service. Robin Newman read the Proclamation presented at this meeting (on file).
2. **Good News and Recognitions – FSSD awardees at the February 7th Tech & Learning Innovative Leader Awards** held at the Dallas Regional Leadership Summit were: Josh Bracamontes, Shelly Robinson and Amber Whitley, finalists in the Best Implementation of Data Policy category; Lee Kirkpatrick, finalist in the Best Example of Teacher & Student Well Being Programs category; Gina Looney and Summer Carlton, winners in the Best Implementation of Digital Curriculum category; and Mary Decker, winner in the Best Example of Sustainable Classrooms category.

#### **IV. PUBLIC INPUT**

- **Susan Phelps**, PGES personnel and parent of PGMS student, spoke regarding the upcoming open enrollment and student population at PGS.

#### **V. REPORTS / PRESENTATIONS / DISCUSSIONS**

1. **Teaching and Learning Spotlight** – Introduced by Dr. Decker was Summer Carlton, Curriculum and Professional Learning Supervisor, who gave the Board more insight into

her responsibilities. More information is presented in the Summary of T&L Activity for February (on file).

2. **Construction Report** – Presented by Dr. Esslinger (report on file).
3. **COVID Update** – The COVID Team was on hand for questions from the Board. As of this date, there is only 1 student excluded with COVID, 6 students excluded due to household exposure, and no teachers were excluded. As the COVID Omicron variant declines in this area, it is certainly positive for our district.

## **VI. APPROVAL OF BOARD AGENDA**

Allena Bell made a **motion** to approve the Board Agenda as presented. Alicia Barker **seconded** the motion, which **carried 6-0**.

## **VII. APPROVAL OF CONSENT AGENDA**

Tim Stillings made a **motion** to approve the Consent Agenda as presented. Robin Newman **seconded** the motion, which **carried 6-0**.

Approved under Consent Agenda (on file) were:

1. **Minutes of Board Meeting dated January 10, 2022**
2. **Minutes of Board Retreat dated January 22, 2022**
3. **Minutes of Special Called Meeting January 31, 2022**
4. **Surplus Property Authorization – FIS Media Center furniture**
5. **Budget Amendments**

## **VIII. BUSINESS BEFORE THE BOARD**

1. **Teachers Recommended for Tenure** – Copies of the recommendation letters from principals for those individuals who are being recommended for tenure status in the FSSD have been submitted for your review. We have documentation of attendance, summative evaluations and other information in the Human Resource Department for the Board's review upon request. Also, an additional background check has been conducted within the past few months on each person eligible for tenure. Twenty four teachers were recommended for tenure. We congratulate these individuals!

### **Teachers attaining tenure:**

FES – JoAnna Salce, Sarah Strasser

JES – Kara Kendle

LES – Lauren Cochran, Julie Ennamorato, Shelly Francis, Alyson Roberts, Jeanna Winn, Joy Stephens

MES – Colin Henson, Jessica Rosenthal, Jane Barnes

PGES – Ginger Colvett, Keisha Covington, Brittany Nole, Megan Blonder

FIS – Miguel Alvarado, Deborah Gleason, Emily Valadez-Rodriguez

FMS – Shannon Barnes, Aleesha Hoag, Sara Simmons

PGMS – Lisa Onusaitis, Cara Pearson

Tim Stillings made a **motion** to approve the candidates recommended for tenure as presented. Allena Bell **seconded** the motion, which **carried 6-0**.

- 2. Approval of Central Office Complex Construction - Phase 1B and Phase 2** – Provided for the Board were the Initial Budget Estimate/Updated Scope Assignment and an updated Bond-Funded Projects outline (on file). Mr. John Strack, EVP of Operations for Nabholz and Mr. Steve Griffin, Wold-HFR Design Principal and Director of the General Architecture Division were on hand for this item.

Phase 1B includes most of the site work for the entire project and the interior work on the Maintenance & Transportation Center. The projected construction cost of the MTC Phase 1A and 1B is \$6,042,918 of which \$1,540,800 is the previously approved budgeted amount for Phase 1A. Phase 1B does require planning commission approval. The projected cost of Phase 2, Central Office building, is 21,694,299.11. The projected costs of the originally approved Phase 1A and the projected costs of Phase 1B Phase 2 were presented and discussed at the Board Retreat on January 22<sup>nd</sup>. We appreciate the Board's questions and discussions during the presentation. The City of Franklin will view Phase 1B and Phase 2 (CO office building) as one single project and both will require planning commission approval. Wold/HFR Design would like to present plans to the Planning Commission on February 28<sup>th</sup> for the possible approval on April 28<sup>th</sup>. This timeline should provide an appropriate transition for Nabholz as they finish up the Gym and PAC, begin Phase 1A then move into Phase 1B and Phase 2. The Nabholz Team will continue to conduct value engineering on all three projects as they work to provide the district with a guaranteed maximum price in the future. The design plan going to the Planning Commission is the exact same as was presented at the Retreat, no changes have been made. The administration recommended approval of Phase 1B and Phase 2.

Alicia Barker made a **motion** to approve Phase 1B and Phase 2 of the Central Office Complex as presented. Allena Bell **seconded** the motion, which **carried 6-0 by roll call vote**.

- 3. Director of Schools Performance – Total Composite Score** – Provided for the Board were the Total Composite Score sheet and Performance Review Process outline (on file). Mr. Townsel led this item of Business. After review of the Annual Report for 2020-21 submitted by Dr. Snowden, Board Members have completed their Individual Score Sheets and they have been returned to the Administrative Assistant, averaged according to the rules set forth by the Board, and verified by the Associate Director for Finance & Administration. Based on this final score, a percentage of the bonus pool will be awarded to the Director of Schools in compliance with the Performance Review Process previously approved for the 2020-21 year and upon approval by the Board. Based on the composite score received of 98.25%, Dr. Snowden is eligible to receive 100% of the Bonus Pool as a Performance Bonus, equal to 10% of current annual salary. The next step is for the Board to meet in a work session, ideally prior to the first budget work session, to revise the performance objectives for the 2022-23 year.

Kevin Townsel made a **motion** to approve Dr. Snowden's performance bonus for 100% of the Bonus Pool available based on the composite score of 98.25%, which is equal to 10% of Dr. Snowden's current annual salary, as set forth in the Performance Goals approved by the Board for the 2020-21 year. Robin Newman **seconded** the motion, which **carried 6-0 by roll call vote**.

Dr. Snowden thanked the Board, also saying that the score reflected work on the part of each person within the district, great parental support and outstanding representation from our students. Dr. Snowden accepted the bonus and will conditionally return the bonus back to the district with the request that expenditures of these funds will be of his choosing, such as in this past year some of the money went to purchasing facility dogs for two of the schools.

4. **Policy Revision: Interscholastic Athletics (4.301) – 1<sup>st</sup> Reading** – This revision request adds Harpeth Valley Athletic Conference (HVAC) to the listing of bylaws that will be followed with our sports teams, as we fall under that conference for girls softball. There were no other changes requested to this policy. The administration recommended approval of the 1st Reading.

Alicia Barker made a **motion to approve the 1<sup>st</sup> Reading** of revisions to Interscholastic Athletics (4.301) as presented **and to waive the 2<sup>nd</sup> Reading**. Robin Newman **seconded** the motion, which **carried 6-0**.

5. **Policy Revision: Teacher Tenure (5.117) – 1<sup>st</sup> Reading** – This policy update removes number 6 under additional guidelines for earning tenure: A background check within six (6) months prior to tenure being granted. State law requires all employees to be fingerprinted at least every 5 years of employment with the school district (T.C.A. 49-5-413). Additionally, FSSD Board Policy 5.108 states that current employees shall report being charged with any criminal offense to their immediate supervisor within 72 hours of the offense. Removing the background check requirement from the tenure policy will allow all employees to complete their background checks on a 5-year rotation throughout their employment with FSSD while eliminating the potential for duplicate checks in the same year based on our current policy, in adherence to both the 6-month from tenure and the 5-year check as required by law. The administration recommended approval of the 1st Reading.

Robin Newman made a **motion** to approve the 1<sup>st</sup> Reading of revisions to Teacher Tenure (5.117) as presented. Alicia Barker **seconded** the motion. After discussion, the **motion carried 6-0**.

6. **Policy Revision/Reactivation: COVID Sick Leave (5.3023) – 1<sup>st</sup> Reading** - The previous adoption of this policy expired as of December 17, 2021. Due to the negative impact our personnel continue to experience with this illness, this extension request adds a possible additional five (5) days to paid leave due to a positive diagnosis of the illness of the employee, for a cap of ten (10) days paid leave for this fiscal year. Dr. Snowden noted that the Omicron variant has been much more contagious and many FSSD employees contracted COVID even though they were fully vaccinated and had received the booster. We have had

165 employees who have contracted COVID since January 1, 2022. The administration recommended approval of the 1st Reading.

Tim Stillings made a **motion to approve the 1<sup>st</sup> Reading** of revisions/reactivation to **COVID Sick Leave (5.3023)** as presented **and to waive 2<sup>nd</sup> Reading**. Kevin Townsel **seconded** the motion. After discussion, the motion **carried 6-0 by roll call vote**.

7. **Policy Revision: Transfers Within the System (6.206) – 1<sup>st</sup> Reading** - This revision follows with amendments to TCA 49-2-128 and additional language from TCA 49-6-3113 which will be effective for students beginning with the 2022-23 school year. With new legislation, districts must post open spaces in each school by grade, class and program level and provide an open enrollment period for consideration of movement from the zoned school to a school of their choice. TSBA has provided a model policy for updated language and incorporation into our existing policy. As noted by the double asterisks in Line 17, this policy is not effective in the event of a federally-mandated desegregation order, which FSSD has been under since 1974. We believe we are very close to attaining “unitary status” (released from court oversight) in the very near future; however, legal counsel has recommended we should continue to be very conservative in our declaration and transfers of students within the school district. Also, based upon legal counsel, this new law is not intended to create any additional financial burden on school districts; space (seat) availability should be based on current staffing needs across the district and in each school.

We have been working with principals over the last couple weeks to determine how many seats may be available, if any, in each school as we prepare to post those seats. The tentative plan is to post the number of seats available on or before March 14<sup>th</sup>. The Open Enrollment period will begin April 1<sup>st</sup> and run through April 30<sup>th</sup>.

FSSD has had a transfer policy in place since 1998. The following are the current in-district transfers by school:

FES – 15	JES – 17
LES – 7	MES – 10
PGES – 20	PGMS – 20
FIS – 1	FMS – 2

The administration respectfully requests approval of the 1<sup>st</sup> Reading and to waive the 2<sup>nd</sup> Reading.

Tim Stillings made a **motion to approve the 1<sup>st</sup> Reading** of revisions to **Transfers Within the System (6.206)** as presented **and to waive the 2<sup>nd</sup> Reading**. Kevin Townsel **seconded** the motion. Discussion before the vote included additional considerations that will go into the number of transfer spots that will be available. The motion **carried 6-0**.

## **VIII. DIRECTOR OF SCHOOLS REPORT**

- **Annex Property Update**– The draft real estate agency agreements with Joyce Friedman (Crye-Leike) and Tom Magli (Magli Realty) were submitted to legal counsel for review on February 3<sup>rd</sup> and we are awaiting counsel’s written approval. In addition, the district has

selected Boozer & Company P.C. of Franklin to conduct the appraisal of the Annex property.

- **Presidents Day** – February 17<sup>th</sup> will be an early dismissal day. The district will be closed February 18<sup>th</sup> for a Mid-Winter Break. Students will not be in school on Presidents Day, February 21<sup>st</sup>, however, personnel will be having school-centered professional learning that day.
- **Visit to Columbia State Community College** – A visit for our 8<sup>th</sup> graders is tentatively set during the week of March 7<sup>th</sup>.
- **African-American History Month event** - February is African-American History Month, and our schools will be recognizing the contributions of many outstanding African-American men and women at varying times during the month. This year, the scholarship and community recognition will be awarded for the Monroe and Mary Booker Awards for Leadership and Service in person with an assembly for 8<sup>th</sup> grade students only. This event will be video-taped for the Booker family, who will not be present this year. We congratulate the recipients and thank the Booker family for their service to our community.
- **Teachers, Principal and Supervisor of the Year** – Building Teachers of the Year, District-Level Teachers of the Year, Principal of the Year, and Supervisor of the Year have been selected. All of these individuals will be honored at the March Board meeting, with a reception preceding the meeting if it is possible to have gatherings. Congratulations to all! We are so proud to have them leading and educating our students and serving as great examples of the education profession within our schools and the district.
- **Special Education Preschool and Voluntary Pre-Kindergarten (VPK) Program availability** – These early learning programs are open at this time for enrollment for the coming year.
- **Conferences and meetings update:** below is an update on conferences:
  - Legislative and Legal Institute – February 14-15 – Thanks to the Board members that were able to participate.
  - TSBA Day at the Capitol – Washington, DC – May 16-17 (tentative dates)

## X. UPDATES

**Teaching & Learning** – Dr. Mary Decker, Associate Director for Teaching & Learning, provided the following (on file):

- Demographics Report for February 2022

**Finance & Administration** – David Esslinger, Associate Director for Finance & Administration, provided the following (on file):

- Personnel Change Report January/February 2022
- Investment Report
- Revenue and Expenditure Reports
- Sales Tax Revenue Comparison Report for February

**XI. ANNOUNCEMENTS**

- Sales tax collection is up 19.9% February 2022 over February 2021, and collections are 17.4% higher at this time than at the same time in 2021.
- Legislative and Legal Institute – TSBA reported to the attendees there are over 300 bills filed on education pending in the General Assembly.
- Mr. Townsel recently served as the Board representative in the WCS/FSSD Pre-K Advisory Council meeting hosted by Dr. Kirkpatrick.
- Board members appreciated the schools hosting them during School Board Appreciation Week.

**XII. ADJOURNMENT**

Chair Blair adjourned the meeting at 8:22 p.m.

		
	_____ Robert Blair, Chair	_____ Date
<b>ATTEST:</b>		
	_____ Kevin Townsel, Secretary	_____ Date

# APPLICATION FOR OVERNIGHT FIELD TRIP

Pursuant to the Franklin Special School District Board of Education Policy 4.302 "Field Trips and Excursions", preparation of all overnight field trips must include application of the field trip with this form and appropriate approval thereto. Please submit this form in ample time for approval of the Board of Education.

SCHOOL: MOORE elem GRADE(S): 4th DATE OF REQUEST: 3/1/22

TEACHER(S) REQUESTING: Tiffany Carlton, Colin Henson, Jane Barnes

DATES OF FIELD TRIP: 5/12/22 to 5/13/22  
2:10 1:16 2:10 1:17

DESTINATION(S): Natchez Trace Parkway

INSTRUCTIONAL PURPOSE of this field trip, including value of the activity/relationship of trip to classroom instruction, suitability of activity and distance traveled in terms of age level (use additional sheet if necessary):

(See ATTACHED)

TRIP COST PER CHILD: \$ ~~0~~ COLLECTION METHOD: Log Donations  
AVAILABLE Through School

SCHOLARSHIPS NEEDED (#): \_\_\_\_\_ SCHOLARSHIPS PROVIDED (#): if needed

METHOD OF PAYMENT OF SCHOLARSHIPS: Sponsors Donations

STUDENT BODY OFFERED TRIP, i.e., grade(s), group(s): 4th Grade

NUMBER PARTICIPATING: Typically 85-90% of class (70-75)

CHAPERONES ATTENDING (NOTE FACULTY MEMBERS): \* Tiffany Carlton,  
\* Colin Henson, \* Jane Barnes, \* Eli Adams, \* Claire Davis  
Additional 30-40 Parents

\* Faculty Members

DATE AND TIME OF DEPARTURE: 5 / 12 / 22 at 9 : 00 (am) pm

DATE AND TIME OF RETURN: 5 / 13 / 22 at 2 : 00 am (pm)  
210 5/110 & 5/17

MODE(S) OF TRANSPORTATION: FSSD BUS

IF MORE THAN ONE, LIST SPECIFIC DETAILS (use additional sheet if necessary):

An additional bus is needed on first day 5/12  
to transport parents walking to beginning location and end location

ACCOMMODATION ARRANGEMENTS: The Group will spend  
the Night at Moore Elementary

MEAL ARRANGEMENTS: Students provide 2 sack lunches  
we provide Dinner and Breakfast

EMERGENCY CONTINGENCY PLAN: Support Vehicle follows us and  
Sheriff escorts most of road walking

Please give the office a list of students participating in field trip and emergency numbers. If appropriate, give the office a list of students not participating and make arrangements for those students in your absence. Also notify special class teachers, cafeteria and any other teachers necessary if students will miss these classes.

RECOMMENDED BY  
PRINCIPAL: Janet Cangel DATE: 3/7/22

DIRECTOR OF SCHOOLS: [Signature] DATE: 3/8/22

AUTHORIZATION BY  
FSSD BOARD OF EDUCATION: [Signature] DATE: 3/21/22

Moore Elementary School  
4<sup>th</sup> Grade Walk/Hike to Wellness  
2022

The following document will demonstrate how the Moore Elementary School's 4<sup>th</sup> Grade Walk/Hike to Wellness meets the standards set by NASPE (National Association of Sports and Physical Education) in physical education. It will also show how it meets the 4<sup>th</sup> grade standards set by the State of Tennessee Department of Education in health education, language arts, math, and social studies.

*During our 8 weeks of training, we emphasis the proper mechanics of walking. We encourage students to maintain a specific speed or pace that will ensure they keep up with their group and not cause a prolonged space or gap between their group and the group behind them. We are constantly emphasizing that safety comes first while both training and participating in the actual walk. We discourage horseplay or any other actions that might cause harm to one of the participants.*

## Physical Education: Grades 3-5

### **Standard: Movement Forms/Motor Skills and Movement Patterns**

**Grade Level Expectation:** A physically educated person demonstrates competency in motor skills and movement patterns needed to perform a variety of physical activities.

**Checks for Understanding:** To achieve the following Checks for Understanding refer to the Student Performance Indicators.

*The student will:*

Demonstrate mature form in all loco-motor patterns and selected manipulative and non-loco-motor skills.

Use responsible behavior in safety procedures for all physical activities

**Level 2 - Skills are developing; mastery and assessment occur at this level.**

1.2.9 I can identify and apply safety principles in all activity situations.

*During our training we emphasize the importance of daily physical activity in maintaining a healthy lifestyle. We encourage our students to get their entire family out for a walk in the neighborhood or at the park. This activity is totally voluntary for our 4<sup>th</sup> grade students, but we stress that each one of them can accomplish the goal by putting in the daily practice, committing to follow the rules and being part of the team. We encourage our students to also participate in our running program. The students are divided up into walking groups at the beginning consisting of 8-10 students. Within these groups they will make decisions on a walking order, which student is responsible for roll taking and other group dynamics. They*

*will be called on to settle disagreements within their groups and settle on a consensus when decisions need to be made.*

### **Standard: Physical Activity**

**Grade Level Expectation:** A physically educated person participates regularly in physical activity.

**Checks for Understanding:** To achieve the following Checks for Understanding refer to the Student Performance Indicators Levels 1-3.

*The student will:*

Participate voluntarily in physical activity outside the physical education class  
Identify and make use of opportunities at school and in the community for regular participation in physical activity  
uses physical education skills and knowledge for increased physical activity at recess and in the community

#### **Student Performance Indicators:**

##### **Level 1 - Skills are introduced at this level.**

*At Level 1, the student will:*

- 3.1.1 Participate in appropriate physical activities outside the school setting
- 3.1.2 Participate in individual and small group activities in structured and non-structured physical activity settings

*During our training we encourage our students to maintain a specific pace that produces an increased heart rate for an extended period of time. We will discuss how walking can be one of the best forms of cardiovascular exercises you can perform. It is low impact, low cost and watching the world go by at 3.5 miles an hour can be very educational. We discuss that not only will their cardiorespiratory system improve but overall muscle tone and strength will be increased. We will be allowing students to recognize how their bodies are responding to the training by asking questions about how they feel after training every couple of weeks. We have always seen an increase in our fitness levels within our 4<sup>th</sup> grade students who participate in the walk. Conducting our Fitness-gram testing in the spring allows us to see improvements in their cardio-respiratory fitness based on mile run times. We encourage the students to bring a nutritious snack to be eaten prior to training. This is to provide the proper fuel for the body as we train. Our goal is to produce a student who realizes the importance of daily physical activity and will have the knowledge and experience to develop a personal plan for fitness. We want our students to develop a love for walking and hiking and possibly involve their family members in future endeavors related to fitness. The joy and excitement that our students experience when they have reached their goal of completing the 8 weeks of training and the 28-mile two-day walk/hike is hard to put into words. They have a sense of accomplishment and pride they will carry with them into adulthood.*

## **Standard: Fitness**

**Grade Level Expectation:** A physically educated person achieves and maintains a health-enhancing level of physical fitness.

**Checks for Understanding:** To achieve the following Checks for Understanding refer to the Student Performance Indicators Levels 1-3.

*The student will:*

engage in sustained physical activity that causes an increased heart rate for longer periods of time

recognize and monitor the physiological indicators that accompany moderate to vigorous physical activity

Identify activities associated with each component of health-related physical fitness

evaluate and improve personal levels of health-related fitness

recognize that time and effort are necessary for improving and maintaining fitness

recognize the importance of nutrition relative to fitness

### **Student Performance Indicators:**

#### **Level 1 - Skills are introduced at this level.**

*At Level 1, the student will:*

4.1.1 Sustain moderate to vigorous physical activity for longer periods of time

4.1.2 Monitor the change in heart rate that occurs during physical activity

4.1.3 Identify at least two activities associated with health-related fitness and the benefits of these activities

4.1.4 Recognize that physical activity contributes to improved fitness and personal well being

4.1.5 Understand that there is a connection between nutrition and a healthy lifestyle

#### **Level 2 - Skills are developing; mastery and assessment occur at this level.**

*At Level 2, the student will:*

4.2.1 Plan, monitor and set goals in daily physical activities for the purpose of developing and maintaining personal fitness

4.2.2 Identify multiple physiological changes that occur during physical activity

4.2.3 Identify and use each component of health-related fitness that contributes to the development of personal fitness

4.2.5 Enjoy achievement of health enhancing levels of fitness

*We stress that this program not only enhances personal fitness levels but also helps the students learn about personal responsibility and making right choices. They must adhere to a strict code of conduct that is written into the agreement they sign at the beginning. They must agree to follow all safety rules and safe practices. They must be able to cooperate with each*

*of their peers not only in their group but also within the total team. They agree to respect each of their peers and the adults during both training and the actual walk. They are responsible for their own behavior and must stay on task.*

### **Standard: Personal and Social Responsibility**

**Grade Level Expectation:** A physically educated person exhibits responsible personal and social behavior that respects self and others in physical activity settings.

**Checks for Understanding:** To achieve the following Checks for Understanding refer to the Student Performance Indicators Levels 1-3.

*The student will:*

apply rules, procedures, and safe practices  
cooperate with others regardless of personal differences in skill, gender, disability, socioeconomic level and ethnicity  
recognize and value attributes of individuals  
treat others with respect during physical activity  
resolve conflicts in socially acceptable ways  
work independently and on-task

#### **Student Performance Indicators:**

**Level 1 - Skills are introduced at this level.**

*At Level 1, the student will:*

- 5.1.1 Identify appropriate rules, procedures, and safe practices for selected activities
- 5.1.2 Work cooperatively with a partner or small group

*We discuss that this program is a voluntary program and may not be for everyone. We want each student to enjoy his or her participation in the training and the two-day walk. We feel that the growth that happens during the 8 weeks of training and the two days we spend out on the Natchez Trace goes along way in developing self-expression and social interaction. We encourage the students to keep a personal log of how they feel throughout the training and the walk. This can be a reflection tool when they reach their goal and want to relive certain aspects of the experience. The feelings of joy and accomplishment that are exhibited when we arrive back at the school where the entire student body, teachers and parents line the drive welcoming us back allows the 4<sup>th</sup> grade students who participated a chance to celebrate their success. It is our hope that the students will use this experience as a catalyst to push themselves into other challenging fitness endeavors.*

## **Standard: Values Physical Activity**

**Grade Level Expectation:** A physically educated person values physical activity for health, enjoyment, challenge, self-expression and/or social interaction

**Checks for Understanding:** To achieve the following Checks for Understanding refer to the Student Performance Indicators Levels 1-3.

*The student will:*

experience enjoyment while participating in physical activity  
seek personally challenging experiences in physical activity  
use physical activity as a means of self expression  
recognize physical activity as a positive opportunity for social interaction  
celebrate personal successes and achievements

### **Student Performance Indicators:**

**Level 1 - Skills are introduced at this level.**

*At Level 1, the student will:*

6.1.1 Participate willingly in a variety of physical activities

**Level 2 - Skills are developing; mastery and assessment occur at this level.**

*At Level 2, the student will:*

6.2.1 Describe feelings following participation in physical activity

6.2.2 Value the challenges and achievements associated with fitness and skill development

6.2.3 Select physical activities for the purpose of self-expression

6.2.4 Challenge self to higher level of performance

6.2.5 Enjoy participation in group activities

6.2.6 Select a new physical activity for participation

**Level 3 - Students are proficient at this level.**

*At Level 3, the student will:*

6.3.1 Seek personally challenging experiences in physical activity both in and out of school.

*We stress with the participants in our program that it is not only about fitness but also about decision-making and responsibility. They are called upon to make various group decisions that affect their experience within the program. Their goals are discussed at the beginning of training and how they are responsible for the achievement of their daily goals that will lead to success. We discuss personal hygiene pertaining to exercise, perspiration and the use of deodorant. We have discussions about getting the proper amount of sleep during the training phase as well as on the actual walk. We also discuss that proper hydration is essential to good performance. They will be called on to address conflicts within their groups and seek resolutions to those conflicts. We discuss the*

*importance of being smart about activities during recess that could cause injury and affect their performance at practice. Students will recognize that certain students with disabilities may have a modified training schedule. All participants will be required to treat both peers and adults with respect and have proper manners throughout training and the walk. A very important discussion involves the possibility that horseplay or any other activity done outside of the rules agreed to could lead to serious injury or even death. We are walking on public roads and trails and therefore need to practice all the safety rules we can to prevent any injury to the students.*

## **Tennessee Health Education Standards 3-5**

**Standard 1: The student will demonstrate the ability to implement decision making skills and goal setting skills to promote his/her personal health and wellness, thereby enhancing quality of life for himself/herself and those around him/her.**

### **Learning Expectations:**

The student will:

- 1.1 Identify effective decision-making techniques.
- 1.2 Identify the benefits of forming personal goals, values and standards.
- 1.3 Identify the influences that help an individuals form personal goals, values and standards.
- 1.4 Apply the decision-making process in developing personal goals and standards that affect family life.

### **Performance Indicators:**

*At Level 1, the student will be able to:*

- describe the steps of the decision-making process.
- explain the difference between short- and long-term personal goals.

*At Level 2, the student will be able to:*

- demonstrate the decision-making process.
- analyze how influences affect personal decision-making processes.
- describe the connection between choices, actions, and consequences.
- identify how goals and standards relate to self worth.

*At Level 3, the student will be able to:*

- evaluate how various people provide influences in personal choices.
- demonstrate making personal choices based on reasoned arguments.

**Standard 2: The student will understand the importance of personal hygiene practices as related to healthy living.**

### **Learning Expectations:**

The student will:

- 2.1 demonstrate the importance of personal hygiene practices.
- 2.2 describe physical/emotional/social health implications of personal hygiene.

2.3 identify ways to take responsibility for our personal health.

**Performance Indicators:**

*At Level 1, the student will be able to:*

- describe basic personal hygiene methods including hand washing, dental/oral care, **bathing/shampooing**, and dressing.
- explain how personal hygiene practices can affect personal health and social relationships.

*At Level 2, the student will be able to:*

- apply basic hygiene methods including hand washing, dental/oral care, **bathing/shampooing**, **use of deodorant**, and **appropriate dress**.
- describe how good personal hygiene relates to a positive outlook and self concept.

**Standard 4: The student will understand the relationship of physical activity and rest to healthy living.**

**Learning Expectations:**

The student will:

- 4.1 explain the importance of participation in the recommended one hour of daily physical activity.
- 4.2 identify personal physical activity goals needed to achieve overall wellness.
- 4.3 explain the role of adequate sleep-in health and performance of daily activities.

**Performance Indicators:**

*At Level 1, the student will be able to:*

- explain the benefits of daily physical activity, rest, and sleep on personal health.

**Standard 5: The student will understand the relationship of nutrition to healthy living.**

**Learning Expectations:**

The student will:

- 5.2 explain how personal health and body composition is influenced by **balancing diet and physical exercise**.

**Performance Indicators:**

*At Level 1, the student will be able to:*

Describe that **adequate water intake** and a nutritious breakfast are

essential components of healthy living.

Explain the role of dietary supplements and nutrients including minerals, vitamins, and **water**

### **Emotional, Social, and Mental Health**

**Domain Description:** Emotional, social, and mental health is dependent upon a healthy self-concept and communicating needs, wants, and feelings in a healthy manner. Learning to manage conflict, anger and stress promotes healthy living.

**Standard 8: The student will understand the importance of positive self-concept and interpersonal relationships for healthy living.**

#### **Learning Expectations:**

The student will:

8.1 describe how feelings affect behavior.

8.2 **demonstrate respect** for the unique qualities of self and others.

8.3 describe characteristics to be a **responsible friend** and family member.

8.4 identify positive and negative stress.

#### **Performance Indicators:**

*At Level 1, the student will be able to:*

- discuss the connection between feelings and behavior.
  - explain that emotions may be expressed in different ways.
  - identify and demonstrate appropriate manners.
  - identify appropriate ways to express feelings.
  - demonstrate the ability to respect property, rights, and personal space of others
  - identify the characteristics of a bully.
  - describe ways to use non-violent behaviors to resolve conflict and compromise in a manner that is fair to all persons involved.
- explain the importance of having personal values (e.g., honesty, truthfulness, trustworthy, patience, loyalty, responsibility, self control, etc).

*At Level 2, the student will be able to:*

- analyze how respectful and tolerant behaviors can reduce prejudice, discrimination and bullying (e.g., race, culture, disabilities, and gender);
- express the importance of not feeling sad or depressed for long periods of time.
- describe how to identify their own feelings and the feelings of others.
- identify how someone might feel in different situations.
- demonstrate appropriate ways to include individuals with disabilities.

#### **Teacher Assessment Indicators (examples):**

The teacher may:

- have students compare the behaviors needed for building positive relationships with friends and family to the behaviors needed for working together as a team

### **Injury Prevention and Safety**

**Domain Description:** According to the Tennessee Department of Health-Office of Health Statistics, the leading cause of death for individuals between the ages of 1 and 44 is unintentional injury, and accounts for more deaths than heart disease and cancer combined.

**Standard 10: The student will understand attitudes and behaviors for preventing injuries and deaths from injury.**

#### **Learning Expectations:**

The student will:

10.2 explain the **importance of safety rules** and laws.

10.3 demonstrate and explain appropriate choices related to reducing **unintentional injuries**.

#### **Performance Indicators:**

*At Level 2, the student will be able to:*

- describe how personal choices and peer pressure relate to the common risks of childhood injury and death.
- explain safety precautions that would help prevent injuries

## **Tennessee English Language Arts Standards**

**Effective 2009-2010**

**Grade 4**

**Standard 2 - Communication**

**Grade Level Expectations**

**GLE 0401.2.1** Continue to develop oral language skills necessary for communication.

**GLE 0401.2.2** Continue to develop listening skills necessary for communication

### **Checks for Understanding (Formative/Summative Assessment)**

#### **Listening**

**0401.2.1** Listen attentively by facing the speaker, asking questions, and summarizing what is said.

**0401.2.2** Use established rules for attentive listening (e.g., do not interrupt, ask questions, provide appropriate feedback).

**0401.2.3** Understand and follow multi-step directions (e.g., follow directions for a game).

**0401.2.4** Formulate and respond to questions from teachers and group members.

### **Speaking**

**0401.2.6** Use rules for polite conversation.

**0401.2.7** Participate in creative responses to text (e.g., choral reading, discussion, dramatization, oral presentations).

**0401.2.8** Express reactions, personal experiences, and opinions orally.

**0401.2.9** Create and deliver an oral presentation on an assigned topic (e.g., book reports, demonstrations, science/social studies projects).

## **Standard 3 – Writing**

### **Grade Level Expectations**

**GLE 0401.3.2** Write in a variety of modes and genres (e.g., narration, description, personal expression, imaginative writing, response to literature, response to subject matter content).

### **Checks for Understanding (Formative/Summative Assessment)**

**0401.3.3** Practice writing to a prompt within a specified time limit.

**0401.3.15** Incorporate vivid language into writing.

## **Standard 7 - Media**

### **Grade Level Expectations**

**GLE 0401.7.1** Recognize that media can be a source of information and entertainment.

**GLE 0401.7.2** Use media to publish and present information.

### **Checks for Understanding (Formative/Summative Assessment)**

**0401.7.1** Use media (e.g., photographs, PowerPoint, dioramas, videos, the arts, online catalogs, nonfiction books, encyclopedias, Internet) to view, read, and represent information and to conduct research.

**0401.7.2** Use print and non-print materials along with prior knowledge to provide background for writing and /or presenting.

**0401.7.3** Use media to enhance reports and oral presentations.

### **State Performance Indicators**

**SPI 0401.7.1** Select the most appropriate and reliable media for accessing information, writing a report or making a presentation.

**SPI 0401.7.2** Identify the main idea in a visual image.

**SPI 0401.7.3** Choose the most effective medium to enhance a short oral presentation (e.g., still pictures, model, diorama, PowerPoint, recording).

## **Standard 1 – Mathematical Processes**

**GLE 0406.1.2** Apply and adapt a variety of appropriate strategies to problem solving, including estimation, and reasonableness of the solution.

**Checks for Understanding (Formative/Summative Assessment):**

0406.1.2 Identify the range of appropriate estimates, including over-estimate and under-estimate.

## **Social Studies - Fourth Grade**

4.1.03 Recognize the contributions of individuals and people of various ethnic, racial, religious, and socioeconomic groups to the development of civilizations.

4.1.04 Understand the contributions of individuals and people of various ethnic, racial, religious, and socioeconomic groups to Tennessee.

c. Summarize the contributions of people of various racial, ethnic, and religious groups in the development of early Tennessee.

### **Accomplishments**

4.2.01 Describe the potential costs and benefits of personal economic choices in a market economy.

a. Identify the economic motivations for European exploration and colonization.

b. Describe how Native Americans in Tennessee and the Western Hemisphere met their basic economic needs.

c. Analyze how people in different parts of the United States earned a living in the past and do so in the present.

4.2.02 Give examples of the interaction of groups, businesses, and governments in a market economy.

a. Explain the economic patterns of various early Native American groups in Tennessee and the Western Hemisphere.

b. Identify major industries of colonial America.

c. Explain the economic patterns of early European colonial governments and their relationships with foreign governments.

4.2.03 Understand fundamental economic concepts.

a. Explain and demonstrate the role of money in daily life.

b. Describe the relationship of price to supply and demand and how it affected early American history.

c. Use economic concepts such as supply, demand, and price to help explain events.

## **Geography**

### **Content Standard: 3.0**

Geography enables the students to see, understand and appreciate the web of relationships between people, places, and environments. Students will use the knowledge, skills, and understanding of concepts within the six essential elements of geography: world in spatial terms, places and regions, physical systems, human systems, environment and society, and the uses of geography.

### **Performance Indicators State:**

As documented through state assessment -

#### ***At Level 1, the student is able to***

- 4.3.spi.1. identify the routes the explorers of the Americas on a map (i.e., Columbus, Balboa, Pizarro, DeSoto).
- 4.3.spi.2. identify and use key geographical features on maps (i.e., mountains, rivers, plains, valleys, forests).

#### ***At Level 2, the student is able to***

- 4.3.spi.3. recognize the reasons settlements are founded on major river systems. (i.e., transportation, manmade boundaries, food, and water sources).
- 4.3.spi.4. recognize river systems that impacted early American history (i.e., Mississippi, Mystic, Charles, Hudson).

**FCS Tilting Braising Pans for MES, PGS, FIS, FMS, FES**  
**Bid : FCS 2022-10**  
**March 9, 2022**

**Purchase and installation of seven 40 quart tilting skillet braising pans.**

**SCHOOL/DEPARTMENT:** Moore Elementary, Poplar Grove, Freedom Intermediate,  
Freedom Middle, Franklin Elementary

**FUNDING SOURCE:** Food and Culinary Services

**BUDGET CODE:**

143 E 73100 710 009	\$40,494.63
143 E 73100 710 030	\$40,494.63
143 E 73100 710 002	\$21,071.49
143 E 73100 710 04	\$21,071.49
143 E 73100 710 005	\$21,071.49

**DATE OF BID OPENING:** March 9, 2022

**RECOMMENDED LOWEST BID MEETING SPECIFICATIONS:** Tri Mark/ Strategic Equipment, LLC  
3011 Industrial Parkway East  
Knoxville, TN 37921 **\$144,203.73**

**OTHER BIDDERS:**

Mobile Fixture & Equipment	\$146,483.03
Dykes	\$154,575.67
Douglas	\$160,838.86

**OTHER BIDDERS WHO WERE SENT BID INFORMATION** Hotel & Restaurant Supply

*Approved*  
  
3/9/22

Bid was advertised in the Williamson Herald on Thursday, February 24, 2022

**FSSD SURPLUS PROPERTY AUTHORIZATION  
FOR ITEMS VALUED TO BE GREATER THAN \$500 - MUST HAVE FULL BOARD APPROVAL**

ITEMS TO BE DISPOSED: (add rows if needed)

DATE: 2/28/2022

Location	Quantity	Description
Transportation	One (1)	2008 Thomas Type D School Bus / 1T88T3E2381291166

insert pictures here if appropriate:

**Notes:**

- The above items are no longer suitable to be utilized in the programs of FSSD.
- The supervisor of the program has estimated the item value to **exceed \$500**.
- Upon approval **from the Board** to surplus, the supervisor may sell the property to the highest bidder after advertising in newspaper (7days) or internet auction website used by the district, state or other local government. Please share the plan for sale:

govdeals.com

- All revenue from the sale of listed items shall be deposited in the general-purpose fund of the Board unless the item was purchased from CNP or Federal Projects.
- If attempts to sell the property fail to produce monetary return, the property may be discarded.

Approval:



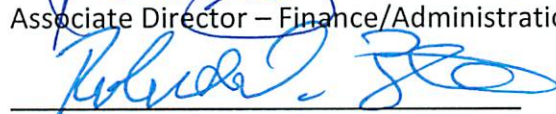
Program Supervisor



Director of Schools



Associate Director – Finance/Administration



Board Chairman

Approved original to: Program Supervisor

Approved Copies to: Facilities Supervisor, Accounting Coordinator, General Ledger Specialists

Reference: Board Policy 2.403

**RESOLUTION  
OF THE FRANKLIN SPECIAL SCHOOL DISTRICT  
BOARD OF EDUCATION  
REQUESTING NO LEGISLATIVE ACTION ON HB2833/SB2168**

**WHEREAS**, HB2833 and SB2168 have been filed for introduction in the current Tennessee legislative session and include various changes and additions to laws concerning charter schools; and

**WHEREAS**, said changes include (1) reducing timelines for review and approval of charter school applications from 90 to 75 days, (2) adding a provision for charter schools to choose to use a school building that is at or below 50% LEA usage, (3) funding changes related to facilities use, and other provisions reducing local LEA decision-making; and

**WHEREAS**, (1) the current review time for charter school applications already demands prompt attention in order to complete an appropriate review, (2) school buildings are not designed for common areas such as offices, gymnasiums, libraries, hallways, etc. to have two separate schools with two administrations applying different rules and schedules, and the proposed legislation does not anticipate growth in an LEA's enrollment demand, and (3) any funding change proposals are not timely given the anticipated proposals for replacement of the BEP funding formula; and

**WHEREAS**, the proposed legislation reduces local decision-making on issues that are best made by local elected bodies with knowledge of location conditions.

**NOW THEREFORE, BE IT RESOLVED**, that the Franklin Special School District Board of Education urges the General Assembly and any committees or subcommittees considering HB2833 and SB2168 to take no action advancing said proposed legislation.

Approved by the Board and signed this 21<sup>st</sup> day of March, 2022:

\_\_\_\_\_  
*Robert Blair, Chairman*

\_\_\_\_\_  
*Allena Bell, Vice Chair*

\_\_\_\_\_  
*Alicia Barker, Board Member*

\_\_\_\_\_  
*Robin Newman, Board Member*

\_\_\_\_\_  
*Tim Stillings, Board Member*

\_\_\_\_\_  
*Kevin Townsel, Board Member*

\_\_\_\_\_  
*Dr. David Snowden, Director of Schools*



 **AIA<sup>®</sup> Document A133<sup>™</sup> – 2019****Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the 7th day of March in the year 2022  
*(In words, indicate day, month, and year.)*

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

Franklin Special School District  
507 New Hwy 96 West  
Franklin, TN 37064

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

Nabholz Construction Corporation, dba/  
Nabholz Construction Services  
6640 Carothers Parkway; Suite 150  
Franklin, TN 37067

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

Johnson Elementary School Kitchen Renovation & Expansion  
815 Glass Ln.  
Franklin, TN 37064

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

HFR Design  
214 Centerview Drive Suite 300  
Brentwood, TN 37027

The Owner and Construction Manager 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201<sup>™</sup>–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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**User Notes:**

(1395806261)

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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

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

| To Be Determined

§ 1.1.2 The Project's physical characteristics:

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

| To Be Determined

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

| Unknown at time of execution

Init.

/

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

.1 Design phase milestone dates, if any:

Drawings have been completed.

.2 Construction commencement date:

Summer 2022 or when procurement indicates it to be practical.

.3 Substantial Completion date or dates:

The goal will be to complete the remodel by the start of the second semester for the 2022, 2023 school year. A substantial completion date will be defined in the amendment.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
*(Identify any requirements for fast-track scheduling or phased construction.)*

N/A

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

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

To Be Determined

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
*(List name, address, and other contact information.)*

David Esslinger  
Franklin Special School District  
507 New Hwy 96 West  
Franklin, TN 37064  
Ph 615.794.6624  
Fax 615.591.4327

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

To Be Determined

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

(Paragraphs deleted)

.1 Other, if any:  
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

To Be Determined

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

Steve Griffin  
HFR Design  
214 Centerview Drive Suite 300  
Brentwood, TN 37027  
Ph 615.370.8500  
Fax 601.832.2296

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

John Strack  
Nabholz Construction Services  
6640 Carothers Pkwy, Suite 150  
Franklin, TN 37064  
Ph 615.572.3742

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

To Be Determined

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

To Be Determined

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

To Be Determined

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in

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User Notes:

(1395806261)

this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

**§2.1.1** Construction Manager shall exercise the degree of care, skill and diligence in the performance of the Construction Manager's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Construction Manager's Standard of Care"). The Construction Manager shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Construction Manager's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Construction Manager's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Construction Manager under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

**§2.1.2** To the extent the Owner requests that the Construction Manager provide services within its Standard of Care, such as value analysis and/or constructability suggestions or comments with respect to the Drawings and Specifications, Owner acknowledges that such services are advisory only and not professional design services. The Owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to Owner's acceptance thereof. The Owner further acknowledges that the Construction Manager is not responsible for adequacy of the drawings and specifications or for confirming the absence of errors or omissions that may exist therein. The Owner shall cause the Architect to revise the Drawings and Specifications to reflect all value analysis and constructability suggestions and comments accepted by the Owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time may be adjusted upon the Contractor's review and pricing of the revised Drawings and Specifications.

## **§ 2.2 Relationship of the Parties**

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

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction (as amended), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law; Article 15, Claims and Disputes. The term "Contractor" as used in A201-2017 (as amended) shall mean the Construction Manager.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017 (as amended), which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 (as amended) shall mean the Construction Manager.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 (as amended) referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with

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

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall perform its Preconstruction Services consistent with the Construction Manager's Standard of Care. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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.

**§ 3.1.3.3** The Owner and Architect shall consult with the Construction Manager in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### **§ 3.1.5 Phased Construction**

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

#### **§ 3.1.6 Cost Estimates**

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 [Intentionally Omitted]

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 [Intentionally Omitted]

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

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

#### § 3.1.12 Procurement

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

#### § 3.1.13 Compliance with Laws

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

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

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## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Drawings and Specifications have been completed, the Construction Manager and in consultation with the Architect will solicit trade contractors for competitive bids in relevant trade categories. Upon completion of the bidding cycle, the Construction Manager shall propose a Guaranteed Maximum Price which shall be the sum of the estimated cost of work, including the contingencies described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 The Owner and Construction Manager acknowledge that the Construction Manager will/has developed the Guaranteed Maximum Price based upon completed Contract Documents "CDs".

In the event that the Owner and Construction Manager agree that the Construction Manager will develop a Guaranteed Maximum Price before the completion of the Contract Documents (CDs), in that such Drawings and Specifications do not contain all details and requirements of the Work, the Guaranteed Maximum Price will be based on certain assumptions by the Construction Manager. To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager will include an allowance to be identified in the GMP Amendment for further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, or any condition which was not reasonably anticipated by the Construction Manager's assumptions regarding the completion of the design, all of which, if required shall be incorporated by Change Order for additional cost and/or time as required. If the Contract Documents (CDs) or final Drawings and Specifications require performance of the Work in any manner different from such assumptions, or contain changes in the scope of the Work to be performed by the Construction Manager, the Construction Manager shall as soon as practicable notify the Owner and Architect thereof and of the Construction Manager's estimate of the resulting increase or decrease in the Guaranteed Maximum Price. At such time as the Owner, Architect and the Construction Manager have agreed upon the effect of such difference and/or changes in the scope of the Work, a Change Order shall be issued substituting the finished Contract Documents (CDs) for those described in this Agreement and the Guaranteed Maximum Price and Contract Time shall be adjusted as agreed by the parties.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017 (as amended), the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### § 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017 (as amended).

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER’S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 (as amended) Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

## § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

## § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the

Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

## **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

*(Paragraphs deleted)*

**§ 5.1.2** The fee for preconstruction services shall be a lump sum of Zero (\$0.00). Any miscellaneous costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in Article 5.1.2.1.

*(Table deleted)*

**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

**§ 5.1.3** [Intentionally Omitted]

### **§ 5.2 Payments**

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

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

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

%

## **ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

### **§ 6.1 Contract Sum**

**§ 6.1.1** The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

**§ 6.1.2** The Construction Manager's Fee:

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

**§ 6.1.3** A lump sum equal to 4.5% of the Cost of the Work. The Construction Manager's Fee shall be adjusted for changes in the Work by zero percent (0%) for deductive changes and 4.5% for additive changes.

Nabholz has agreed to a lump sum equal to 4.0% of the Cost of the Work for the re-roof scope. For this portion of work, the Construction Manager's Fee shall be adjusted for changes in the Work by zero percent (0%) for deductive changes and 4.0% for additive changes.

**§ 6.1.4** Limitations, if any, on Subcontractor's overhead and profit for increases in the cost of its portion of the work shall be per Project Specifications.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent ( 100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 6.1.7 Other:  
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of Work as defined in Article 6 of this Agreement and in no event shall be considered a line item guarantee of the cost of any individual portion of the Work.

## § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction (as amended).

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction (as amended).

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017 (as amended), as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 (as amended) shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be included in the Guaranteed Maximum Price

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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§ 7.1.1.1 The sum for General Conditions will be billed as a lump sum and paid in monthly installments commencing with the next calendar month following the date of commencement of construction of the Project and concluding on the date of completion of the Work. Payments will be pro-rated for part of a calendar month at the commencement of construction and the calendar month in which Final Completion occurs.

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

§ 7.1.3 [Intentionally Omitted]

## § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or at off-site locations or workshops.

§ 7.2.2 Salaries and burden of the Construction Manager's supervisory, project/operations management, executive, safety and administrative personnel, when engaged in execution of the Work, whether at the site, at the Construction Manager's principal office or offices other than the site office. These persons costs will be charged on an hourly basis and will be included in an agreed upon General Conditions costs.

Classification	Name

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)*

### § 7.2.2.1

*(Paragraphs deleted)*

[Intentionally Omitted]

§ 7.2.3 [Intentionally Omitted]

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, collectively referred to as "Labor Burden", shall be charged at a flat rate of 49% of base wage, provided that such costs are based on wages and salaries included in the Cost of the Work as described herein. Owner acknowledges that the Labor Burden rate set in this 7.2.4 is confidential and competitive to Construction Manager, and shall not be disclosed to any third-party without advance written authorization of Construction Manager's Operations President.

§ 7.2.4.1 The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law the Contract Sum will be adjusted accordingly.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

## § 7.3 Subcontract Costs

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

## § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of

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the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

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

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at a rate not to exceed the standard rental rate in the geographical area in which the project is located.

**§ 7.5.3** Costs of removal of debris and/or costs associated with diverting water waste to a waste recycling center from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

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

#### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** That portion of insurance including deductibles and bond premiums that can be directly attributed to this Contract and expenses for Subcontractor and Supplier Surety shall be reimbursed at the following rate: 1) Contractor's Subcontractor Supplier Default Insurance (SSDI) at one and a quarter percent (1.25%) of the Subcontractor/Supplier value; or 2) Contractor's actual premium cost for other Payment and Performance Bonds from the Subcontractors. At the Construction Manager's option, a combination of the above may be used. Application of SDI or surety bond shall be at the sole discretion of the Construction Manager.

The cost of the Construction Manager's insurance program shall be reimbursed at the rate of \$8.50 per thousand dollars of Contract Sum. Rates shall be subject to adjustment on the first day of each calendar year if required by the Construction Manager.

Builders Risk Insurance maintained by the Construction Manager at the rate of \$0.13 per thousand of Contract Sum per month to insure the components of the Project while under construction. If the construction type for the project classifies as wood frame or jointed masonry, different rates may apply.

**Owner acknowledges that the information provided in this Section 7.6.1 is trade secret, proprietary, or otherwise confidential and competitive to Construction Manager, and shall not be disclosed to any third-party without advance written authorization of Construction Manager's Operations President.**

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 (as amended) or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager knew that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017 (as amended). The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, data lines, telephone service, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017 (as amended).

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 (as amended) or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.7.5 Warranty Reserve (CM at Risk). A warranty reserve in the amount of TBD percent (TBD%) of the Cost of the Work will be agreed upon and included as a line item in the GMP Amendment(s) to cover the Construction Manager's cost for providing the warranty as outlined in the Contract Documents. The warranty reserve shall be deemed a Cost of the Work. In order to facilitate the final payment process set forth in Article 7.2, the Construction Manager will bill the Owner a lump sum amount for the full warranty reserve at the time of final payment.

## § 7.8 Related Party Transactions

§ 7.8.1 [Intentionally Omitted]

§ 7.8.2 [Intentionally Omitted]

## § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Construction Manager and Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

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

§ 6.11 The Contractor shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Contract Documents be applicable to Contractor when an auditor is hired by Owner on a contingency fee basis.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

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

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

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

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

§ 11.1.4 If required by the Owner, with each Application for Payment, the Construction Manager shall submit a detailed cost transaction report generated from the Construction Manager's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of the progress payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work. The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not

constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 11.1.5.3** [Intentionally Omitted]

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make 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.

**§ 11.1.7** In accordance with AIA Document A201–2017 (as amended) and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1 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 most recent schedule of values;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified; and
- .4 The Construction Manager’s Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 (as amended);
- .3 [Intentionally Omitted]
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 (as amended);
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%)

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:  
*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the Work is shown at fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld.

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017 (as amended).

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

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

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017 (as amended), and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

**§ 11.2.2** Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article

9 of AIA Document A201–2017 (as amended). The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017 (as amended). The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

**§ 11.2.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017 (as amended). A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

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

**§ 11.2.4** If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

**§ 11.3 Interest**

Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the maximum rate allowed by applicable law.

*(Paragraphs deleted)*

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017 (as amended). However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 (as amended) for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017 (as amended), the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017 (as amended)

Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017 (as amended).

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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## § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017 (as amended).

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017 (as amended), the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 (as amended) shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017 (as amended).

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017 (as amended), then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

## § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 (as amended); in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017 (as amended), except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017 (as amended). Where reference is made in this Agreement to a provision of AIA Document A201–2017 (as amended) or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017 (as amended), neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract

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Documents. The Owner shall provide Construction Manager advance written notice of such assignment. The Construction Manager shall execute all consents reasonably required to facilitate the assignment and acceptable to Construction Manager.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of Two million dollars (\$ 2,000,000 ) for each occurrence and two million dollars (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of two million dollars (\$ 2,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of one million dollars (\$ 1,000,000 ) each accident for bodily injury, one million dollars (\$ 1,000,000 ) each employee for bodily injury by disease, and one million dollars (\$ 1,000,000 ) policy limit for bodily injury by disease.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of two million dollars (\$ 2,000,000 ) per claim and two million dollars (\$ 2,000,000 ) in the aggregate.

#### § 14.3.1.6 Other Insurance

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

#### Coverage

#### Limits

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. Bonds may be obtained through the Construction Manager's usual source and the

cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017 (as amended), may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 14.5 Other provisions:

§ 11.5.1 Owner acknowledges that Contractor is an independent contractor and the Owner has no ownership or control over Contractor, a private entity. Contractor has not agreed to act as a custodian of public records for the Owner subject to the provisions of the Tennessee Public Records Act. Owner acknowledges and agrees that certain documents and information provided to Owner pursuant to the terms and conditions of this agreement may place Contractor and Owner at a competitive disadvantage if the information is disclosed and may constitute Contractor’s trade secret, confidential, proprietary, or information otherwise excluded from disclosure under the Act. In the event Owner receives a request for disclosure pursuant to letter, subpoena or other means, Owner shall provide notice of such request to Contractor within twenty-four (24) hours of receipt of the request, subpoena or demand, and shall not disclose such records without having provided Contractor with such notice and opportunity to take reasonable action to protect such records.

§ 11.5.2 If Drawings are revised after the Drawings referenced in the Contract, the Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Construction Manager and Owner. The Owner and Construction Manager acknowledge that it is difficult to determine and implement changes that are not so identified. Regardless if the Contract is amended to incorporate revised Drawings, the Guaranteed Maximum Price and Contract Time are subject to additional equitable adjustments for the cost and time impacts if implementing any changes not so identified.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction (as amended)

*(Paragraphs deleted)*

- .5 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 (as amended) provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

To Be Determined

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

**OWNER** *(Signature)*

David Snowden, Director of Schools  
*(Printed name and title)*

**CONSTRUCTION MANAGER** *(Signature)*

John Strack, EVP of Operations  
*(Printed name and title)*

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**AIA**<sup>®</sup>

# Document A133™ – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 7th day of March in the year 2022  
*(In words, indicate day, month and year.)*

for the following **PROJECT:**  
*(Name and location or address)*

Johnson Elementary School Kitchen Renovation & Expansion  
815 Glass Ln.  
Franklin, TN 37064

**THE OWNER:**  
*(Name, legal status, and address)*

Franklin Special School District  
507 New Hwy 96 West  
Franklin, TN 37064

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*

Nabholz Construction Corporation, dba/  
Nabholz Construction Services  
6640 Carothers Parkway; Suite 150  
Franklin, TN 37067

### TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified.

#### ARTICLE B.2 OWNER'S INSURANCE

##### § B.2.1 General

§ B2.1.1 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

**§ B2.1.2** The Owner shall take reasonable steps to require its separate contractors to name the Owner and Contractor as Additional Insureds on the separate contractors' general liability insurance policies and file certificates of insurance with the Owner showing such compliance prior to commencing Work at the Project site.

**§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance with coverage limits of no less than \$2,000,000.00 per occurrence.

**§ B.2.3 Required Property Insurance – Contractor Provided Builder's Risk**

**§ B.2.3.1** Unless directed otherwise in writing by Owner, Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, builder's risk insurance written on an "all-risks" policy form and sufficient to cover the total value of the entire Project on a replacement cost basis without optional deductibles. This builder's risk insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of any labor performed and materials, furnishings, equipment or fixtures. Owner will provide advance written notice to Contractor if materials, furnishings, or equipment supplied by others should be covered under the builder's risk insurance. The builder's risk insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire (with extended coverage), physical loss or damage, explosion, theft, vandalism, malicious mischief, collapse, earthquake, earth movement, flood, water damage, rain damage, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

**Cause of Loss**

**Sub-Limit**

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework, temporary structures, building systems, and construction forms, including, cribbing and scaffolding, falsework, and from testing and startup (both cold and hot testing). The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, utility replacement costs and fees, general conditions costs including supervision, third party consultants for inspections and testing, all local, state, and federal permits, fees and inspections, business interrupting and expediting expenses, "soft costs" including reasonable compensation for A/E services, interest, taxes, advertising expenses, insurance and legal and accounting expenses, portions of the Work and materials stored off-site, portions of the Work and materials stored on-site but not yet incorporated into the Work, and portions of the Work in transit, required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

**Coverage**

**Sub-Limit**

TBD based upon Project

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall assure continuation of the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance 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 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions if Owner provides the coverage.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing. In the event Owner fails to obtain any necessary insurer consent to occupy prior to Substantial Completion, and such failure results in a loss or reduction of insurance coverage, Owner shall bear all risk of loss and waives all its rights of action against Contractor, Subcontractors, and Sub-subcontractors for such loss.

**§ B.2.3.3 Insurance for Existing Structures**

Unless the parties agree in writing otherwise, if the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance for the value of such existing structure and any of its contents, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner agrees that the insured value of the existing structure and any contents under this property insurance policy is the sole source of recovery to the Owner in the event of a loss, or losses exceeding the insured value of the existing structure. The Owner shall waive all rights for damages to such existing structure and its contents and shall waive subrogation rights in favor of Contractor, Subcontractor, Sub-subcontractors, agents and their respective employees. If there are any coinsurance penalties, or losses otherwise uninsured, Owner shall pay uninsured losses to the Work.

**§ B.2.4 Optional Extended Property Insurance.**

Intentionally Omitted

*(Paragraphs deleted)*

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

**§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

**§ B.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
Worker's Compensation	Statutory Limit
Employer's Liability	\$1,000,000 each accident for bodily injury \$1,000,000 each employee for bodily injury by disease \$1,000,000 per policy for bodily injury by disease
Business Auto	\$2,000,000 combined single limit including Hired and Non-Owned Auto

**§ B.2.6 Risk of Loss.** If Owner elects not to purchase the Optional Insurance, Owner shall bear the risk of loss and waives all rights of action against Contractor, Subcontractors, and Sub-subcontractors for uninsured loss.

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the

Owner's written request. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** If requested, the Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. The Contractor shall be responsible for all loss not covered because of such deductibles or retentions when providing the Builder's Risk coverage.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 04 13, CG 20 3 04 13.

**§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of Two Million Dollars (\$ 2,000,000 ) each occurrence, Two Million Dollars (\$ 2,000,000 ) general aggregate, and Two Million Dollars (\$ 2,000,000 ) aggregate for products-completed operations hazard, 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 and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions, as modified.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of Two Million Dollars ( \$ 2,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits of One Million Dollars ( \$ 1,000,000 ) each accident for bodily injury, One Million Dollars ( \$ 1,000,000 ) each employee for bodily injury by disease, and One Million Dollars ( \$ 1,000,000 ) policy limit for bodily injury by disease.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of Two Million Dollars ( \$ 2,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of Two Million Dollars ( \$ 2,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of Two Million Dollars ( \$ 2,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

§ B.3.2.11 If required, insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of ( \$ ) per claim and ( \$ ) in the aggregate.

§ B.3.2.12 If required, insurance for the use or operation of unmanned aircraft, if the Work requires such activities, with policy limits of Two Million Dollars ( \$ 2,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

### § B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.3.2** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

**§ B.3.3.2.1** Builder’s Risk insurance on an "all-risks" form of the type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations under Section B.2.3 except to the extent provided below. The Construction Manager shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the builder’s risk insurance policy or policies required. Unless otherwise indicated below, the Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the Builder’s Risk insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

Contractor will be responsible for adjusting and settling a loss with the insurer and act as trustee of the proceeds of insurance under a Contractor-provided Builder’s Risk policy.

**§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of Two Million Dollars (\$ 2,000,000 ) per claim and Two Million (\$ 2,000,000 ) in the aggregate, for Work within fifty (50) feet of railroad property.

**§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, under a Pollution Liability policy with policy limits of Two Million Dollars (\$ 2,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

**§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

**§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

**§ B.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

**Coverage**

**Limits**

**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

**Type**

**Penal Sum (\$0.00)**

Payment Bond

Performance Bond

Payment and Performance Bonds shall be on the appropriate AIA forms or compatible bond forms provided by the Surety Company.

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**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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

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# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Johnson Elementary School Kitchen Renovation & Expansion  
815 Glass Ln.  
Franklin, TN 37064

**THE OWNER:**

*(Name, legal status and address)*

Franklin Special School District  
507 New Hwy 96 West  
Franklin, TN 37064

**THE ARCHITECT:**

*(Name, legal status and address)*

HFR Design  
214 Centerview Drive, Suite 300  
Brentwood, TN 37027

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**ADDITIONS AND DELETIONS:**

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 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 Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions 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.

### § 1.4 Interpretation

In the interest of brevity the Contract 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.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

### § 1.8 Building Information Models Use and Reliance

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

information model, and each of their agents and employees. Any agreement to such protocols shall be included in the Contract Documents as "BIM Addendum," or other agreed designation. The Owner shall cause an identical version of the BIM Addendum, if any, to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled.

### **§ 1.9 ORDER OF PRECEDENCE**

**§ 1.9.1** In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of the omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Architect for clarification. The Architect's clarifications are final and binding on all parties, subject to an equitable adjustment in Contact Time or Price pursuant to Articles 7 and 8 or claims and disputes in accordance with Article 15.

**§ 1.9.2** Where figures are given, they shall be preferred to scaled dimensions.

**§ 1.9.3** Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with the well-known meanings.

**§ 1.9.4** In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order:

- a. Change order and written Modifications to this Agreement
- b. this Agreement
- c. drawings (large scale governing over small scale)
- d. approved submittals
- e. information furnished by the Owner
- f. other documents listed in the Agreement (Among categories of documents having the same order of precedence, the term or provision that includes the most recent date shall control).

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Prior to commencement of the Work, the Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor 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.

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor 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 Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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## ARTICLE 3 CONTRACTOR

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.1.4 The Owner hereby agrees that Contractor shall not be liable or responsible in any manner whatsoever for any claims, damages, expenses, costs, errors, or omissions arising out of the professional services performed by the Architect or other design professionals, whether through indemnity or otherwise. The Owner's sole recourse shall be against the Architect, or other design professionals performing such professional services, and any insurance procured by the Architect.**

**To the extent that the Owner requires, or the Contractor otherwise provides, any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner shall, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or to the Architect or its consultants for such services required by the Owner and rendered hereunder.**

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Unless otherwise required by the Contract Documents, the Contractor 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures required by the Contract Documents may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper

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execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor 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.

**§ 3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, upon discovery, notify the Architect in writing, and necessary changes shall be accomplished by appropriate Modifications. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract 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 Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor 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 15.

#### **§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor'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 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

#### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor 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 Contract Documents. **The Contractor, in making this representation, is relying on the Architect to have fully coordinated the design drawings.**

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design criteria expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form required by the Contract Documents.

### § 3.13 Use of Site

The Contractor 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 Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents 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, 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3 The obligations of the Contractor shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, including but not limited to any liability arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants and agents and employees of any of them.**

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such 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, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor in writing of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor 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 Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; 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 a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. **To the extent the Owner chooses to perform construction or operations related to the Project, or to award separate contracts in connection with other portions of the Project or other construction or operations on the site, the Owner shall be required to secure a separate permit for that Work, if required by the authority having jurisdiction. Regardless, the Owner shall ensure that the Contractor is listed as an additional insured on the Separate Contractor's general liability and excess liability policy. If the Contractor claims that delay or additional cost is involved because of performance of construction or operations of Separate Contractors, of such action by the Owner or its Separate Contractors, the Contractor shall make such Claim as provided in Article 15.**

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 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 Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor 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 Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of 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 Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors..

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, 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 the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction 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 and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 in the Contract Sum, 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 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

**Notwithstanding, in the event the Architect has issued multiple Additional Supplementary Instructions that, in the aggregate, result in the changes justifying an adjustment in Contract Sum or extension of the Contract Time, Contractor shall be entitled to submit a request for an equitable adjustment.**

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, epidemics, pandemics, or other designated health emergency, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from first-tier Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of 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 Contractor 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 Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor 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 Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect 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 in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work 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 Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for 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 Contract Documents.

**However, in no event shall the Architect refuse to certify or shall the Owner withhold payment of an amount greater than that which is sufficient to pay the direct expenses the Owner reasonably expects to incur to correct any of the above reasons set forth by the Architect for withholding certification.**

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

#### § 9.5.4 [Intentionally Omitted]

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor 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 Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, 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 Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.7.1 Upon execution of the Agreement, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make change to this Payment Information without oral communication, followed by written confirmation, from Contractor's Controller. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as required under the terms of this Agreement.**

## § 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 Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect 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 Contractor to complete all Work in accordance with the Contract Documents.

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract 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.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract 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 Contractor, provided such occupancy or use is consented to by the insurer 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 Contractor 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 Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor 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 Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect 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 Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, 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 Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such 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 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 Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor 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 Contractor shall take reasonable precautions for safety of, and shall provide 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 Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor 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 Contractor 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 notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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 Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor 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 either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 Contractor 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 Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have 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 Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents 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.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor 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 Contractor, the Contractor 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 Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

**§ 10.3.7 Unless required by the Contract Documents, the Contractor shall not be required to perform, without consent, any Work relating to mold, asbestos, or polychlorinated biphenyl ("PCB"). The Contractor shall perform no work involving toxic, contaminant, contaminated or hazardous material of any type, which removal or responsibility to render harmless is the Owner's obligation.**

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the Contractor-procured property insurance shall be charged to the Owner by a Change Order. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner does not provide written notice to the Contractor of the Owner's failure to procure the required property insurance with all of the coverage and in the amounts described in the Contract Documents, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain such insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. In the event the Owner fails to procure the required property insurance with all of the amounts described in the Contract Documents, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner with respect to damage to the Work, furnishings, fixtures, equipment, and materials intended to be incorporated into the permanent structure, and consequential damages stemming therefrom.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide written notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3)

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Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, or delay in completion due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Subcontractors, Sub-subcontractors, Separate Contractors, and Architect for loss of use of the Owner's property, the inability to conduct normal operations, or delay in completion, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of written notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

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## § 12.2 Correction of Work

### § 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. In the event Work is uncovered and determined as conforming to the Contract Documents the costs of recovering and replacement, including compensation for Contractor's service and expenses, shall be at the Owner's expense.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, 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 any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor 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 Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 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.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract 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.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

## § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

## § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract 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.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor 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 upon in writing.

## § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor 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 Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If such procedures reveal the Work complies with the Contract Documents, all such costs shall be at the Owner's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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 Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

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

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor 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 subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, 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 Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated 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.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

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#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5.1 Where the price of material, equipment or energy increases significantly during the term of the Contract, through no fault of the Contractor, the Contract Sum shall be equitably adjusted by Change Order as provided in Section 7 of the General Conditions of the Contract. A significant price increase means a change in price from the date of Contract execution to the date of performance by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts, or other documentation.**

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor 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 Contractor 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 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of 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.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, 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 Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 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.

§ 15.2.9 If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of the first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business days of the date of first discussion, the Parties' representative shall immediately inform senior executives of the Parties in writing that resolution was not achieved. Upon receipt of such notice, senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

### § 15.3 Mediation

§ 15.3.1 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 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,

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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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

#### § 15.4 Arbitration

§ 15.4.1 [Intentionally Omitted] [Intentionally Omitted]

§ 15.4.1.1 [Intentionally Omitted] [Intentionally Omitted]

§ 15.4.2 [Intentionally Omitted]

§ 15.4.3 [Intentionally Omitted]

#### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 [Intentionally Omitted]

§ 15.4.4.2 [Intentionally Omitted]

§ 15.4.4.3 [Intentionally Omitted]

### ARTICLE 16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

#### § 16.1 Investigation, Analysis, and Testing

§ 16.1.1 **The Contractor has not investigated or determined the current conditions of the existing superstructure, building systems and the adequacy of utilities that may impact Contractor's performance of the Work. The cost of correcting any such deficiencies is not included within the GMP.**

# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## ADDENDUM 1

1 Property Address: 221 Fairground Street Franklin TN 37064  
2 Buyer: \_\_\_\_\_  
3 Seller: Franklin Special School District (FSSD) Board of Education  
4 Buyer's Agent: \_\_\_\_\_  
5 Listing Agent: Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty

6 This ADDENDUM between the undersigned parties is entered into and is effective as of the Date provided in the  
7 Lot/Land Exclusive Right to Sell Listing Agreement Designated Agency Agreement with an Effective Date or Binding Agreement  
8 Date of 03/22/2022 for the purpose of changing, deleting, supplementing or adding terms to said Agreement. In  
9 consideration of mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is  
10 hereby acknowledged, the parties agree as follows:

11 1. Line 36 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation  
12 via MLS & Public Marketing to be executed with this Agreement. Once List Price determined,  
13 then an Addendum to List Agreement issued to establish Term of listing.

14 2. Either party may choose to discontinue contract; however, termination for convenience by  
15 either party requires 30 day prior written notice.

16 3. If contract agreement terminated for convenience by Seller, then all hard costs for  
17 marketing to be reimbursed by Seller to Listing Agents upon delivery of actual receipts for  
18 expenses incurred and paid within 30 days of termination. Expenses would include but not  
19 limited to open houses, special events, signage, photography.

20  
21 4. Line 36 Marketing of Property Commencement Date: Waiver Signed. See Line 357 "Seller's  
22 Waiver of Broker Cooperation via MLS & Public Marketing"

23  
24 5. Add to Carry-Over Clause Line 40: Upon expiration of this Agreement, Broker shall provide  
25 Seller a listing of all introductions to the property made directly or indirectly during the  
26 term of this agreement. Seller will refer all inquiries concerning the property to Broker  
27 during the term of this agreement.

28 6. Add to Line 76: Only if ordered by the Court will FSSD pay all reasonable attorneys  
29 fees.....

30  
31 7. Line 315: Delete "Held by Broker in an escrow or trustee account or "

32 8. Line 316: Modified to read, "forwarded to title/escrow company of Sellers choosing who  
33 shall immediately deposit said earnest money in to their escrow/trust account at a federally  
34 insured financial institution until disbursed in accordance with terms of said agreement.

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47 This Addendum is made a part of the Agreement as if quoted therein verbatim. Should the terms of this Addendum conflict  
48 with the terms of the Agreement or other documents executed prior to or simultaneous to the execution of this Addendum, the  
49 terms of this Addendum shall control, and the conflicting terms are hereby considered deleted and expressly waived by all  
50 parties. In all other respects, the Agreement shall remain in full force and effect.

51 The party(ies) below have signed and acknowledge receipt of a copy.

52 \_\_\_\_\_

53 **BUYER** \_\_\_\_\_ **BUYER** \_\_\_\_\_

54 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

55 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

56 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

57 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

58 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

59 The party(ies) below have signed and acknowledge receipt of a copy.

60 \_\_\_\_\_

61 **SELLER Franklin Special School District** \_\_\_\_\_ **SELLER** \_\_\_\_\_

62 **By:** \_\_\_\_\_ **David L. Snowden** \_\_\_\_\_ **By:** \_\_\_\_\_

63 **Title:** \_\_\_\_\_ **Director of Schools** \_\_\_\_\_ **Title:** \_\_\_\_\_

64 **Entity:** \_\_\_\_\_ **Board of Education** \_\_\_\_\_ **Entity:** \_\_\_\_\_

65 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

66 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

67

68 The party(ies) below have signed and acknowledge receipt of a copy.

69 \_\_\_\_\_

70 **BUYER'S AGENT** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

71 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_

72 **Date** \_\_\_\_\_ **Address** \_\_\_\_\_

73

74 The party(ies) below have signed and acknowledge receipt of a copy.

75 \_\_\_\_\_ **Crye-Leike/Magli Realty** \_\_\_\_\_

76 **LISTING AGENT Joyce Friedman/Tom Magli** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

77 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ **206A Cool Springs Blvd., Suite 101/301 Public Sq**

78 **Date** \_\_\_\_\_ **Address Franklin 37064 TN 37067**

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## LOT/LAND EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** Crye-Leike Realtors & Magli Realty  
2 **ADDRESS OF COMPANY:** 206 A Cool Springs Blvd Ste 101/301 Public Sq Franklin 37067 TN 37064  
3 **OWNER / SELLER:** Franklin Special School District(FSSD) Board of Education  
4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the  
7 hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS / LEGAL DESCRIPTION:** 221 Fairground Street Lot 1  
9 (Address) Franklin (City), Tennessee 37064 (Zip) as  
10 recorded in Williamson County Register of Deeds Office, P67  
11 deed book(s) 58 page(s), and/or 0780 A 001.00 000 instrument number, and further described  
12 as:  
13  
14 with an estimated acreage of .42 ("Property").

15 **A. Other items that remain with the Property at no additional cost to Buyer:**

16  
17  
18  
19 **B. Items that will NOT remain with the Property:**

20  
21  
22  
23 **2. THE LISTING PRICE.** \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars).  
24 This price is based (select one):

- 25  for entire Property as a tract, and not by the acre; or  
26  per acre with the sales price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_  
27 per acre based on a current or mutually acceptable survey; or  
28  for entire Property as a tract but with the sales price to be adjusted upward or downward at \$ \_\_\_\_\_  
29 per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey  
30 should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

31 **3. TERM.**

32 This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date")  
33 through September 20th, 2022 ("Listing Expiration Date"). If a contract to purchase, exchange or lease is  
34 signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sale  
35 Agreement, exchange agreement, or lease agreement.

36 **Marketing of Property Commencement Date:** Seller directs Broker to commence marketing of the Property for sale  
37 to the general public on the Effective Date

38 OR  
39  on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Carry-Over Clause.** Should Seller contract to sell or exchange, or contract to lease the Property within 90 days after the Listing Expiration Date of this Exclusive Right to Sell Listing Agreement (“Agreement”) to any Buyer/Tenant (or anyone acting on Buyer’s/Tenant’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. **TERMS** of sale acceptable to Seller (such as USDA, Conventional, etc.): Cash to Seller

5. **POSSESSION OF PROPERTY** to be delivered: \_\_\_\_\_ **Date of Deed** \_\_\_\_\_

6. **COMPENSATION.** A total of \$ \_\_\_\_\_, or 5 % compensation based on the total sales price shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price (“Closing”). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ 0.00, or 0 % compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of the lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of Closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between Broker and Seller. The Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller’s breach of the Purchase and Sale Agreement or the lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or lease been fulfilled. Such compensation will be payable without demand. Should Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market the Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney’s fees together with any court costs and expenses which real estate agent incurs in enforcing any of Seller’s obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. **FURTHER INFORMATION CONCERNING PROPERTY.**

A. **Mineral, oil, gas, water and timber rights.**

Will conveyance of this Property include all mineral, oil, gas, water and timber rights?  Yes /  No

If no, please explain: NONE

B. **Crops.**

Crops planted at the time of sale will:

Pass with the land to the buyer OR  Remain with the Seller OR  Other (please describe):

NONE

C. **Leasehold or Tenant’s Rights.**

There are no leasehold interests or tenant’s rights in the subject Property, except as follows:

NONE

93 **D. Licenses or Usage Permits.**  
94 No licenses or usage permits have been granted, including but not limited to those for crops, minerals, water, grazing,  
95 timber, usage rights to hunters, fishermen, or others except as follows:  
96 **NONE**  
97

98 **E. Utilities.**  
99 Seller represents that the following utility connections are located as follows: (e.g. on the Property, at the lot line,  
100 across the street, unknown, etc.)  
101 Electricity: Determined by Survey Gas: Determined by Survey  
102 Municipal Sewer: Determine by Survey Municipal Water: Determined by Survey  
103 Telephone: Determined by Survey Cable: Determined by Survey

104 **F. Zoning.**  
105 Seller represents that the Property is zoned Residential R-4

106 **G. Flood Zone.**  
107 Is the Property or any part thereof located in a flood zone?  
108 **NO**  
109

110 **H. Exterior Injection Well, Soil Absorption and/or Percolation Test.**  
111 **1. Exterior Injection Well.** Does the Seller have knowledge of an exterior injection well being present on the  
112 Property? Yes / No  
113 **2. Soil Absorption and/or Percolation Test.** Has the Property been tested for  soil absorption and/or   
114 percolation? If either box is checked, please provide a copy of test results within \_\_\_\_\_ days of signing  
115 Agreement.

116 **I. Subsurface Sewage Disposal.**  
117 Has the Property been evaluated for a Sub-Surface Sewage Disposal System? Yes / No  
118 If yes, please provide a copy within \_\_\_\_\_ days of signing Agreement.

119 **J. Survey.**  
120 Has the Property been surveyed? Yes / No If yes, please provide a copy of the most recent survey within  
121 1 days of signing Agreement.

122 **K. Special Tax Arrangements.**  
123 Is the Property in any special tax arrangement such as Green Belt? Yes / No  
124 If yes, please list details: \_\_\_\_\_  
125

126 **L. Foreign/Unnatural Materials on Property.**  
127 Are you aware of any underground tanks or toxic substances, tires, appliances, garbage, foreign and/or unnatural  
128 materials, asbestos, polychlorinated biphenyl (PCB's), ureaformaldehyde, methane gas, methamphetamine  
129 production, radioactive material or radon on the Property (structure or soil)? Yes / No  
130 If yes, please list details, including the substance and its location:  
131  
132

133 **8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.**  
134 Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this  
135 listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands  
136 and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable  
137 database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that  
138 the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local  
139 association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities.  
140 Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide  
141 compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Broker  
142 shall offer a cooperative compensation to any agent who is a member participant of any MLS in which Property is listed  
143 in the amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a

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144 Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is  
145 the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member  
146 participant of the MLS(es) in which the Property is listed. In the event that Broker elects to offer a cooperating  
147 compensation to an agent who is not a member participant in the MLS(es) in which the Property is listed, it will be in the  
148 amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a Selling Agent or  
149 Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of  
150 the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that  
151 nonmember participant agent. Seller will assist Broker in any reasonable way in selling Property and will refer to Broker  
152 all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and  
153 authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.  
154 Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to  
155 disseminate the Multiple Listing Profile Sheet; to exhibit said Property to any prospective Buyer; and to have  
156 photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used  
157 and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;  
158 and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other  
159 copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant  
160 license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the  
161 Property to be shown at all reasonable hours and otherwise cooperate with Broker. Seller agrees that Broker is authorized  
162 to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property  
163 which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if  
164 such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order  
165 for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from  
166 Buyers or cooperating brokers, Broker will follow Seller's lawful instructions on the disclosure of the existence of  
167 any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

168 **9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.**

169 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
170 *of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected*  
171 *from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one*  
172 *of the following:*

173 *Non United States citizen;*

174 *Non resident alien; or*

175 *Foreign corporation, partnership, trust, or estate*

176 *It is Seller's responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

177 **10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

178 Seller agrees to carefully review the information on the Multiple Listing Profile Sheet to ensure information is accurate.  
179 Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the  
180 improvements located thereon. Seller is not aware of any other defect or environmental factor which would affect the value  
181 of the Property, significantly reduce the structural integrity of the improvements on the Property, or the health of future  
182 occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data  
183 wherein Seller has supplied such information. Seller further agrees to hold Agents and firm harmless and indemnify them  
184 from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or  
185 misrepresentation by Seller and/or for any material fact that is known or should be known by Seller concerning the Property  
186 and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fees for Agents and  
187 firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.  
188 Code Ann. § 62-13-102) concerning the Property.

189 Seller authorizes Broker and/or his affiliated Licensees to conduct showings of the Property. **Seller is responsible for**  
190 **compliance with state or federal law regarding usage of video or audio recording devices while marketing or**  
191 **showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.**  
192 Seller additionally authorizes Broker and/or his affiliated Licensees and any duly authorized key holder key-entry access  
193 to the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the  
194 purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents  
195 that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from  
196 entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and  
197 employees harmless from any loss, theft, or damage incurred as a result of showings thereof.

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198 Seller acknowledges and agrees that Broker:

- 199 (a) May show other properties to prospective buyers who are interested in Seller's Property;
- 200 (b) Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the  
201 condition of the Property, any portion thereof, or any item therein; for any geological issues present on the  
202 Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage;  
203 the availability and cost of utilities, septic or community amenities; conditions existing off the Property which  
204 may affect the Property; uses and zoning of the Property, whether permitted or proposed; for applicable  
205 boundaries of school districts or other school information; proposed or pending condemnation actions involving  
206 the Property; the appraised or future value of the Property; termites and wood destroying organisms; building  
207 products and construction techniques; the tax or legal consequences of a contemplated transaction; matters  
208 relating to financing; etc. Seller is hereby advised to seek independent expert advice on any of these or other  
209 matters which are of concern to Seller;
- 210 (c) Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this  
211 Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the  
212 Tennessee Real Estate Commission Rules; and
- 213 (d) May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

214 **11. EXPERT ASSISTANCE.**

215 While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an  
216 expert in the matters of law, taxation, financing, square footage, acreage, inspections, geological issues, wood destroying  
217 organisms, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice  
218 to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides  
219 names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained  
220 by Client.

221 **12. AGENCY.**

222 **A. Definitions.**

- 223 1. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage  
224 firm and where the context would indicate, the Broker's affiliated licensees.
- 225 2. **Designated Agent for the Seller:** The individual licensee that has been assigned by his/her Managing Broker  
226 and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the  
227 exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a  
228 possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate  
229 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
230 established without a written agency agreement.
- 231 3. **Facilitator / Transaction Broker (not an agent for either party):** The licensee is not working as an agent for  
232 either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a  
233 transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be  
234 used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any  
235 Licensee or company who has not entered into a written agency agreement with either party in the transaction is  
236 considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 237 4. **Dual agency:** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
238 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
239 full disclosure to each party and with each party's informed consent.
- 240 5. **Adverse Facts:** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees  
241 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of  
242 improvements to real property or present a significant health risk to occupants of the property.
- 243 6. **Confidentiality:** By law, every licensee is obligated to protect some information as confidential. This includes  
244 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the  
245 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee  
246 discloses that he/she has an agency relationship with another party, any such information which the consumer  
247 THEN reveals must be passed on by the licensee to that other party.

248 **B. Duties owed to all Parties to a Transaction.**

249 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**  
250 **to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise**  
251 **provided by law:**

- 252 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- 253 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge;
- 254 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to  
255 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both  
256 parties in the transaction. This duty of confidentiality extends to any information which the party would  
257 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure  
258 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency  
259 relationship and the closing of the transaction;
- 260 4. To provide services to each party to the transaction with honesty and good faith;
- 261 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that  
262 might affect such transaction only when such information is available through public records and when such  
263 information is requested by a party;
- 264 6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
- 265 7. A) To refrain from engaging in self-dealing or acting on behalf of licensee’s immediate family, or on behalf of  
266 any other individual, organization or business entity in which licensee has a personal interest without prior  
267 disclosure of such personal interest and the timely written consent of all parties to the transaction; and
- 268 B) To refrain from recommending to any party to the transaction the use of services of another individual,  
269 organization or business entity in which the licensee has an interest or from whom the licensee may receive a  
270 referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate  
271 services, without timely disclosure to the party who receives the referral, the licensee’s interest in such referral or  
272 the fact that a referral fee may be received.

273 **C. Duties owed to Client.**

274 **In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an**  
275 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 276 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement  
277 between the licensee and licensee’s client;
- 278 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation  
279 of a transaction and in other activities, except where such loyalty/duty would violate licensee’s duties to a  
280 customer in the transaction; and
- 281 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist  
282 the client by:
- 283 A) Scheduling all Property showings on behalf of the client;
- 284 B) Receiving all offers and counter offers and forwarding them promptly to the client;
- 285 C) Answering any questions that the client may have in negotiation of a successful purchase agreement  
286 within the scope of the licensee’s expertise; and
- 287 D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase  
288 agreement for a successful closing of the transaction.

289 Upon waiver of any of the above duties listed under subsection 12.C.3., a consumer must be advised in writing  
290 by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the  
291 transaction for the performance of said duties.

292 **D. Seller’s Authorizations**

- 293 1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee  
294 as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated  
295 Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if a Designated  
296 Agent for the Buyer (other than the Licensee below) is also associated with Broker. The Managing Broker hereby

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297 appoints Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty to be the Designated  
298 Agent to the Seller in this transaction.

299 2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to  
300 appoint a licensee, other than the Licensee named above, as Designated Agent for the Seller, to the exclusion of  
301 any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement,  
302 if necessary.

303 3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The  
304 Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated*  
305 *Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of  
306 the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon  
307 any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an  
308 advocate for either the Seller or any prospective buyers.

309 4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this  
310 Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated  
311 transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction  
312 is closed or contemplated transaction between these parties is terminated and no further negotiations occur  
313 between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

314 13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust  
315 money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee  
316 account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease,  
317 exchange, or option agreement until disbursed in accordance with the terms of said agreement.

318 14. **TITLE.** Seller warrants he is vested with good and marketable title to the Property with full authority to execute this  
319 Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

320 15. **OTHER PROVISIONS.**

321 A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and  
322 be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This  
323 Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and  
324 entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by  
325 all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement  
326 shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

327 B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be  
328 governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;  
330 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine  
331 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to  
332 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be  
333 determined by the location of Property

334 D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
335 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
336 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

337 E. **Fair Housing.** Broker and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
338 sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe  
339 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

340 16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND  
341 OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.  
342 NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU  
343 ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS  
344 DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND  
345 ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

346 17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which  
347 might otherwise be confidential:

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**18. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement:

- 1. Seller's Waiver of Broker Cooperation via MLS & Public Marketing
- 2. Addendum No. 1

360  
361  
362  
363

**19. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:

See Addendum No. 1

365  
366  
367  
368  
369  
370  
371

**NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.**

372  
373

The party(ies) below have signed and acknowledge receipt of a copy.

374  
375

**BY: Broker or Licensee Authorized by Broker**

**Crye-Leike Realtors & Magli Realty**  
**BROKER/FIRM**

376  
377

\_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm  
Date

206 A Cool Springs Blvd Ste 101/301 Public Sq  
Address **Franklin 37067 TN 37064**

378  
379

**Joyce Friedman/Tom Magli**  
Print/Type Name

Phone: **(615)7141666/7949220**  
Email: **joyce@joycefriedmanproperties.com**

380

The party(ies) below have signed and acknowledge receipt of a copy.

381  
382

**SELLER/OWNER**

**SELLER/OWNER**

383  
384

**David L. Snowden Director of Schools**  
Print/Type Name

**Franklin Special School District Board of Education**  
Print/Type Name

385  
386

\_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm  
Date

\_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm  
Date

387  
388

**507 New Highway 96 West**  
Address **Franklin TN 37064**

\_\_\_\_\_  
Address

389  
390

Phone: **615-794-6624 (H)** \_\_\_\_\_ (Cell)  
\_\_\_\_\_ (W) Email: **dsnowden@fssd.org**

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
\_\_\_\_\_ (W) Email: \_\_\_\_\_

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## ADDENDUM 1

1 Property Address: 319 Battle Avenue Lot 10 Franklin TN 37064  
2 Buyer: \_\_\_\_\_  
3 Seller: Franklin Special School District (FSSD) Board of Education  
4 Buyer's Agent: \_\_\_\_\_  
5 Listing Agent: Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty

6 This ADDENDUM between the undersigned parties is entered into and is effective as of the Date provided in the  
7 Lot/Land Exclusive Right to Sell Listing Agreement Designated Agency Agreement with an Effective Date or Binding Agreement  
8 Date of 03/22/2022 for the purpose of changing, deleting, supplementing or adding terms to said Agreement. In  
9 consideration of mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is  
10 hereby acknowledged, the parties agree as follows:

- 11 1. Line 36 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation  
12 via MLS & Public Marketing to be executed with this Agreement. Once List Price determined,  
13 then an Addendum to List Agreement issued to establish Term of listing.
- 14 2. Either party may choose to discontinue contract; however, termination for convenience by  
15 either party requires 30-day prior written notice.
- 16 3. If contract agreement terminated for convenience by Seller, then all hard costs for  
17 marketing to be reimbursed by Seller to Listing Agents upon delivery of actual receipts for  
18 expenses incurred and paid within 30 days of termination. Expenses would include but not  
19 limited to open houses, special events, signage, photography.
- 20 4. Line 36 Marketing of Property Commencement Date: Waiver Signed. See Line 357 Seller's  
21 Waiver of Broker Cooperation via MLS & Public Marketing"
- 22 5. Add to Carry-Over Clause Line 40: "Upon expiration of this Agreement, Broker shall provide  
23 Seller a listing of all introductions to the property made directly or indirectly during the  
24 term of this agreement. Seller will refer all inquiries concerning the property to Broker  
25 during the term of this agreement."
- 26 6. Add to Line 76: Only if ordered by the Court will FSSD pay all reasonable attorneys  
27 fees.....
- 28 7. Earnest Money/Trust Money Line 315: Delete "Held by Broker in an escrow or trustee account  
29 or "
- 30 8. Earnest Money/Trust Money Line 316: Modified to read, "forwarded to title/escrow company  
31 of Sellers choosing who shall immediately deposit said earnest money in to their  
32 escrow/trust account at a federally insured financial institution until disbursed in  
33 accordance with terms of said agreement.  
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47 This Addendum is made a part of the Agreement as if quoted therein verbatim. Should the terms of this Addendum conflict  
48 with the terms of the Agreement or other documents executed prior to or simultaneous to the execution of this Addendum, the  
49 terms of this Addendum shall control, and the conflicting terms are hereby considered deleted and expressly waived by all  
50 parties. In all other respects, the Agreement shall remain in full force and effect.

51 The party(ies) below have signed and acknowledge receipt of a copy.

52 \_\_\_\_\_

53 **BUYER** \_\_\_\_\_ **BUYER** \_\_\_\_\_

54 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

55 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

56 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

57 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

58 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

59 The party(ies) below have signed and acknowledge receipt of a copy.

60 \_\_\_\_\_

61 **SELLER** \_\_\_\_\_ **SELLER** \_\_\_\_\_

62 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

63 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

64 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

65 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

66 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

67

68 The party(ies) below have signed and acknowledge receipt of a copy.

69 \_\_\_\_\_

70 **BUYER'S AGENT** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

71 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_

72 **Date** \_\_\_\_\_ **Address** \_\_\_\_\_

73

74 The party(ies) below have signed and acknowledge receipt of a copy.

75 \_\_\_\_\_ **Crye-Leike** \_\_\_\_\_

76 **LISTING AGENT Joyce Friedman** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

77 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm **206A Cool Springs Blvd Ste 101**

78 **Date** \_\_\_\_\_ **Address** **Franklin TN 37067**

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## LOT/LAND EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** Crye-Leike, Realtors & Magli Realty

2 **ADDRESS OF COMPANY:** 206A Cool Springs Blvd #101/301 Public Sq Franklin 37067 TN 37064

3 **OWNER / SELLER:** Franklin Special School District (FSSD) Board of Education

4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the  
7 hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS / LEGAL DESCRIPTION:** 319 Battle Avenue Lot 10  
9 (Address) Franklin (City), Tennessee \_\_\_\_\_ (Zip) as  
10 recorded in Williamson County Register of Deeds Office, 73  
11 deed book(s) 452 page(s), and/or \_\_\_\_\_ instrument number, and further described  
12 as:  
13 Sunset Manor Addition Block A, Lot 10, PB 73, PG 452  
14 with an estimated acreage of .2777 +/- ("Property").

15 **A. Other items that remain with the Property at no additional cost to Buyer:**

16  
17  
18  
19 **B. Items that will NOT remain with the Property:**

20  
21  
22  
23 **2. THE LISTING PRICE.** \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars).  
24 This price is based (select one):

- 25  for entire Property as a tract, and not by the acre; or  
26  per acre with the sales price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_  
27 per acre based on a current or mutually acceptable survey; or  
28  for entire Property as a tract but with the sales price to be adjusted upward or downward at \$ \_\_\_\_\_  
29 per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey  
30 should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

31 **3. TERM.**

32 This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date")  
33 through September 20th, 2022 ("Listing Expiration Date"). If a contract to purchase, exchange or lease is  
34 signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sale  
35 Agreement, exchange agreement, or lease agreement.

36 **Marketing of Property Commencement Date:** Seller directs Broker to commence marketing of the Property for sale  
37 to the general public on the Effective Date

38 OR  
39  on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Carry-Over Clause.** Should Seller contract to sell or exchange, or contract to lease the Property within 90 days after the Listing Expiration Date of this Exclusive Right to Sell Listing Agreement (“Agreement”) to any Buyer/Tenant (or anyone acting on Buyer’s/Tenant’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. **TERMS** of sale acceptable to Seller (such as USDA, Conventional, etc.): Cash to Seller

5. **POSSESSION OF PROPERTY** to be delivered: \_\_\_\_\_ **Date of Deed** \_\_\_\_\_

6. **COMPENSATION.** A total of \$ \_\_\_\_\_, or 5 % compensation based on the total sales price shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price (“Closing”). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ 0.00, or 0 % compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of the lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of Closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between Broker and Seller. The Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller’s breach of the Purchase and Sale Agreement or the lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or lease been fulfilled. Such compensation will be payable without demand. Should Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market the Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney’s fees together with any court costs and expenses which real estate agent incurs in enforcing any of Seller’s obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. **FURTHER INFORMATION CONCERNING PROPERTY.**

**A. Mineral, oil, gas, water and timber rights.**

Will conveyance of this Property include all mineral, oil, gas, water and timber rights?  Yes /  No

If no, please explain: NONE

**B. Crops.**

Crops planted at the time of sale will:

Pass with the land to the buyer OR  Remain with the Seller OR  Other (please describe):

NONE

**C. Leasehold or Tenant’s Rights.**

There are no leasehold interests or tenant’s rights in the subject Property, except as follows:

NONE

93 **D. Licenses or Usage Permits.**  
94 No licenses or usage permits have been granted, including but not limited to those for crops, minerals, water, grazing,  
95 timber, usage rights to hunters, fishermen, or others except as follows:  
96 **NONE**  
97

98 **E. Utilities.**  
99 Seller represents that the following utility connections are located as follows: (e.g. on the Property, at the lot line,  
100 across the street, unknown, etc.)  
101 Electricity: Determined by Survey Gas: Determined by Survey  
102 Municipal Sewer: Determined by Survey Municipal Water: Determined by Survey  
103 Telephone: Determined by Survey Cable: Determined by Survey

104 **F. Zoning.**  
105 Seller represents that the Property is zoned Civic Institutional (CI)

106 **G. Flood Zone.**  
107 Is the Property or any part thereof located in a flood zone?  
108 **NO**  
109

110 **H. Exterior Injection Well, Soil Absorption and/or Percolation Test.**  
111 **1. Exterior Injection Well.** Does the Seller have knowledge of an exterior injection well being present on the  
112 Property? Yes / No  
113 **2. Soil Absorption and/or Percolation Test.** Has the Property been tested for  soil absorption and/or   
114 percolation? If either box is checked, please provide a copy of test results within \_\_\_\_\_ days of signing  
115 Agreement.

116 **I. Subsurface Sewage Disposal.**  
117 Has the Property been evaluated for a Sub-Surface Sewage Disposal System? Yes / No  
118 If yes, please provide a copy within \_\_\_\_\_ days of signing Agreement.

119 **J. Survey.**  
120 Has the Property been surveyed? Yes / No If yes, please provide a copy of the most recent survey within  
121 \_\_\_\_\_ days of signing Agreement.

122 **K. Special Tax Arrangements.**  
123 Is the Property in any special tax arrangement such as Green Belt? Yes / No  
124 If yes, please list details: \_\_\_\_\_  
125

126 **L. Foreign/Unnatural Materials on Property.**  
127 Are you aware of any underground tanks or toxic substances, tires, appliances, garbage, foreign and/or unnatural  
128 materials, asbestos, polychlorinated biphenyl (PCB's), ureaformaldehyde, methane gas, methamphetamine  
129 production, radioactive material or radon on the Property (structure or soil)? Yes / No  
130 If yes, please list details, including the substance and its location:  
131  
132

133 **8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.**  
134 Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this  
135 listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands  
136 and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable  
137 database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that  
138 the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local  
139 association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities.  
140 Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide  
141 compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Broker  
142 shall offer a cooperative compensation to any agent who is a member participant of any MLS in which Property is listed  
143 in the amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a

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144 Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is  
145 the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member  
146 participant of the MLS(es) in which the Property is listed. In the event that Broker elects to offer a cooperating  
147 compensation to an agent who is not a member participant in the MLS(es) in which the Property is listed, it will be in the  
148 amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a Selling Agent or  
149 Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of  
150 the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that  
151 nonmember participant agent. Seller will assist Broker in any reasonable way in selling Property and will refer to Broker  
152 all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and  
153 authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.  
154 Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to  
155 disseminate the Multiple Listing Profile Sheet; to exhibit said Property to any prospective Buyer; and to have  
156 photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used  
157 and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;  
158 and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other  
159 copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant  
160 license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the  
161 Property to be shown at all reasonable hours and otherwise cooperate with Broker. Seller agrees that Broker is authorized  
162 to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property  
163 which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if  
164 such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order  
165 for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from  
166 Buyers or cooperating brokers, Broker will follow Seller's lawful instructions on the disclosure of the existence of  
167 any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

168 **9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.**

169 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
170 *of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected*  
171 *from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one*  
172 *of the following:*

173 *Non United States citizen;*

174 *Non resident alien; or*

175 *Foreign corporation, partnership, trust, or estate*

176 *It is Seller's responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

177 **10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

178 Seller agrees to carefully review the information on the Multiple Listing Profile Sheet to ensure information is accurate.  
179 Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the  
180 improvements located thereon. Seller is not aware of any other defect or environmental factor which would affect the value  
181 of the Property, significantly reduce the structural integrity of the improvements on the Property, or the health of future  
182 occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data  
183 wherein Seller has supplied such information. Seller further agrees to hold Agents and firm harmless and indemnify them  
184 from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or  
185 misrepresentation by Seller and/or for any material fact that is known or should be known by Seller concerning the Property  
186 and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fees for Agents and  
187 firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.  
188 Code Ann. § 62-13-102) concerning the Property.

189 Seller authorizes Broker and/or his affiliated Licensees to conduct showings of the Property. **Seller is responsible for**  
190 **compliance with state or federal law regarding usage of video or audio recording devices while marketing or**  
191 **showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.**  
192 Seller additionally authorizes Broker and/or his affiliated Licensees and any duly authorized key holder key-entry access  
193 to the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the  
194 purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents  
195 that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from  
196 entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and  
197 employees harmless from any loss, theft, or damage incurred as a result of showings thereof.

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198 Seller acknowledges and agrees that Broker:

- 199 (a) May show other properties to prospective buyers who are interested in Seller's Property;
- 200 (b) Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the  
201 condition of the Property, any portion thereof, or any item therein; for any geological issues present on the  
202 Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage;  
203 the availability and cost of utilities, septic or community amenities; conditions existing off the Property which  
204 may affect the Property; uses and zoning of the Property, whether permitted or proposed; for applicable  
205 boundaries of school districts or other school information; proposed or pending condemnation actions involving  
206 the Property; the appraised or future value of the Property; termites and wood destroying organisms; building  
207 products and construction techniques; the tax or legal consequences of a contemplated transaction; matters  
208 relating to financing; etc. Seller is hereby advised to seek independent expert advice on any of these or other  
209 matters which are of concern to Seller;
- 210 (c) Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this  
211 Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the  
212 Tennessee Real Estate Commission Rules; and
- 213 (d) May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

214 **11. EXPERT ASSISTANCE.**

215 While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an  
216 expert in the matters of law, taxation, financing, square footage, acreage, inspections, geological issues, wood destroying  
217 organisms, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice  
218 to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides  
219 names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained  
220 by Client.

221 **12. AGENCY.**

222 **A. Definitions.**

- 223 1. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage  
224 firm and where the context would indicate, the Broker's affiliated licensees.
- 225 2. **Designated Agent for the Seller:** The individual licensee that has been assigned by his/her Managing Broker  
226 and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the  
227 exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a  
228 possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate  
229 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
230 established without a written agency agreement.
- 231 3. **Facilitator / Transaction Broker (not an agent for either party):** The licensee is not working as an agent for  
232 either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a  
233 transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be  
234 used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any  
235 Licensee or company who has not entered into a written agency agreement with either party in the transaction is  
236 considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 237 4. **Dual agency:** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
238 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
239 full disclosure to each party and with each party's informed consent.
- 240 5. **Adverse Facts:** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees  
241 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of  
242 improvements to real property or present a significant health risk to occupants of the property.
- 243 6. **Confidentiality:** By law, every licensee is obligated to protect some information as confidential. This includes  
244 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the  
245 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee  
246 discloses that he/she has an agency relationship with another party, any such information which the consumer  
247 THEN reveals must be passed on by the licensee to that other party.

248 **B. Duties owed to all Parties to a Transaction.**

249 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**  
250 **to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise**  
251 **provided by law:**

- 252 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- 253 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge;
- 254 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to  
255 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both  
256 parties in the transaction. This duty of confidentiality extends to any information which the party would  
257 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure  
258 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency  
259 relationship and the closing of the transaction;
- 260 4. To provide services to each party to the transaction with honesty and good faith;
- 261 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that  
262 might affect such transaction only when such information is available through public records and when such  
263 information is requested by a party;
- 264 6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
- 265 7. A) To refrain from engaging in self-dealing or acting on behalf of licensee’s immediate family, or on behalf of  
266 any other individual, organization or business entity in which licensee has a personal interest without prior  
267 disclosure of such personal interest and the timely written consent of all parties to the transaction; and
- 268 B) To refrain from recommending to any party to the transaction the use of services of another individual,  
269 organization or business entity in which the licensee has an interest or from whom the licensee may receive a  
270 referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate  
271 services, without timely disclosure to the party who receives the referral, the licensee’s interest in such referral or  
272 the fact that a referral fee may be received.

273 **C. Duties owed to Client.**

274 **In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an**  
275 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 276 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement  
277 between the licensee and licensee’s client;
- 278 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation  
279 of a transaction and in other activities, except where such loyalty/duty would violate licensee’s duties to a  
280 customer in the transaction; and
- 281 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist  
282 the client by:
- 283 A) Scheduling all Property showings on behalf of the client;
- 284 B) Receiving all offers and counter offers and forwarding them promptly to the client;
- 285 C) Answering any questions that the client may have in negotiation of a successful purchase agreement  
286 within the scope of the licensee’s expertise; and
- 287 D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase  
288 agreement for a successful closing of the transaction.

289 Upon waiver of any of the above duties listed under subsection 12.C.3., a consumer must be advised in writing  
290 by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the  
291 transaction for the performance of said duties.

292 **D. Seller’s Authorizations**

- 293 1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee  
294 as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated  
295 Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if a Designated  
296 Agent for the Buyer (other than the Licensee below) is also associated with Broker. The Managing Broker hereby

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297 appoints Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty to be the Designated  
298 Agent to the Seller in this transaction.

299 2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to  
300 appoint a licensee, other than the Licensee named above, as Designated Agent for the Seller, to the exclusion of  
301 any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement,  
302 if necessary.

303 3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The  
304 Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated*  
305 *Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of  
306 the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon  
307 any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an  
308 advocate for either the Seller or any prospective buyers.

309 4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this  
310 Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated  
311 transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction  
312 is closed or contemplated transaction between these parties is terminated and no further negotiations occur  
313 between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

314 13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust  
315 money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee  
316 account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease,  
317 exchange, or option agreement until disbursed in accordance with the terms of said agreement.

318 14. **TITLE.** Seller warrants he is vested with good and marketable title to the Property with full authority to execute this  
319 Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

320 15. **OTHER PROVISIONS.**

321 A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and  
322 be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This  
323 Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and  
324 entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by  
325 all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement  
326 shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

327 B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be  
328 governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;  
330 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine  
331 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to  
332 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be  
333 determined by the location of Property

334 D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
335 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
336 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

337 E. **Fair Housing.** Broker and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
338 sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe  
339 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

340 16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND  
341 OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.  
342 NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU  
343 ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS  
344 DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND  
345 ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

346 17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which  
347 might otherwise be confidential:

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**18. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement:

- 1. Seller's Waiver of Broker Cooperation via MLS & Public Marketing
- 2. Addendum No. 1

361  
362  
363

**19. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:  
See Addendum No. 1.

365  
366  
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371

**NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.**

372  
373

The party(ies) below have signed and acknowledge receipt of a copy.

374  
375

\_\_\_\_\_  
**BY: Broker or Licensee Authorized by Broker**

Crye-Leike, Realtors & Magli Realty  
**BROKER/FIRM**

376  
377

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

206A Cool Springs Blvd #101/301 Public Sq  
Address **Franklin 37067 TN 37064**

378  
379

Joyce Friedman & Tom Magli  
Print/Type Name

Phone: 6157141666/794-9220  
Email: joyce@joycefriedmanproperties.com

380

The party(ies) below have signed and acknowledge receipt of a copy.

381  
382

\_\_\_\_\_  
**SELLER/OWNER**

\_\_\_\_\_  
**SELLER/OWNER**

383  
384

David L. Snowden, Dir of Schools  
Print/Type Name

Franklin Special School District  
Print/Type Name

385  
386

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

387  
388

507 New Highway 96 West  
Address **Franklin TN 37064**

\_\_\_\_\_  
Address

389  
390

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
615-794-6624 (W) Email: dsnowden@fssd.org

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
\_\_\_\_\_ (W) Email: \_\_\_\_\_

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## ADDENDUM 1

1 Property Address: 401 Battle Ave Lot 11 Franklin TN 37064  
2 Buyer: \_\_\_\_\_  
3 Seller: Franklin Special School District (FSSD) Board of Education  
4 Buyer's Agent: \_\_\_\_\_  
5 Listing Agent: Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty

6 This ADDENDUM between the undersigned parties is entered into and is effective as of the Date provided in the  
7 Lot/Land Exclusive Right to Sell Listing Agreement Designated Agency Agreement with an Effective Date or Binding Agreement  
8 Date of 03/22/2022 for the purpose of changing, deleting, supplementing or adding terms to said Agreement. In  
9 consideration of mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is  
10 hereby acknowledged, the parties agree as follows:

11 1. Line 36 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation  
12 via MLS & Public Marketing to be executed with this Agreement. Once List Price determined,  
13 then an Addendum to List Agreement issued to establish Term of listing.

14 2. Either party may choose to discontinue contract; however, termination for convenience by  
15 either party requires 30-day prior written notice.

16 3. If contract agreement terminated for convenience by Seller, then all hard costs for  
17 marketing to be reimbursed by Seller to Listing Agents upon delivery of actual receipts for  
18 expenses incurred and paid within 30 days of termination. Expenses would include but not  
19 limited to open houses, special events, signage, photography.

20 4. Line 36 Marketing of Property Commencement Date: Waiver Signed. See Line 357 Seller's  
21 Waiver of Broker Cooperation via MLS & Public Marketing"

22 5. Add to Carry-Over Clause Line 40: "Upon expiration of this Agreement, Broker shall provide  
23 Seller a listing of all introductions to the property made directly or indirectly during the  
24 term of this agreement. Seller will refer all inquiries concerning the property to Broker  
25 during the term of this agreement."

26 6. Add to Line 76: Only if ordered by the Court will FSSD pay all reasonable attorneys  
27 fees.....

28 7. Earnest Money/Trust Money Line 315: Delete "Held by Broker in an escrow or trustee account  
29 or "

30 8. Earnest Money/Trust Money Line 316: Modified to read, "forwarded to title/escrow company  
31 of Sellers choosing who shall immediately deposit said earnest money in to their  
32 escrow/trust account at a federally insured financial institution until disbursed in  
33 accordance with terms of said agreement.  
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47 This Addendum is made a part of the Agreement as if quoted therein verbatim. Should the terms of this Addendum conflict  
48 with the terms of the Agreement or other documents executed prior to or simultaneous to the execution of this Addendum, the  
49 terms of this Addendum shall control, and the conflicting terms are hereby considered deleted and expressly waived by all  
50 parties. In all other respects, the Agreement shall remain in full force and effect.

51 The party(ies) below have signed and acknowledge receipt of a copy.

52 \_\_\_\_\_

53 **BUYER** \_\_\_\_\_ **BUYER** \_\_\_\_\_

54 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

55 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

56 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

57 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

58 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

59 The party(ies) below have signed and acknowledge receipt of a copy.

60 \_\_\_\_\_

61 **SELLER Franklin Special School District** \_\_\_\_\_ **SELLER** \_\_\_\_\_

62 **By:** \_\_\_\_\_ **David L. Snowden** \_\_\_\_\_ **By:** \_\_\_\_\_

63 **Title:** \_\_\_\_\_ **Director of Schools** \_\_\_\_\_ **Title:** \_\_\_\_\_

64 **Entity:** \_\_\_\_\_ **Board of Education** \_\_\_\_\_ **Entity:** \_\_\_\_\_

65 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

66 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

67

68 The party(ies) below have signed and acknowledge receipt of a copy.

69 \_\_\_\_\_

70 **BUYER'S AGENT** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

71 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_

72 **Date** \_\_\_\_\_ **Address** \_\_\_\_\_

73

74 The party(ies) below have signed and acknowledge receipt of a copy.

75 \_\_\_\_\_ **Crye-Leike Realtors/Magli Realty** \_\_\_\_\_

76 **LISTING AGENT Joyce Friedman/Tom Magli** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

77 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ **206A Cool Springs Blvd, Ste 100/301 Public Sq**

78 **Date** \_\_\_\_\_ **Address Franklin 37064 TN 37067**

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## LOT/LAND EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** Crye-Leike, Realtors & Magli Realty

2 **ADDRESS OF COMPANY:** 206A Cool Springs Blvd Ste 101/301 Public Sq Franklin 37067 TN 37064

3 **OWNER / SELLER:** Franklin Special School District (FSSD) Board of Education

4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the  
7 hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS / LEGAL DESCRIPTION:** 401 Battle Avenue  
9 (Address) Franklin (City), Tennessee 37064 (Zip) as  
10 recorded in Williamson County Register of Deeds Office, 73  
11 deed book(s) 452 page(s), and/or \_\_\_\_\_ instrument number, and further described  
12 as:  
13 Sunset Manor Addition Block A, Lot 11, PB 73, PG 452  
14 with an estimated acreage of .277 +/- ("Property").

15 **A. Other items that remain with the Property at no additional cost to Buyer:**

16  
17  
18

19 **B. Items that will NOT remain with the Property:**

20  
21  
22

23 **2. THE LISTING PRICE.** \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars).  
24 This price is based (select one):

- 25  for entire Property as a tract, and not by the acre; or  
26  per acre with the sales price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_  
27 per acre based on a current or mutually acceptable survey; or  
28  for entire Property as a tract but with the sales price to be adjusted upward or downward at \$ \_\_\_\_\_  
29 per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey  
30 should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

31 **3. TERM.**

32 This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date")  
33 through September 20, 2022 ("Listing Expiration Date"). If a contract to purchase, exchange or lease is  
34 signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sale  
35 Agreement, exchange agreement, or lease agreement.

36 **Marketing of Property Commencement Date:** Seller directs Broker to commence marketing of the Property for sale  
37 to the general public on the Effective Date

38 OR  
39  on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Carry-Over Clause.** Should Seller contract to sell or exchange, or contract to lease the Property within 90 days after the Listing Expiration Date of this Exclusive Right to Sell Listing Agreement (“Agreement”) to any Buyer/Tenant (or anyone acting on Buyer’s/Tenant’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. **TERMS** of sale acceptable to Seller (such as USDA, Conventional, etc.): Cash to Seller

5. **POSSESSION OF PROPERTY** to be delivered: \_\_\_\_\_ **Date of Deed** \_\_\_\_\_

6. **COMPENSATION.** A total of \$ \_\_\_\_\_, or 5 % compensation based on the total sales price shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price (“Closing”). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ 0.00, or 0 % compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of the lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of Closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between Broker and Seller. The Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller’s breach of the Purchase and Sale Agreement or the lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or lease been fulfilled. Such compensation will be payable without demand. Should Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market the Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney’s fees together with any court costs and expenses which real estate agent incurs in enforcing any of Seller’s obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. **FURTHER INFORMATION CONCERNING PROPERTY.**

A. **Mineral, oil, gas, water and timber rights.**

Will conveyance of this Property include all mineral, oil, gas, water and timber rights?  Yes /  No

If no, please explain: NONE

B. **Crops.**

Crops planted at the time of sale will:

Pass with the land to the buyer OR  Remain with the Seller OR  Other (please describe):

NONE

C. **Leasehold or Tenant’s Rights.**

There are no leasehold interests or tenant’s rights in the subject Property, except as follows:

NONE

93 **D. Licenses or Usage Permits.**  
94 No licenses or usage permits have been granted, including but not limited to those for crops, minerals, water, grazing,  
95 timber, usage rights to hunters, fishermen, or others except as follows:  
96 **NONE**  
97

98 **E. Utilities.**  
99 Seller represents that the following utility connections are located as follows: (e.g. on the Property, at the lot line,  
100 across the street, unknown, etc.)  
101 Electricity: Determined by Survey Gas: Determined by Survey  
102 Municipal Sewer: Determined by Survey Municipal Water: Determined by Survey  
103 Telephone: Determined by Survey Cable: Determined by Survey

104 **F. Zoning.**  
105 Seller represents that the Property is zoned Civic Institutional (CI)

106 **G. Flood Zone.**  
107 Is the Property or any part thereof located in a flood zone?  
108 **NO**  
109

110 **H. Exterior Injection Well, Soil Absorption and/or Percolation Test.**  
111 **1. Exterior Injection Well.** Does the Seller have knowledge of an exterior injection well being present on the  
112 Property? Yes / No  
113 **2. Soil Absorption and/or Percolation Test.** Has the Property been tested for  soil absorption and/or   
114 percolation? If either box is checked, please provide a copy of test results within \_\_\_\_\_ days of signing  
115 Agreement.

116 **I. Subsurface Sewage Disposal.**  
117 Has the Property been evaluated for a Sub-Surface Sewage Disposal System? Yes / No  
118 If yes, please provide a copy within \_\_\_\_\_ days of signing Agreement.

119 **J. Survey.**  
120 Has the Property been surveyed? Yes / No If yes, please provide a copy of the most recent survey within  
121 \_\_\_\_\_ days of signing Agreement.

122 **K. Special Tax Arrangements.**  
123 Is the Property in any special tax arrangement such as Green Belt? Yes / No  
124 If yes, please list details: \_\_\_\_\_  
125

126 **L. Foreign/Unnatural Materials on Property.**  
127 Are you aware of any underground tanks or toxic substances, tires, appliances, garbage, foreign and/or unnatural  
128 materials, asbestos, polychlorinated biphenyl (PCB's), ureaformaldehyde, methane gas, methamphetamine  
129 production, radioactive material or radon on the Property (structure or soil)? Yes / No  
130 If yes, please list details, including the substance and its location:  
131  
132

133 **8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.**  
134 Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this  
135 listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands  
136 and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable  
137 database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that  
138 the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local  
139 association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities.  
140 Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide  
141 compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Broker  
142 shall offer a cooperative compensation to any agent who is a member participant of any MLS in which Property is listed  
143 in the amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a

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144 Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is  
145 the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member  
146 participant of the MLS(es) in which the Property is listed. In the event that Broker elects to offer a cooperating  
147 compensation to an agent who is not a member participant in the MLS(es) in which the Property is listed, it will be in the  
148 amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a Selling Agent or  
149 Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of  
150 the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that  
151 nonmember participant agent. Seller will assist Broker in any reasonable way in selling Property and will refer to Broker  
152 all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and  
153 authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.  
154 Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to  
155 disseminate the Multiple Listing Profile Sheet; to exhibit said Property to any prospective Buyer; and to have  
156 photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used  
157 and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;  
158 and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other  
159 copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant  
160 license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the  
161 Property to be shown at all reasonable hours and otherwise cooperate with Broker. Seller agrees that Broker is authorized  
162 to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property  
163 which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if  
164 such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order  
165 for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from  
166 Buyers or cooperating brokers, Broker will follow Seller's lawful instructions on the disclosure of the existence of  
167 any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

168 **9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.**

169 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
170 *of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected*  
171 *from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one*  
172 *of the following:*

173 *Non United States citizen;*

174 *Non resident alien; or*

175 *Foreign corporation, partnership, trust, or estate*

176 *It is Seller's responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

177 **10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

178 Seller agrees to carefully review the information on the Multiple Listing Profile Sheet to ensure information is accurate.  
179 Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the  
180 improvements located thereon. Seller is not aware of any other defect or environmental factor which would affect the value  
181 of the Property, significantly reduce the structural integrity of the improvements on the Property, or the health of future  
182 occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data  
183 wherein Seller has supplied such information. Seller further agrees to hold Agents and firm harmless and indemnify them  
184 from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or  
185 misrepresentation by Seller and/or for any material fact that is known or should be known by Seller concerning the Property  
186 and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fees for Agents and  
187 firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.  
188 Code Ann. § 62-13-102) concerning the Property.

189 Seller authorizes Broker and/or his affiliated Licensees to conduct showings of the Property. **Seller is responsible for**  
190 **compliance with state or federal law regarding usage of video or audio recording devices while marketing or**  
191 **showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.**  
192 Seller additionally authorizes Broker and/or his affiliated Licensees and any duly authorized key holder key-entry access  
193 to the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the  
194 purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents  
195 that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from  
196 entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and  
197 employees harmless from any loss, theft, or damage incurred as a result of showings thereof.

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198 Seller acknowledges and agrees that Broker:

- 199 (a) May show other properties to prospective buyers who are interested in Seller's Property;
- 200 (b) Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the  
201 condition of the Property, any portion thereof, or any item therein; for any geological issues present on the  
202 Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage;  
203 the availability and cost of utilities, septic or community amenities; conditions existing off the Property which  
204 may affect the Property; uses and zoning of the Property, whether permitted or proposed; for applicable  
205 boundaries of school districts or other school information; proposed or pending condemnation actions involving  
206 the Property; the appraised or future value of the Property; termites and wood destroying organisms; building  
207 products and construction techniques; the tax or legal consequences of a contemplated transaction; matters  
208 relating to financing; etc. Seller is hereby advised to seek independent expert advice on any of these or other  
209 matters which are of concern to Seller;
- 210 (c) Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this  
211 Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the  
212 Tennessee Real Estate Commission Rules; and
- 213 (d) May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

214 **11. EXPERT ASSISTANCE.**

215 While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an  
216 expert in the matters of law, taxation, financing, square footage, acreage, inspections, geological issues, wood destroying  
217 organisms, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice  
218 to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides  
219 names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained  
220 by Client.

221 **12. AGENCY.**

222 **A. Definitions.**

- 223 1. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage  
224 firm and where the context would indicate, the Broker's affiliated licensees.
- 225 2. **Designated Agent for the Seller:** The individual licensee that has been assigned by his/her Managing Broker  
226 and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the  
227 exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a  
228 possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate  
229 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
230 established without a written agency agreement.
- 231 3. **Facilitator / Transaction Broker (not an agent for either party):** The licensee is not working as an agent for  
232 either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a  
233 transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be  
234 used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any  
235 Licensee or company who has not entered into a written agency agreement with either party in the transaction is  
236 considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 237 4. **Dual agency:** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
238 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
239 full disclosure to each party and with each party's informed consent.
- 240 5. **Adverse Facts:** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees  
241 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of  
242 improvements to real property or present a significant health risk to occupants of the property.
- 243 6. **Confidentiality:** By law, every licensee is obligated to protect some information as confidential. This includes  
244 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the  
245 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee  
246 discloses that he/she has an agency relationship with another party, any such information which the consumer  
247 THEN reveals must be passed on by the licensee to that other party.

248 **B. Duties owed to all Parties to a Transaction.**

249 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**  
250 **to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise**  
251 **provided by law:**

- 252 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- 253 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge;
- 254 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to  
255 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both  
256 parties in the transaction. This duty of confidentiality extends to any information which the party would  
257 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure  
258 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency  
259 relationship and the closing of the transaction;
- 260 4. To provide services to each party to the transaction with honesty and good faith;
- 261 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that  
262 might affect such transaction only when such information is available through public records and when such  
263 information is requested by a party;
- 264 6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
- 265 7. A) To refrain from engaging in self-dealing or acting on behalf of licensee’s immediate family, or on behalf of  
266 any other individual, organization or business entity in which licensee has a personal interest without prior  
267 disclosure of such personal interest and the timely written consent of all parties to the transaction; and
- 268 B) To refrain from recommending to any party to the transaction the use of services of another individual,  
269 organization or business entity in which the licensee has an interest or from whom the licensee may receive a  
270 referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate  
271 services, without timely disclosure to the party who receives the referral, the licensee’s interest in such referral or  
272 the fact that a referral fee may be received.

273 **C. Duties owed to Client.**

274 **In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an**  
275 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 276 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement  
277 between the licensee and licensee’s client;
- 278 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation  
279 of a transaction and in other activities, except where such loyalty/duty would violate licensee’s duties to a  
280 customer in the transaction; and
- 281 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist  
282 the client by:
- 283 A) Scheduling all Property showings on behalf of the client;
- 284 B) Receiving all offers and counter offers and forwarding them promptly to the client;
- 285 C) Answering any questions that the client may have in negotiation of a successful purchase agreement  
286 within the scope of the licensee’s expertise; and
- 287 D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase  
288 agreement for a successful closing of the transaction.

289 Upon waiver of any of the above duties listed under subsection 12.C.3., a consumer must be advised in writing  
290 by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the  
291 transaction for the performance of said duties.

292 **D. Seller’s Authorizations**

- 293 1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee  
294 as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated  
295 Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if a Designated  
296 Agent for the Buyer (other than the Licensee below) is also associated with Broker. The Managing Broker hereby

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297 appoints Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty to be the Designated  
298 Agent to the Seller in this transaction.

299 2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to  
300 appoint a licensee, other than the Licensee named above, as Designated Agent for the Seller, to the exclusion of  
301 any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement,  
302 if necessary.

303 3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The  
304 Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated*  
305 *Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of  
306 the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon  
307 any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an  
308 advocate for either the Seller or any prospective buyers.

309 4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this  
310 Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated  
311 transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction  
312 is closed or contemplated transaction between these parties is terminated and no further negotiations occur  
313 between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

314 13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust  
315 money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee  
316 account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease,  
317 exchange, or option agreement until disbursed in accordance with the terms of said agreement.

318 14. **TITLE.** Seller warrants he is vested with good and marketable title to the Property with full authority to execute this  
319 Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

320 15. **OTHER PROVISIONS.**

321 A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and  
322 be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This  
323 Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and  
324 entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by  
325 all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement  
326 shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

327 B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be  
328 governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;  
330 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine  
331 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to  
332 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be  
333 determined by the location of Property

334 D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
335 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
336 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

337 E. **Fair Housing.** Broker and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
338 sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe  
339 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

340 16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND  
341 OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.  
342 NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU  
343 ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS  
344 DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND  
345 ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

346 17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which  
347 might otherwise be confidential:

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357 **18. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made  
358 a part of this Agreement:

- 359 1. Seller's Waiver of Broker Cooperation via MLS Public Marketing
- 360 2. Addendum No. 1

361  
362  
363

364 **19. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:  
365 See Addendum No. 1

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367  
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371

372 **NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.**

373

The party(ies) below have signed and acknowledge receipt of a copy.

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375

\_\_\_\_\_  
**BY: Broker or Licensee Authorized by Broker**

Crye-Leike, Realtors & Magli Realty  
**BROKER/FIRM**

376  
377

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

206A Cool Springs Blvd Ste 101/301 Public Sq  
Address **Franklin 37067 TN 37064**

378  
379

Joyce Friedman & Tom Magli  
Print/Type Name

Phone: 615-771-6620/7945485  
Email: joyce@joycefriedmanproperties.com

380

The party(ies) below have signed and acknowledge receipt of a copy.

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382

\_\_\_\_\_  
**SELLER/OWNER**

\_\_\_\_\_  
**SELLER/OWNER**

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David L. Snowden, Dir. of Schools  
Print/Type Name

\_\_\_\_\_  
Print/Type Name

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\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

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507 New Highway 96 West  
Address **Franklin TN 37064**

\_\_\_\_\_  
Address

389  
390

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
615-794-6624 (W) Email: dsnowden@fssd.org

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
\_\_\_\_\_ (W) Email: \_\_\_\_\_

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RF131 – Lot/Land Exclusive Right to Sell Listing Agreement (Designated Agency), Page 8 of 8

Version 01/01/2022



# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## ADDENDUM 1

1 Property Address: 403 Battle Ave Lot 12 Franklin TN 37064  
2 Buyer: \_\_\_\_\_  
3 Seller: Franklin Special School District (FSSD)  
4 Buyer's Agent: \_\_\_\_\_  
5 Listing Agent: Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty

6 This ADDENDUM between the undersigned parties is entered into and is effective as of the Date provided in the  
7 Lot/Land Exclusive Right to Sell Listing Agreement Designated Agency Agreement with an Effective Date or Binding Agreement  
8 Date of 03/22/2022 for the purpose of changing, deleting, supplementing or adding terms to said Agreement. In  
9 consideration of mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is  
10 hereby acknowledged, the parties agree as follows:

11 1. Line 36 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation  
12 via MLS & Public Marketing to be executed with this Agreement. Once List Price determined,  
13 then an Addendum to List Agreement issued to establish Term of listing.

14 2. Either party may choose to discontinue contract; however, termination for convenience by  
15 either party requires 30-day prior written notice.

16 3. If contract agreement terminated for convenience by Seller, then all hard costs for  
17 marketing to be reimbursed by Seller to Listing Agents upon delivery of actual receipts for  
18 expenses incurred and paid within 30 days of termination. Expenses would include but not  
19 limited to open houses, special events, signage, photography.

20 4. Line 36 Marketing of Property Commencement Date: Waiver Signed. See Line 357 Seller's  
21 Waiver of Broker Cooperation via MLS & Public Marketing"

22 5. Add to Carry-Over Clause Line 40: "Upon expiration of this Agreement, Broker shall provide  
23 Seller a listing of all introductions to the property made directly or indirectly during the  
24 term of this agreement. Seller will refer all inquiries concerning the property to Broker  
25 during the term of this agreement."

26 6. Add to Line 76: Only if ordered by the Court will FSSD pay all reasonable attorneys  
27 fees.....

28 7. Earnest Money/Trust Money Line 315: Delete "Held by Broker in an escrow or trustee account  
29 or "

30 8. Earnest Money/Trust Money Line 316: Modified to read, "forwarded to title/escrow company  
31 of Sellers choosing who shall immediately deposit said earnest money in to their  
32 escrow/trust account at a federally insured financial institution until disbursed in  
33 accordance with terms of said agreement.  
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47 This Addendum is made a part of the Agreement as if quoted therein verbatim. Should the terms of this Addendum conflict  
48 with the terms of the Agreement or other documents executed prior to or simultaneous to the execution of this Addendum, the  
49 terms of this Addendum shall control, and the conflicting terms are hereby considered deleted and expressly waived by all  
50 parties. In all other respects, the Agreement shall remain in full force and effect.

51 The party(ies) below have signed and acknowledge receipt of a copy.

52 \_\_\_\_\_

53 **BUYER** \_\_\_\_\_ **BUYER** \_\_\_\_\_

54 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

55 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

56 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

57 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

58 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

59 The party(ies) below have signed and acknowledge receipt of a copy.

60 \_\_\_\_\_

61 **SELLER Franklin Special School District** \_\_\_\_\_ **SELLER** \_\_\_\_\_

62 **By:** \_\_\_\_\_ **David L. Snowden** \_\_\_\_\_ **By:** \_\_\_\_\_

63 **Title:** \_\_\_\_\_ **Director of Schools** \_\_\_\_\_ **Title:** \_\_\_\_\_

64 **Entity:** \_\_\_\_\_ **Board of Education** \_\_\_\_\_ **Entity:** \_\_\_\_\_

65 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

66 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

67

68 The party(ies) below have signed and acknowledge receipt of a copy.

69 \_\_\_\_\_

70 **BUYER'S AGENT** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

71 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_

72 **Date** \_\_\_\_\_ **Address** \_\_\_\_\_

73

74 The party(ies) below have signed and acknowledge receipt of a copy.

75 \_\_\_\_\_ **Crye-Leike/Magli Realty** \_\_\_\_\_

76 **LISTING AGENT Joyce Friedman/Tom Magli** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

77 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ **206A Cool Springs Blvd Ste 101/301 Public Sq**

78 **Date** \_\_\_\_\_ **Address** **Franklin 37067 TN 37064**

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## LOT/LAND EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** Crye-Leike, Realtors & Magli Realty

2 **ADDRESS OF COMPANY:** 206A Cool Springs Blvd Ste 101/301 Public Sq Franklin 37067 TN 37064

3 **OWNER / SELLER:** Franklin Special School District (FSSD) Board of Education

4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the  
7 hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS / LEGAL DESCRIPTION:** 403 Battle Avenue Lot 12  
9 (Address) Franklin (City), Tennessee 37064 (Zip) as  
10 recorded in Williamson County Register of Deeds Office, 73  
11 deed book(s) 452 page(s), and/or \_\_\_\_\_ instrument number, and further described  
12 as:  
13 Sunset Manor Addition, Lot 12 on Battle Ave, Block A, PB 73, PG 452  
14 with an estimated acreage of .277 +/- ("Property").

15 **A. Other items that remain with the Property at no additional cost to Buyer:**

16  
17  
18

19 **B. Items that will NOT remain with the Property:**

20  
21  
22

23 **2. THE LISTING PRICE.** \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars).  
24 This price is based (select one):

- 25  for entire Property as a tract, and not by the acre; or  
26  per acre with the sales price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_  
27 per acre based on a current or mutually acceptable survey; or  
28  for entire Property as a tract but with the sales price to be adjusted upward or downward at \$ \_\_\_\_\_  
29 per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey  
30 should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

31 **3. TERM.**

32 This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date")  
33 through September 20th, 2022 ("Listing Expiration Date"). If a contract to purchase, exchange or lease is  
34 signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sale  
35 Agreement, exchange agreement, or lease agreement.

36 **Marketing of Property Commencement Date:** Seller directs Broker to commence marketing of the Property for sale  
37 to the general public on the Effective Date

38 OR  
39  on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Carry-Over Clause.** Should Seller contract to sell or exchange, or contract to lease the Property within 90 days after the Listing Expiration Date of this Exclusive Right to Sell Listing Agreement (“Agreement”) to any Buyer/Tenant (or anyone acting on Buyer’s/Tenant’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. **TERMS** of sale acceptable to Seller (such as USDA, Conventional, etc.): Cash to Seller

5. **POSSESSION OF PROPERTY** to be delivered: \_\_\_\_\_ **Date of Deed** \_\_\_\_\_

6. **COMPENSATION.** A total of \$ \_\_\_\_\_, or 5 % compensation based on the total sales price shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price (“Closing”). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ 0.00, or 0 % compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of the lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of Closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between Broker and Seller. The Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller’s breach of the Purchase and Sale Agreement or the lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or lease been fulfilled. Such compensation will be payable without demand. Should Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market the Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney’s fees together with any court costs and expenses which real estate agent incurs in enforcing any of Seller’s obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. **FURTHER INFORMATION CONCERNING PROPERTY.**

A. **Mineral, oil, gas, water and timber rights.**

Will conveyance of this Property include all mineral, oil, gas, water and timber rights?  Yes /  No

If no, please explain: NONE

B. **Crops.**

Crops planted at the time of sale will:

Pass with the land to the buyer OR  Remain with the Seller OR  Other (please describe):

NONE

C. **Leasehold or Tenant’s Rights.**

There are no leasehold interests or tenant’s rights in the subject Property, except as follows:

NONE

93 **D. Licenses or Usage Permits.**  
94 No licenses or usage permits have been granted, including but not limited to those for crops, minerals, water, grazing,  
95 timber, usage rights to hunters, fishermen, or others except as follows:  
96 **NONE**  
97

98 **E. Utilities.**  
99 Seller represents that the following utility connections are located as follows: (e.g. on the Property, at the lot line,  
100 across the street, unknown, etc.)  
101 Electricity: Determine by Survey Gas: Determine by Survey  
102 Municipal Sewer: Determine by Survey Municipal Water: Determine by Survey  
103 Telephone: Determined by Survey Cable: Determine by Survey

104 **F. Zoning.**  
105 Seller represents that the Property is zoned Civic Institutional (CI)

106 **G. Flood Zone.**  
107 Is the Property or any part thereof located in a flood zone?  
108 **NO**  
109

110 **H. Exterior Injection Well, Soil Absorption and/or Percolation Test.**  
111 **1. Exterior Injection Well.** Does the Seller have knowledge of an exterior injection well being present on the  
112 Property? Yes / No  
113 **2. Soil Absorption and/or Percolation Test.** Has the Property been tested for  soil absorption and/or   
114 percolation? If either box is checked, please provide a copy of test results within \_\_\_\_\_ days of signing  
115 Agreement.

116 **I. Subsurface Sewage Disposal.**  
117 Has the Property been evaluated for a Sub-Surface Sewage Disposal System? Yes / No  
118 If yes, please provide a copy within \_\_\_\_\_ days of signing Agreement.

119 **J. Survey.**  
120 Has the Property been surveyed? Yes / No If yes, please provide a copy of the most recent survey within  
121 \_\_\_\_\_ days of signing Agreement.

122 **K. Special Tax Arrangements.**  
123 Is the Property in any special tax arrangement such as Green Belt? Yes / No  
124 If yes, please list details: \_\_\_\_\_  
125

126 **L. Foreign/Unnatural Materials on Property.**  
127 Are you aware of any underground tanks or toxic substances, tires, appliances, garbage, foreign and/or unnatural  
128 materials, asbestos, polychlorinated biphenyl (PCB's), ureaformaldehyde, methane gas, methamphetamine  
129 production, radioactive material or radon on the Property (structure or soil)? Yes / No  
130 If yes, please list details, including the substance and its location:  
131  
132

133 **8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.**  
134 Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this  
135 listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands  
136 and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable  
137 database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that  
138 the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local  
139 association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities.  
140 Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide  
141 compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Broker  
142 shall offer a cooperative compensation to any agent who is a member participant of any MLS in which Property is listed  
143 in the amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a

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144 Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is  
145 the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member  
146 participant of the MLS(es) in which the Property is listed. In the event that Broker elects to offer a cooperating  
147 compensation to an agent who is not a member participant in the MLS(es) in which the Property is listed, it will be in the  
148 amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a Selling Agent or  
149 Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of  
150 the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that  
151 nonmember participant agent. Seller will assist Broker in any reasonable way in selling Property and will refer to Broker  
152 all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and  
153 authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.  
154 Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to  
155 disseminate the Multiple Listing Profile Sheet; to exhibit said Property to any prospective Buyer; and to have  
156 photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used  
157 and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;  
158 and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other  
159 copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant  
160 license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the  
161 Property to be shown at all reasonable hours and otherwise cooperate with Broker. Seller agrees that Broker is authorized  
162 to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property  
163 which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if  
164 such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order  
165 for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from  
166 Buyers or cooperating brokers, Broker will follow Seller's lawful instructions on the disclosure of the existence of  
167 any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

168 **9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.**

169 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
170 *of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected*  
171 *from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one*  
172 *of the following:*

173 *Non United States citizen;*

174 *Non resident alien; or*

175 *Foreign corporation, partnership, trust, or estate*

176 *It is Seller's responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

177 **10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

178 Seller agrees to carefully review the information on the Multiple Listing Profile Sheet to ensure information is accurate.  
179 Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the  
180 improvements located thereon. Seller is not aware of any other defect or environmental factor which would affect the value  
181 of the Property, significantly reduce the structural integrity of the improvements on the Property, or the health of future  
182 occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data  
183 wherein Seller has supplied such information. Seller further agrees to hold Agents and firm harmless and indemnify them  
184 from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or  
185 misrepresentation by Seller and/or for any material fact that is known or should be known by Seller concerning the Property  
186 and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fees for Agents and  
187 firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.  
188 Code Ann. § 62-13-102) concerning the Property.

189 Seller authorizes Broker and/or his affiliated Licensees to conduct showings of the Property. **Seller is responsible for**  
190 **compliance with state or federal law regarding usage of video or audio recording devices while marketing or**  
191 **showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.**  
192 Seller additionally authorizes Broker and/or his affiliated Licensees and any duly authorized key holder key-entry access  
193 to the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the  
194 purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents  
195 that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from  
196 entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and  
197 employees harmless from any loss, theft, or damage incurred as a result of showings thereof.

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198 Seller acknowledges and agrees that Broker:

- 199 (a) May show other properties to prospective buyers who are interested in Seller's Property;
- 200 (b) Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the  
201 condition of the Property, any portion thereof, or any item therein; for any geological issues present on the  
202 Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage;  
203 the availability and cost of utilities, septic or community amenities; conditions existing off the Property which  
204 may affect the Property; uses and zoning of the Property, whether permitted or proposed; for applicable  
205 boundaries of school districts or other school information; proposed or pending condemnation actions involving  
206 the Property; the appraised or future value of the Property; termites and wood destroying organisms; building  
207 products and construction techniques; the tax or legal consequences of a contemplated transaction; matters  
208 relating to financing; etc. Seller is hereby advised to seek independent expert advice on any of these or other  
209 matters which are of concern to Seller;
- 210 (c) Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this  
211 Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the  
212 Tennessee Real Estate Commission Rules; and
- 213 (d) May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

214 **11. EXPERT ASSISTANCE.**

215 While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an  
216 expert in the matters of law, taxation, financing, square footage, acreage, inspections, geological issues, wood destroying  
217 organisms, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice  
218 to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides  
219 names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained  
220 by Client.

221 **12. AGENCY.**

222 **A. Definitions.**

- 223 1. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage  
224 firm and where the context would indicate, the Broker's affiliated licensees.
- 225 2. **Designated Agent for the Seller:** The individual licensee that has been assigned by his/her Managing Broker  
226 and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the  
227 exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a  
228 possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate  
229 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
230 established without a written agency agreement.
- 231 3. **Facilitator / Transaction Broker (not an agent for either party):** The licensee is not working as an agent for  
232 either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a  
233 transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be  
234 used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any  
235 Licensee or company who has not entered into a written agency agreement with either party in the transaction is  
236 considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 237 4. **Dual agency:** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
238 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
239 full disclosure to each party and with each party's informed consent.
- 240 5. **Adverse Facts:** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees  
241 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of  
242 improvements to real property or present a significant health risk to occupants of the property.
- 243 6. **Confidentiality:** By law, every licensee is obligated to protect some information as confidential. This includes  
244 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the  
245 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee  
246 discloses that he/she has an agency relationship with another party, any such information which the consumer  
247 THEN reveals must be passed on by the licensee to that other party.

248 **B. Duties owed to all Parties to a Transaction.**

249 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**  
250 **to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise**  
251 **provided by law:**

- 252 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- 253 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge;
- 254 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to  
255 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both  
256 parties in the transaction. This duty of confidentiality extends to any information which the party would  
257 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure  
258 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency  
259 relationship and the closing of the transaction;
- 260 4. To provide services to each party to the transaction with honesty and good faith;
- 261 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that  
262 might affect such transaction only when such information is available through public records and when such  
263 information is requested by a party;
- 264 6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
- 265 7. A) To refrain from engaging in self-dealing or acting on behalf of licensee’s immediate family, or on behalf of  
266 any other individual, organization or business entity in which licensee has a personal interest without prior  
267 disclosure of such personal interest and the timely written consent of all parties to the transaction; and
- 268 B) To refrain from recommending to any party to the transaction the use of services of another individual,  
269 organization or business entity in which the licensee has an interest or from whom the licensee may receive a  
270 referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate  
271 services, without timely disclosure to the party who receives the referral, the licensee’s interest in such referral or  
272 the fact that a referral fee may be received.

273 **C. Duties owed to Client.**

274 **In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an**  
275 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 276 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement  
277 between the licensee and licensee’s client;
- 278 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation  
279 of a transaction and in other activities, except where such loyalty/duty would violate licensee’s duties to a  
280 customer in the transaction; and
- 281 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist  
282 the client by:
- 283 A) Scheduling all Property showings on behalf of the client;
- 284 B) Receiving all offers and counter offers and forwarding them promptly to the client;
- 285 C) Answering any questions that the client may have in negotiation of a successful purchase agreement  
286 within the scope of the licensee’s expertise; and
- 287 D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase  
288 agreement for a successful closing of the transaction.

289 Upon waiver of any of the above duties listed under subsection 12.C.3., a consumer must be advised in writing  
290 by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the  
291 transaction for the performance of said duties.

292 **D. Seller’s Authorizations**

- 293 1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee  
294 as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated  
295 Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if a Designated  
296 Agent for the Buyer (other than the Licensee below) is also associated with Broker. The Managing Broker hereby

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297 appoints Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty to be the Designated  
298 Agent to the Seller in this transaction.

299 2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to  
300 appoint a licensee, other than the Licensee named above, as Designated Agent for the Seller, to the exclusion of  
301 any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement,  
302 if necessary.

303 3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The  
304 Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated*  
305 *Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of  
306 the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon  
307 any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an  
308 advocate for either the Seller or any prospective buyers.

309 4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this  
310 Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated  
311 transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction  
312 is closed or contemplated transaction between these parties is terminated and no further negotiations occur  
313 between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

314 13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust  
315 money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee  
316 account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease,  
317 exchange, or option agreement until disbursed in accordance with the terms of said agreement.

318 14. **TITLE.** Seller warrants he is vested with good and marketable title to the Property with full authority to execute this  
319 Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

320 15. **OTHER PROVISIONS.**

321 A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and  
322 be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This  
323 Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and  
324 entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by  
325 all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement  
326 shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

327 B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be  
328 governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;  
330 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine  
331 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to  
332 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be  
333 determined by the location of Property

334 D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
335 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
336 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

337 E. **Fair Housing.** Broker and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
338 sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe  
339 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

340 16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND  
341 OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.  
342 NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU  
343 ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS  
344 DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND  
345 ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

346 17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which  
347 might otherwise be confidential:

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356

357 **18. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made  
358 a part of this Agreement:

- 359 1. Seller's Waiver of Broker Cooperation via MLS & Public Marketing
- 360 2. Addendum No. 1

361  
362  
363

364 **19. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:  
365 See Addendum No. 1

366  
367  
368  
369  
370  
371

372 **NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.**

The party(ies) below have signed and acknowledge receipt of a copy.	
_____ <b>BY: Broker or Licensee Authorized by Broker</b>	<b>Crye-Leike, Realtors &amp; Magli Realty</b> <b>BROKER/FIRM</b>
_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	206A Cool Springs Blvd Ste 101/301 Public SQ
Date	Address <b>Franklin 37067 TN 37064</b>
Joyce Friedman & Tom Magli	Phone: <b>615-771-6620/7945485</b>
Print/Type Name	Email: <b>joyce@joycefriedmanproperties.com</b>

The party(ies) below have signed and acknowledge receipt of a copy.	
_____ <b>SELLER/OWNER</b>	_____ <b>SELLER/OWNER</b>
David L. Snowden, Dir. of Schools	_____
Print/Type Name	Print/Type Name
_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
Date	Date
507 New Highway 96 West	_____
Address <b>Franklin TN 37064</b>	Address
Phone: _____ (H) _____ (Cell)	Phone: _____ (H) _____ (Cell)
615-794-6624 (W) Email: <b>dsnowden@fssd.org</b>	_____ (W) Email: _____

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## ADDENDUM 1

1 Property Address: 405 Battle Avenue Lot 13 Franklin TN 37064  
2 Buyer: \_\_\_\_\_  
3 Seller: Franklin Special School District (FSSD) Board of Education  
4 Buyer's Agent: \_\_\_\_\_  
5 Listing Agent: Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty

6 This ADDENDUM between the undersigned parties is entered into and is effective as of the Date provided in the  
7 Lot/Land Exclusive Right to Sell Listing Agreement Designated Agency Agreement with an Effective Date or Binding Agreement  
8 Date of 03/22/2022 for the purpose of changing, deleting, supplementing or adding terms to said Agreement. In  
9 consideration of mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is  
10 hereby acknowledged, the parties agree as follows:

11 1. Line 36 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation  
12 via MLS & Public Marketing to be executed with this Agreement. Once List Price determined,  
13 then an Addendum to List Agreement issued to establish Term of listing.

14 2. Either party may choose to discontinue contract; however, termination for convenience by  
15 either party requires 30-day prior written notice.

16 3. If contract agreement terminated for convenience by Seller, then all hard costs for  
17 marketing to be reimbursed by Seller to Listing Agents upon delivery of actual receipts for  
18 expenses incurred and paid within 30 days of termination. Expenses would include but not  
19 limited to open houses, special events, signage, photography.

20 4. Line 36 Marketing of Property Commencement Date: Waiver Signed. See Line 357 Seller's  
21 Waiver of Broker Cooperation via MLS & Public Marketing"

22 5. Add to Carry-Over Clause Line 40: "Upon expiration of this Agreement, Broker shall provide  
23 Seller a listing of all introductions to the property made directly or indirectly during the  
24 term of this agreement. Seller will refer all inquiries concerning the property to Broker  
25 during the term of this agreement."

26 6. Add to Line 76: Only if ordered by the Court will FSSD pay all reasonable attorneys  
27 fees.....

28 7. Earnest Money/Trust Money Line 315: Delete "Held by Broker in an escrow or trustee account  
29 or "

30 8. Earnest Money/Trust Money Line 316: Modified to read, "forwarded to title/escrow company  
31 of Sellers choosing who shall immediately deposit said earnest money in to their  
32 escrow/trust account at a federally insured financial institution until disbursed in  
33 accordance with terms of said agreement.  
34  
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47 This Addendum is made a part of the Agreement as if quoted therein verbatim. Should the terms of this Addendum conflict  
48 with the terms of the Agreement or other documents executed prior to or simultaneous to the execution of this Addendum, the  
49 terms of this Addendum shall control, and the conflicting terms are hereby considered deleted and expressly waived by all  
50 parties. In all other respects, the Agreement shall remain in full force and effect.

51 The party(ies) below have signed and acknowledge receipt of a copy.

52 \_\_\_\_\_

53 **BUYER** \_\_\_\_\_ **BUYER** \_\_\_\_\_

54 **By:** \_\_\_\_\_ **By:** \_\_\_\_\_

55 **Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

56 **Entity:** \_\_\_\_\_ **Entity:** \_\_\_\_\_

57 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

58 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

59 The party(ies) below have signed and acknowledge receipt of a copy.

60 \_\_\_\_\_

61 **SELLER Franklin Special School District** \_\_\_\_\_ **SELLER** \_\_\_\_\_

62 **By:** \_\_\_\_\_ **David L. Snowden** \_\_\_\_\_ **By:** \_\_\_\_\_

63 **Title:** \_\_\_\_\_ **Director of Schools** \_\_\_\_\_ **Title:** \_\_\_\_\_

64 **Entity:** \_\_\_\_\_ **Board of Education** \_\_\_\_\_ **Entity:** \_\_\_\_\_

65 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm

66 **Date** \_\_\_\_\_ **Date** \_\_\_\_\_

67

68 The party(ies) below have signed and acknowledge receipt of a copy.

69 \_\_\_\_\_

70 **BUYER'S AGENT** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

71 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_

72 **Date** \_\_\_\_\_ **Address** \_\_\_\_\_

73

74 The party(ies) below have signed and acknowledge receipt of a copy.

75 \_\_\_\_\_ **Crye-Leike/Magli Realty** \_\_\_\_\_

76 **LISTING AGENT Joyce Friedman/Tom Magli** \_\_\_\_\_ **FIRM / COMPANY** \_\_\_\_\_

77 \_\_\_\_\_ at \_\_\_\_\_ o'clock  am/  pm \_\_\_\_\_ **206A Cool Springs Blvd Ste 101/301 Public Sq**

78 **Date** \_\_\_\_\_ **Address Franklin 37064 TN 37067**

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# CRYE-LEIKE<sup>®</sup>, REALTORS<sup>®</sup>

## LOT/LAND EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** Crye-Leike, Realtors & Magli Realty

2 **ADDRESS OF COMPANY:** 206A Cool Springs Blvd Ste 101/301 Public Sq Franklin 37067 TN 37064

3 **OWNER / SELLER:** Franklin Special School District (FSSD) Board of Education

4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the  
7 hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS / LEGAL DESCRIPTION:** 405 Battle Avenue Lot 13  
9 (Address) Franklin (City), Tennessee 37064 (Zip) as  
10 recorded in Williamson County Register of Deeds Office, 73  
11 deed book(s) 452 page(s), and/or \_\_\_\_\_ instrument number, and further described  
12 as:  
13 Sunset Manor Addition Block A, Lot 13, PB73, PG 452  
14 with an estimated acreage of .311 +/- ("Property").

15 **A. Other items that remain with the Property at no additional cost to Buyer:**

16  
17  
18  
19 **B. Items that will NOT remain with the Property:**

20  
21  
22  
23 **2. THE LISTING PRICE.** \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars).  
24 This price is based (select one):

- 25  for entire Property as a tract, and not by the acre; or  
26  per acre with the sales price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_  
27 per acre based on a current or mutually acceptable survey; or  
28  for entire Property as a tract but with the sales price to be adjusted upward or downward at \$ \_\_\_\_\_  
29 per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey  
30 should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

31 **3. TERM.**

32 This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date")  
33 through September 20th, 2022 ("Listing Expiration Date"). If a contract to purchase, exchange or lease is  
34 signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sale  
35 Agreement, exchange agreement, or lease agreement.

36 **Marketing of Property Commencement Date:** Seller directs Broker to commence marketing of the Property for sale  
37 to the general public on the Effective Date

38 OR  
39  on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Carry-Over Clause.** Should Seller contract to sell or exchange, or contract to lease the Property within 90 days after the Listing Expiration Date of this Exclusive Right to Sell Listing Agreement (“Agreement”) to any Buyer/Tenant (or anyone acting on Buyer’s/Tenant’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. **TERMS** of sale acceptable to Seller (such as USDA, Conventional, etc.): Cash to Seller

5. **POSSESSION OF PROPERTY** to be delivered: \_\_\_\_\_ **Date of Deed** \_\_\_\_\_

6. **COMPENSATION.** A total of \$ \_\_\_\_\_, or 5 % compensation based on the total sales price shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price (“Closing”). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ 0.00, or 0 % compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of the lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of Closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between Broker and Seller. The Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller’s breach of the Purchase and Sale Agreement or the lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or lease been fulfilled. Such compensation will be payable without demand. Should Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market the Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney’s fees together with any court costs and expenses which real estate agent incurs in enforcing any of Seller’s obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. **FURTHER INFORMATION CONCERNING PROPERTY.**

A. **Mineral, oil, gas, water and timber rights.**

Will conveyance of this Property include all mineral, oil, gas, water and timber rights?  Yes /  No

If no, please explain: NONE

B. **Crops.**

Crops planted at the time of sale will:

Pass with the land to the buyer OR  Remain with the Seller OR  Other (please describe):

NONE

C. **Leasehold or Tenant’s Rights.**

There are no leasehold interests or tenant’s rights in the subject Property, except as follows:

NONE

93 **D. Licenses or Usage Permits.**  
94 No licenses or usage permits have been granted, including but not limited to those for crops, minerals, water, grazing,  
95 timber, usage rights to hunters, fishermen, or others except as follows:  
96 **NONE**  
97

98 **E. Utilities.**  
99 Seller represents that the following utility connections are located as follows: (e.g. on the Property, at the lot line,  
100 across the street, unknown, etc.)  
101 Electricity: Determined by Survey Gas: Determined by Survey  
102 Municipal Sewer: Determined by Survey Municipal Water: Determined by Survey  
103 Telephone: Determined by Survey Cable: Determined by Survey

104 **F. Zoning.**  
105 Seller represents that the Property is zoned Civic Institutional (CI)

106 **G. Flood Zone.**  
107 Is the Property or any part thereof located in a flood zone?  
108 **NO**  
109

110 **H. Exterior Injection Well, Soil Absorption and/or Percolation Test.**  
111 **1. Exterior Injection Well.** Does the Seller have knowledge of an exterior injection well being present on the  
112 Property? Yes / No  
113 **2. Soil Absorption and/or Percolation Test.** Has the Property been tested for  soil absorption and/or   
114 percolation? If either box is checked, please provide a copy of test results within \_\_\_\_\_ days of signing  
115 Agreement.

116 **I. Subsurface Sewage Disposal.**  
117 Has the Property been evaluated for a Sub-Surface Sewage Disposal System? Yes / No  
118 If yes, please provide a copy within \_\_\_\_\_ days of signing Agreement.

119 **J. Survey.**  
120 Has the Property been surveyed? Yes / No If yes, please provide a copy of the most recent survey within  
121 \_\_\_\_\_ days of signing Agreement.

122 **K. Special Tax Arrangements.**  
123 Is the Property in any special tax arrangement such as Green Belt? Yes / No  
124 If yes, please list details: \_\_\_\_\_  
125

126 **L. Foreign/Unnatural Materials on Property.**  
127 Are you aware of any underground tanks or toxic substances, tires, appliances, garbage, foreign and/or unnatural  
128 materials, asbestos, polychlorinated biphenyl (PCB's), ureaformaldehyde, methane gas, methamphetamine  
129 production, radioactive material or radon on the Property (structure or soil)? Yes / No  
130 If yes, please list details, including the substance and its location:  
131  
132

133 **8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.**  
134 Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this  
135 listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands  
136 and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable  
137 database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that  
138 the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local  
139 association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities.  
140 Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide  
141 compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Broker  
142 shall offer a cooperative compensation to any agent who is a member participant of any MLS in which Property is listed  
143 in the amount of 3 % of Selling Price/monthly rental amount or \$ \_\_\_\_\_ to a

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144 Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is  
145 the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member  
146 participant of the MLS(es) in which the Property is listed. In the event that Broker elects to offer a cooperating  
147 compensation to an agent who is not a member participant in the MLS(es) in which the Property is listed, it will be in the  
148 amount of 3 % of Selling Price/monthly rental amount or \$ 0.00 to a Selling Agent or  
149 Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of  
150 the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that  
151 nonmember participant agent. Seller will assist Broker in any reasonable way in selling Property and will refer to Broker  
152 all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and  
153 authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.  
154 Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to  
155 disseminate the Multiple Listing Profile Sheet; to exhibit said Property to any prospective Buyer; and to have  
156 photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used  
157 and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;  
158 and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other  
159 copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant  
160 license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the  
161 Property to be shown at all reasonable hours and otherwise cooperate with Broker. Seller agrees that Broker is authorized  
162 to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property  
163 which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if  
164 such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order  
165 for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from  
166 Buyers or cooperating brokers, Broker will follow Seller's lawful instructions on the disclosure of the existence of  
167 any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

168 **9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.**

169 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
170 *of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected*  
171 *from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one*  
172 *of the following:*

173 *Non United States citizen;*

174 *Non resident alien; or*

175 *Foreign corporation, partnership, trust, or estate*

176 *It is Seller's responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

177 **10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

178 Seller agrees to carefully review the information on the Multiple Listing Profile Sheet to ensure information is accurate.  
179 Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the  
180 improvements located thereon. Seller is not aware of any other defect or environmental factor which would affect the value  
181 of the Property, significantly reduce the structural integrity of the improvements on the Property, or the health of future  
182 occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data  
183 wherein Seller has supplied such information. Seller further agrees to hold Agents and firm harmless and indemnify them  
184 from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or  
185 misrepresentation by Seller and/or for any material fact that is known or should be known by Seller concerning the Property  
186 and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fees for Agents and  
187 firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.  
188 Code Ann. § 62-13-102) concerning the Property.

189 Seller authorizes Broker and/or his affiliated Licensees to conduct showings of the Property. **Seller is responsible for**  
190 **compliance with state or federal law regarding usage of video or audio recording devices while marketing or**  
191 **showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.**  
192 Seller additionally authorizes Broker and/or his affiliated Licensees and any duly authorized key holder key-entry access  
193 to the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the  
194 purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents  
195 that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from  
196 entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and  
197 employees harmless from any loss, theft, or damage incurred as a result of showings thereof.

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198 Seller acknowledges and agrees that Broker:

- 199 (a) May show other properties to prospective buyers who are interested in Seller's Property;
- 200 (b) Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the  
201 condition of the Property, any portion thereof, or any item therein; for any geological issues present on the  
202 Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage;  
203 the availability and cost of utilities, septic or community amenities; conditions existing off the Property which  
204 may affect the Property; uses and zoning of the Property, whether permitted or proposed; for applicable  
205 boundaries of school districts or other school information; proposed or pending condemnation actions involving  
206 the Property; the appraised or future value of the Property; termites and wood destroying organisms; building  
207 products and construction techniques; the tax or legal consequences of a contemplated transaction; matters  
208 relating to financing; etc. Seller is hereby advised to seek independent expert advice on any of these or other  
209 matters which are of concern to Seller;
- 210 (c) Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this  
211 Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the  
212 Tennessee Real Estate Commission Rules; and
- 213 (d) May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

214 **11. EXPERT ASSISTANCE.**

215 While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an  
216 expert in the matters of law, taxation, financing, square footage, acreage, inspections, geological issues, wood destroying  
217 organisms, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice  
218 to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides  
219 names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained  
220 by Client.

221 **12. AGENCY.**

222 **A. Definitions.**

- 223 1. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage  
224 firm and where the context would indicate, the Broker's affiliated licensees.
- 225 2. **Designated Agent for the Seller:** The individual licensee that has been assigned by his/her Managing Broker  
226 and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the  
227 exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a  
228 possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate  
229 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
230 established without a written agency agreement.
- 231 3. **Facilitator / Transaction Broker (not an agent for either party):** The licensee is not working as an agent for  
232 either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a  
233 transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be  
234 used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any  
235 Licensee or company who has not entered into a written agency agreement with either party in the transaction is  
236 considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 237 4. **Dual agency:** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
238 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
239 full disclosure to each party and with each party's informed consent.
- 240 5. **Adverse Facts:** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees  
241 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of  
242 improvements to real property or present a significant health risk to occupants of the property.
- 243 6. **Confidentiality:** By law, every licensee is obligated to protect some information as confidential. This includes  
244 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the  
245 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee  
246 discloses that he/she has an agency relationship with another party, any such information which the consumer  
247 THEN reveals must be passed on by the licensee to that other party.

248 **B. Duties owed to all Parties to a Transaction.**

249 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**  
250 **to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise**  
251 **provided by law:**

- 252 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- 253 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge;
- 254 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to  
255 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both  
256 parties in the transaction. This duty of confidentiality extends to any information which the party would  
257 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure  
258 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency  
259 relationship and the closing of the transaction;
- 260 4. To provide services to each party to the transaction with honesty and good faith;
- 261 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that  
262 might affect such transaction only when such information is available through public records and when such  
263 information is requested by a party;
- 264 6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
- 265 7. A) To refrain from engaging in self-dealing or acting on behalf of licensee’s immediate family, or on behalf of  
266 any other individual, organization or business entity in which licensee has a personal interest without prior  
267 disclosure of such personal interest and the timely written consent of all parties to the transaction; and
- 268 B) To refrain from recommending to any party to the transaction the use of services of another individual,  
269 organization or business entity in which the licensee has an interest or from whom the licensee may receive a  
270 referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate  
271 services, without timely disclosure to the party who receives the referral, the licensee’s interest in such referral or  
272 the fact that a referral fee may be received.

273 **C. Duties owed to Client.**

274 **In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an**  
275 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 276 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement  
277 between the licensee and licensee’s client;
- 278 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation  
279 of a transaction and in other activities, except where such loyalty/duty would violate licensee’s duties to a  
280 customer in the transaction; and
- 281 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist  
282 the client by:
- 283 A) Scheduling all Property showings on behalf of the client;
- 284 B) Receiving all offers and counter offers and forwarding them promptly to the client;
- 285 C) Answering any questions that the client may have in negotiation of a successful purchase agreement  
286 within the scope of the licensee’s expertise; and
- 287 D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase  
288 agreement for a successful closing of the transaction.

289 Upon waiver of any of the above duties listed under subsection 12.C.3., a consumer must be advised in writing  
290 by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the  
291 transaction for the performance of said duties.

292 **D. Seller’s Authorizations**

- 293 1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee  
294 as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated  
295 Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if a Designated  
296 Agent for the Buyer (other than the Licensee below) is also associated with Broker. The Managing Broker hereby

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297 appoints Joyce Friedman of Crye-Leike & Tom Magli of Magli Realty to be the Designated  
298 Agent to the Seller in this transaction.

299 2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to  
300 appoint a licensee, other than the Licensee named above, as Designated Agent for the Seller, to the exclusion of  
301 any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement,  
302 if necessary.

303 3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The  
304 Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated*  
305 *Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of  
306 the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon  
307 any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an  
308 advocate for either the Seller or any prospective buyers.

309 4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this  
310 Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated  
311 transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction  
312 is closed or contemplated transaction between these parties is terminated and no further negotiations occur  
313 between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

314 13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust  
315 money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee  
316 account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease,  
317 exchange, or option agreement until disbursed in accordance with the terms of said agreement.

318 14. **TITLE.** Seller warrants he is vested with good and marketable title to the Property with full authority to execute this  
319 Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

320 15. **OTHER PROVISIONS.**

321 A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and  
322 be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This  
323 Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and  
324 entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by  
325 all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement  
326 shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

327 B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be  
328 governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;  
330 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine  
331 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to  
332 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be  
333 determined by the location of Property

334 D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
335 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
336 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

337 E. **Fair Housing.** Broker and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
338 sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe  
339 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

340 16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND  
341 OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.  
342 NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU  
343 ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS  
344 DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND  
345 ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

346 17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which  
347 might otherwise be confidential:

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**18. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement:

- 1. Seller's Waiver of Broker Cooperation via MLS & Public Marketing
- 2. Addendum No. 1

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**19. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:  
See Addendum No. 1

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**NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.**

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The party(ies) below have signed and acknowledge receipt of a copy.

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\_\_\_\_\_  
**BY: Broker or Licensee Authorized by Broker**

Crye-Leike, Realtors & Magli Realty  
**BROKER/FIRM**

376  
377

\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

206A Cool Springs Blvd Ste 101/301 Public SQ  
Address **Franklin 37067 TN 37064**

378  
379

Joyce Friedman & Tom Magli  
Print/Type Name

Phone: 615771-6620/794-5485  
Email: joyce@joycefriedmanproperties.com

380

The party(ies) below have signed and acknowledge receipt of a copy.

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\_\_\_\_\_  
**SELLER/OWNER**

\_\_\_\_\_  
**SELLER/OWNER**

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David L. Snowden, Dir of Schools  
Print/Type Name

\_\_\_\_\_  
Print/Type Name

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\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
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\_\_\_\_\_ at \_\_\_\_\_ o'clock □ am/ □ pm  
Date

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507 New Highway 96 West  
Address **Franklin TN 37064**

\_\_\_\_\_  
Address

389  
390

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
6157946624 (W) Email: dsnowden@fssd.org

Phone: \_\_\_\_\_ (H) \_\_\_\_\_ (Cell)  
\_\_\_\_\_ (W) Email: \_\_\_\_\_

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## COMMERCIAL EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

1 **BROKER (listing company):** Magli Realty Company & Crye-Leike, Realtors  
2 **ADDRESS OF COMPANY:** 301 Public Square Franklin TN 37064-0448  
3 **OWNER / SELLER:** Franklin Special School District  
4 **ADDRESS OF OWNER / SELLER:** 507 New Highway 96 West Franklin TN 37064

5 For and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and  
6 sufficiency of which is hereby acknowledged, Franklin Special School District  
7 as seller (hereinafter referred to as "Seller") and Magli Realty Company & Crye-Leike, Realtors firm  
8 and its licensees (hereinafter collectively referred to as "Firm") do hereby enter into this Commercial Exclusive Right to Sell  
9 Listing Agreement ("Agreement"), this 22nd day of March, 2022 ("Effective Date").

10 1. **Exclusive Listing Agreement.** Seller hereby grants to Firm the exclusive right and privilege as the Agent of the  
11 Seller to show and offer for sale the following described property as the real estate broker for Seller: All that tract of land  
12 known as: 1406 Cannon Street (Address),  
13 Franklin (City), Tennessee, 37064 (Zip), as recorded in Williamson County Register  
14 of Deeds Office, \_\_\_\_\_ deed book(s), \_\_\_\_\_ page(s), and/or Part of 0780 A 001.00 000 instrument  
15 number and further described as: Approximately 6.76± acres as depicted on attached Exhibit "A"  
16 together with all fixtures, landscaping, improvements, leases, mineral rights, air rights, and appurtenances (unless  
17 otherwise noted in Special Stipulations), all hereinafter collectively referred to as the "Property", as more particularly  
18 described in Exhibit "A", or if no Exhibit "A" is attached, as is recorded with the Register of Deeds of the county in which  
19 the Property is located and is made a part of this Agreement by reference. The term of this Agreement shall begin on  
20 March 22, 2022 and shall continue through September 20, 2022 (hereinafter referred to as  
21 "Listing Period"). If a contract to purchase, exchange, or lease is signed before this Agreement expires, the term hereof  
22 shall continue until final disposition of Purchase and Sales Agreement, exchange agreement, or lease agreement.

23 2. **Firm's Duties to Seller.** Firm's sole duties to Seller shall be to: (a) use Firm's best efforts to procure a buyer ready,  
24 willing, and able to purchase Property at a sales price of \$ \_\_\_\_\_ (including commission) or any other  
25 price acceptable to Seller; (b) assist to the extent requested by Seller in negotiating the terms of and filling out a ~~printed~~  
26 real estate purchase and sale agreement; and (c) comply with all applicable laws and regulations in performing its duties  
27 hereunder including Tenn. Code Ann. § 62-13-101, et seq., and the Tennessee Real Estate Commission Rules, as amended.

28 3. **Seller's Duties.** Seller represents that Seller: (a) presently has title to the Property or has full authority to enter into this  
29 Agreement; (b) will cooperate with Firm to sell the Property to prospective buyers, including directing all other agents to  
30 the Firm; (c) will make the Property available for showing at reasonable times as requested by Firm; and (d) will provide  
31 Firm with accurate information regarding the Property (including information concerning all adverse material facts  
32 pertaining to the physical condition of the Property). Seller will have the additional responsibility to provide Firm with  
33 the following documents if they are accessible to Seller:

- 34 a. The most recent property tax assessments and tax bills;
- 35 b. The most recent title insurance policy insuring the Property, including complete and legible copies of all  
36 documents (whether or not recorded) which are referenced therein as title exceptions;
- 37 c. The most recent survey, ALTA (American Land Title Association) of the Property or if such a survey is not  
38 available, the most recent survey of the Property prepared by a licensed Tennessee surveyor;
- 39 d. All soil reports covering any of the Property;
- 40 e. All cruise reports of existing timber on the Property;
- 41 f. All plans and specifications for Property improvements, including without limitation, diagrams of any outdoor  
42 irrigation system;
- 43 g. All existing leases and subleases (including concession and license agreements for use of space within the  
44 Property) and any amendments and letter agreements relating thereto, together with all correspondence to and  
45 from tenants, and a written summary of any leases currently in negotiation, specifying the tenant, premises to be  
46 leased, rents, and term and outlining all other material deal points;

- 47 h. All current insurance policies, together with a written summary of insurance coverage and premiums by policy  
48 type;
- 49 i. All certificates of occupancy;
- 50 j. All contractor, vendor, manufacturer and other warranties with respect to all real property improvements, fixtures,  
51 equipment and personal property to be conveyed;
- 52 k. All equipment leases and services and vendor contracts (including all amendments and side-letter agreements  
53 relating thereto);
- 54 l. All environmental (hazardous substances), engineering, physical inspection, marketing and feasibility studies,  
55 assessments and reports, including any wetlands reports;
- 56 m. A current rent roll for the Property together with monthly income and expense reports for the period of Seller's  
57 ownership of the Property (or for the previous 36 months if shorter);
- 58 n. A written summary of all pending or threatened litigation, insurance claims and notices of legal violations,  
59 together with the pertinent notices, demands, pleadings and other documents;
- 60 o. All reports, assessments or studies regarding actions required to bring the Property into compliance with the  
61 Americans with Disabilities Act or any similar state statute or local ordinance or code;
- 62 p. A schedule of special assessment districts and assessment amounts, if any;
- 63 q. A schedule of impact fees paid or owing on the Property, if any;
- 64 r. A schedule of allowances or rebates due on tenant improvements, if any, and proof of insurance from individual  
65 tenants (including, as tenants, any space concessionaires of licensees);
- 66 s. All maintenance records for the Property;
- 67 t. All municipal, county, state or federal permits, licenses and authorizations affecting the use, operation and  
68 maintenance of the Property;
- 69 u. All assignments, sales documentation or lease documents concerning mineral and/or air rights; and
- 70 v. Other documents which are reasonably requested by a potential buyer during the Due Diligence Period.

#### 71 4. Marketing.

72 Firm may advertise the Property for sale in all media and may photograph and/or videotape the Property and use the  
73 photographs and/or videotapes in connection with Firm's marketing efforts. Seller agrees not to place any advertisements  
74 on the Property or to advertise the Property for sale in any media except with the prior written consent of Firm. Firm is  
75 also hereby authorized to place Firm's "For Sale" sign on the Property. Firm is authorized to procure buyers to purchase  
76 the Property in cooperation with other real estate brokers and their affiliated licensees. Firm is hereby granted the authority  
77 to advertise this listing on the Internet. Firm is additionally permitted to file this listing with any Multiple Listing Services  
78 (MLS(es)) or similar service(s) of which Firm is a member. Seller understands and agrees that by placing the listing on  
79 the MLS or these similar services, the listing may be included in a searchable database provided by the MLS or similar  
80 service which can be viewed on other agents' websites. Seller also agrees that the listing may also appear on publicly  
81 accessible websites sponsored by and/or affiliated with the MLS, the local association of Realtors®, or similar listing  
82 services and those who lawfully receive listing information from said entities. Firm may distribute listing and sales  
83 information (including the sales price) to buyers, other real estate brokers and their affiliated licensees, and/or multiple  
84 listing services or similar services. Firm and other real estate brokers and their affiliated licensees may show the Property  
85 ~~without first notifying Seller.~~ upon Firm notification to FSSD. Sellers agent to attend all showings.

#### 86 5. Compensation.

87 A. **Terms.** Seller agrees to pay Firm, no later than at closing, a real estate commission of Four & One Half percent  
88 (4.5 %) of the purchase price of the Property or \$ \_\_\_\_\_ in the event that during the Listing  
89 Period,

90 (a) Firm procures a ready, willing, and able buyer who has entered into a purchase agreement or an agreement  
91 of exchange for the Property at the price described above;

92 (b) Seller enters into an enforceable contract for the sale or exchange of the Property with any buyer; or

93 (c) Seller enters into an option to purchase agreement during the Listing Period and buyer exercises said option.

94 B. **Cooperating Compensation.** Firm shall share this compensation with a cooperating broker, if any, who procures the  
95 buyer of the Property by paying such cooperating broker 1.5 % of Firm's commission or \$ \_\_\_\_\_. Said  
96 cooperating broker is the agent or facilitator who represents the interests of and/or is working with the buyer.  
97 Cooperating brokers are expressly intended to be third-party beneficiaries under this Agreement only for the purposes  
98 of enforcing their commission rights as cooperating brokers.

99 C. **Carry Over.** Should the Seller contract to sell or exchange or an option agreement is executed for the Property within  
100 90 days after the expiration of this Agreement to any buyer (or anyone acting on buyer's behalf) who has been  
101 introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the  
102 compensation as set forth herein at the closing of the sale or exchange of the Property. This includes but is not limited

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103 to any introduction or exposure to the Property by advertisements or postings appearing in any medium which  
104 originated as a result of listing the Property with Firm. Notwithstanding the above, in the event that the Property is  
105 sold to the prospective buyer by or through another licensed broker with whom Seller has signed an exclusive right to  
106 sell contract or exclusive agency contract, after the date of expiration of the Listing Period, then no compensation shall  
107 be owed to Firm by virtue of this Agreement. The compensation obligations set forth herein shall survive the  
108 termination of this Agreement.

109 **D. Seller Breach or Failure to Close.** In the event that a ready, willing, and able buyer is produced and a contract  
110 results, the Seller is obligated to compensate the Firm in the event that the Seller unlawfully fails to close by Seller's  
111 breach of the contract. In the event that this occurs, Seller agrees to compensate Firm in an amount equal to the  
112 compensation which would have been due and owing Firm had the transaction closed. Such compensation will be  
113 payable without demand. Should the Firm consent to release the Listing prior to the expiration of the Listing Period,  
114 Seller agrees to pay all costs incurred by the Firm to market the Property as a cancellation fee or other amount as  
115 agreed to by the parties, in addition to any other sums that may be due to the Firm. Seller agrees to pay all reasonable  
116 attorney's fees together with any court costs and expenses which real estate firm incurs in enforcing any of Seller's  
117 obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and  
118 equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

119 **E. Buyer Breach or Failure to Close.** Seller and Firm hereby agree that in the event of a failure of buyer to close under  
120 an enforceable contract, actual compensation earned by the Firm would be extremely difficult or impractical to  
121 ascertain. Accordingly, the parties agree that Firm shall be entitled to collect fifty percent (50%) of any Earnest  
122 Money/Trust Money remitted to Seller up to the amount of compensation that would have been earned had the contract  
123 closed, which the parties agree is a reasonable sum considering all of the circumstances existing as of the date of this  
124 Agreement. The parties agree that said amount does not constitute a penalty. Moreover, such partial compensation  
125 shall be credited against any future compensation due under this Listing Agreement or any extensions thereof.  
126 Notwithstanding the foregoing, if the Seller prevails in a specific performance lawsuit then the Firm shall be entitled  
127 to full compensation as outlined herein. The parties hereby agree that all remedies are fair and equitable and neither  
128 party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

129 **6. Earnest Money/Trust Money.** ~~Firm is authorized to accept from buyer a deposit of Earnest Money/Trust Money to be~~  
130 ~~applied to the purchase price for the Property. Such deposit is to be held by Firm in an escrow or trustee account or~~  
131 ~~forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease, exchange, or~~  
132 ~~option agreement until disbursed in accordance with the terms of said agreement.~~ See Special Stipulations

133 **7. Seller Indemnity.** Seller agrees that Firm is only responsible to pay compensation under the terms of this Agreement to  
134 agents within the Firm or cooperating brokers who have dealt directly with the Firm in the sale of this Property. Seller  
135 further agrees to hold Firm harmless and indemnify it from any claim, demand, action, liability or proceedings resulting  
136 from claims for compensation made by anyone other than Firm or said cooperating brokers who have dealt directly with  
137 the Firm in the sale of this Property and to provide for defense costs including reasonable attorney's fees for agents and  
138 Firm in such an event. This indemnification shall survive the Closing and any other termination of this Agreement.

139 **8. Limits on Firm's Authority and Responsibility.** Seller acknowledges and agrees that Firm: (a) may show other properties  
140 to prospective buyers who are interested in Seller's Property; (b) is not an expert with regard to matters that could be  
141 revealed through a survey, title search, or inspection of the Property; for the condition of the Property, any portion thereof,  
142 or any item therein; for any geological issues present on the Property; for the necessity or cost of any repairs to the Property;  
143 for hazardous or toxic materials; for the availability and cost of utilities, septic or community amenities; for any conditions  
144 existing off the Property that may affect the Property; for uses and zoning of the Property, whether permitted or proposed;  
145 for applicable boundaries of school districts or other school information; for proposed or pending condemnation actions  
146 involving the Property; for the appraised or future value of the Property; for termites and wood destroying organisms; for  
147 building products and construction techniques; for the tax or legal consequences of a contemplated transaction; or for  
148 matters relating to financing (Seller acknowledges that Firm (including its broker and affiliated licensees) is not an expert  
149 with respect to the above matters and is hereby advised to seek independent expert advice on any of these matters which  
150 are of concern to Seller. Seller further acknowledges that he has not relied upon any advice, representations or statements  
151 of Firm (including its broker and affiliated licensees) and waives and shall not assert any claims against Firm (including  
152 its broker and affiliated licensees) involving same); (c) shall owe no duties to Seller nor have any authority to act on behalf  
153 of Seller other than what is set forth in this Agreement and those duties contained in the Tennessee Real Estate Broker  
154 License Act of 1973 and the Tennessee Real Estate Commission Rules, as amended; (d) may make all disclosures required  
155 by law and/or the Realtors® Code of Ethics; and (e) may disclose all information about the Property to others.

156 Seller agrees to hold Firm (including its broker and affiliated licensees) harmless from any and all claims, causes of action,  
157 or damages (and shall indemnify Firm (including its broker and affiliated licensees) therefore) arising out of or relating to:  
158 (a) Seller providing Firm incomplete and/or inaccurate information; (b) the handling of Earnest Money/Trust Money by

159 anyone other than Firm (if such earnest money/trust money is entrusted to such person by Seller); or (c) any injury to  
160 persons on the Property and/or loss of or damage to the Property or anything contained therein.  
161 Seller is responsible for compliance with state or federal law regarding usage of video or audio recording devices while  
162 marketing or showing the property. Seller should seek legal advice regarding their rights or limitations related to their  
163 actions.

164 **9. Foreign Investment in Real Property Tax Act (“FIRPTA”) Disclosure.**  
165 *Seller is hereby notified to consult with his/her own closing attorney and tax professional concerning the applicability*  
166 *of the Foreign Investment in Real Property Tax Act (“FIRPTA”) which may require tax withholding to be collected*  
167 *from Seller at the Closing of any sale of the Property. Examples of this may include if the Seller can be classified as*  
168 *one of the following:*

- 169 *Non United States citizen;*
- 170 *Non resident alien; or*
- 171 *Foreign corporation, partnership, trust, or estate.*

172 *It is Seller’s responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.*

173 ~~10. Extension. If during the term of this Agreement, Seller and a prospective buyer enter into a real estate sales contract which~~  
174 ~~is not consummated for any reason whatsoever, then the original expiration date of this Agreement shall be extended for~~  
175 ~~the number of days that the Property was under contract.~~

176 **11. Required State Law Disclosures.**

- 177 (a) Firm agrees to keep confidential all information which Seller asks to be kept confidential by express request or  
178 instruction unless Seller permits such disclosure in writing, by Seller’s subsequent work or conduct or such disclosure is  
179 required by law or the Realtor® Code of Ethics.
- 180 (b) Firm may not knowingly give customers false information.
- 181 (c) In the event of a conflict between Firm’s duty not to give customers false information and the duty to keep the  
182 confidences of Seller, the duty not to give customers false information shall prevail.
- 183 (d) Unless specified below in Special Stipulations, Firm has no other known agency relationships with other parties which  
184 would conflict with any interests of Seller (except that Firm may represent other buyers, sellers, landlords, and tenants in  
185 buying, selling or leasing property).

186 **12. Types of Agency.**

187 **A. Definitions**

- 188 **1. Designated Agent for the Seller.** The individual licensee that has been assigned by his/her Managing Broker  
189 and is working as an agent for the Seller or Property Owner in this consumer’s prospective transaction, to the  
190 exclusion of all other licensees in his/her company. Even if someone else in the licensee’s company represents a  
191 possible buyer for this Seller’s Property, the Designated Agent for the Seller will continue to work as an advocate  
192 for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be  
193 established without a written agency agreement.
- 194 **2. Agent for the Seller.** The licensee’s company is working as an agent for the Property Seller and owes primary  
195 loyalty to the Seller. Even if the licensee is working with a prospective buyer to locate property for sale, rent, or  
196 lease, the licensee and his/her company are legally bound to work in the best interests of any Property Owners  
197 whose Property is shown to this prospective buyer. An agency relationship of this type cannot, by law, be  
198 established without a written agency agreement.
- 199 **3. Facilitator / Transaction Broker (not an agent for either party).** The licensee is not working as an agent for  
200 either party in this consumer’s prospective transaction. A Facilitator may advise either or both of the parties to a  
201 transaction but cannot be considered a representative or advocate of either party. “Transaction Broker” may be  
202 used synonymously with, or in lieu of, “Facilitator” as used in any disclosures, forms or agreements. [By law,  
203 any licensee or company who has not entered into a written agency agreement with either party in the transaction  
204 is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]
- 205 **4. Dual agency.** The licensee has agreements to provide services as an agent to more than one (1) party in a specific  
206 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon  
207 full disclosure to each party and with each party’s informed consent.

208 **B. Seller’s Authorizations:**

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## 1. Designated Agency

- a. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee as Designated Agent for the Seller, to the exclusion of any other licensees associated with Firm. A Designated Agent for the Seller can and will continue to advocate Seller's interests in a transaction even if a Designated Agent for the buyer (other than the licensee below) is also associated with Firm. The Managing Broker hereby appoints Thomas F. Magli & Joyce Friedman to be the Designated Agent to the Seller in this transaction.
- b. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to appoint a licensee, other than the licensee named above, as Designated Agent for the Seller, to the exclusion of any other licensees associated with Firm. This shall be accomplished through an amendment to this Agreement, if necessary.
- c. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the buyer and the Seller of the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an advocate for either the Seller or any prospective buyers.
- d. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction is closed or the transaction or contemplated transaction between these parties is terminated or not accepted and no further negotiations occur between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller.

## 2. Seller Agency

- a. **Default to Facilitator.** Seller hereby authorizes Firm and Listing Licensee to default to Facilitator status (representing the interests of neither the Seller nor the buyer) in any Property showings, negotiations, or transactions in which the Firm may also have a representation agreement with the buyer who is also being assisted by the Listing Licensee. In such event, Agent shall immediately notify (verbally) both the buyer and the Seller of the need to default to this Facilitator status and notification shall be confirmed in writing prior to the execution of the contract. As a Facilitator, Firm and Firm's licensee may assist the parties and provide information in subsequent negotiations in that transaction.
- b. **Resumption of Agency Status.** In the event that Firm and Listing Licensee default to a Facilitator status, this Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated transaction in which the parties are all represented by the Facilitator is resolved (either because the transaction is closed or contemplated transaction between the parties is terminated or not accepted and no further negotiations occur between the parties). At that time, the Firm and Listing Licensee shall immediately revert back to their status as Agent for the Seller.

13. **Agency.** Pursuant to Firm policy, Firm shall practice Designated Agency (Designated or Seller Agency – choose one) in this transaction.

## 14. Other Provisions.

- A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.
- B. **Time of Essence.** Time is of the essence in this Agreement.
- C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of Property.
- D. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

This form is copyrighted and may only be used in real estate transactions in which Mr. Thomas F. Magli is involved as a Tennessee REALTORS® authorized user. Unauthorized use of the form may result in legal sanctions being brought against the user and should be reported to Tennessee REALTORS® at 615-321-1477.

263 E. Severability. If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for  
264 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this  
265 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

266 F. Party Information.

267 Seller's address:  
268 507 New Highway 96 West  
269 \_\_\_\_\_  
270 Franklin, TN 37064  
271 \_\_\_\_\_  
272 Email: dsnowden@fssd.org

Firm's address:  
301 Public Square  
\_\_\_\_\_  
Franklin, TN 37064-0448  
\_\_\_\_\_  
Email: tom@magli.com / joyce@joycefriedmanproperties.com

272 G. Fair Housing. Firm and his affiliated Licensees shall provide services without regard to race, color, creed, religion,  
273 sex, handicap, familial status, national origin, sexual orientation, or gender identity. A request to observe  
274 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

275 15. Exhibits and Addenda. All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of  
276 this Agreement. If any such exhibit or addendum conflicts with any preceding section, said exhibit or addendum shall  
277 control:

278 Exhibit "A" Legal Description  
279 1. A depiction of the subject property is attached and marked Exhibit "A". This depiction will be replaced with a  
280 Legal Description when one becomes available.

281 2. SELLER'S WAIVER OF BROKER COOPERATION VIA MLS AND PUBLIC MARKETING

285 16. Special Stipulations. The following Special Stipulations, if conflicting with any preceding section, shall control:

286 1. Upon expiration of this Agreement, Broker shall provide Seller a listing of all introductions to the property  
287 made directly or indirectly during the term of this agreement. Seller will refer all inquiries concerning the  
288 property to Broker during the term of this agreement.

289 2. Line 71 Marketing of Property Commencement Date. Seller's Waiver of Broker Cooperation via MLS & Public  
290 Marketing to be executed with this Agreement. Once List Price is determined, then an Addendum to List  
291 Agreement  
292 will be issued to establish the Term of listing.

293 3. ~~Contract period to be until date of sale of property or termination for convenience of a party.~~ Either party may  
294 choose to discontinue contract; however, termination for convenience by either party requires 30 day prior  
295 written notice.

296 4. If contract agreement is terminated for convenience by Seller, then all hard costs for marketing are to be  
297 reimbursed by Seller to Listing Agents upon delivery of actual receipts for expenses incurred and paid within 30  
298 days of termination. Expenses would include but not limited to open houses, special events, signage, photography.

299 5. Earnest Money/Trust Money. Firm is authorized to accept from buyer a deposit as Earnest Money/Trust Money  
300 to be applied to the purchase price for the Property. Such deposit is be forwarded to a title/escrow company of  
301 Seller's choosing who shall immediately deposit said Earnest Money/Trust Money into their escrow/trust account  
302 at a federally insured financial institution until disbursed in accordance with terms of said agreement.

316  (Mark box if additional pages are attached.)

317 **LEGAL DOCUMENTS: This is an important legal document creating valuable rights and obligations. If you have**  
318 **questions about it, you should review it with your attorney. Neither the Firm nor any Agent or Facilitator is authorized**  
319 **or qualified to give you any advice about the advisability or legal effect of its provisions.**

320 **NOTE: Any provisions of this Agreement which are preceded by a box “□” must be marked to be a part of this**  
321 **Agreement. By affixing your signature below, you also acknowledge that you have reviewed each page and have**  
322 **received a copy of this Agreement.**

323 The above is hereby accepted, \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_,

324 The party(ies) below have signed and acknowledge receipt of a copy.	
325 <b>Magli Realty Company &amp; Crye-Leike, Realtors</b>	
326 <b>BY: Broker or Licensee Authorized by Broker</b>	<b>BROKER/FIRM</b>
327 _____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	<b>301 Public Square</b>
328 <b>Date</b>	Address <b>Franklin TN 37064-0448</b>
329 <b>Thomas F. Magli &amp; Joyce Friedman</b>	Phone: <b>615-794-5484</b>
330 Print/Type Name	Email: <b>tom@magli.com / joyce@joycefriedmanproperties.com</b>

331 The party(ies) below have signed and acknowledge receipt of a copy.	
332 _____	
333 <b>SELLER/OWNER</b>	<b>SELLER/OWNER</b>
334 By: <b>David L Snowden</b>	By: _____
335 Title: <b>Director of Schools</b>	Title: _____
336 Entity: <b>Franklin Special School District</b>	Entity: _____
337 _____	_____
338 Print/Type Name	Print/Type Name
339 _____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
340 <b>Date</b>	<b>Date</b>
341 <b>507 New Highway 96 West Franklin</b>	_____
342 Address	Address
343 Phone: <b>615-794-6624</b> (H) _____ (Cell)	Phone: _____ (H) _____ (Cell)
344 _____ (W) Email: <b>dsnowden@fssd.org</b>	_____ (W) Email: _____

*NOTE: This form is provided by Tennessee REALTORS® to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the Tennessee REALTORS® logo in conjunction with any form other than standardized forms created by Tennessee REALTORS® is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.*

This form is copyrighted and may only be used in real estate transactions in which **Mr. Thomas F. Magli** is involved as a Tennessee REALTORS® authorized user. Unauthorized use of the form may result in legal sanctions being brought against the user and should be reported to Tennessee REALTORS® at 615-321-1477.



**5.117 TEACHER TENURE – 2<sup>nd</sup> Reading**

This policy update removes number 6 under additional guidelines for earning tenure: A background check within six (6) months prior to tenure being granted.

State law requires all employees to be fingerprinted at least every 5 years of employment with the school district (T.C.A. 49-5-413). Additionally, FSSD board policy 5.108 states that current employees shall report being charged with any criminal offense to their immediate supervisor within 72 hours of the offense.

Removing the background check requirement from the tenure policy will allow all employees to complete their background checks on a 5-year rotation throughout their employment with FSSD while eliminating the potential for duplicate checks in the same year to adhere to both the 6 month from tenure and the 5 year check as required by law.

There were no updates made to the policy for 2<sup>nd</sup> Reading.

# Franklin Special Board of Education

Monitoring: <b>Review: Annually in February</b>	Descriptor Term:  <b>Teacher Tenure</b>	Descriptor Code: <b>5.117</b>	Issued Date: <b>Proposed</b>
		Rescinds: <b>5.117</b>	Issued: <b>09/20/21</b>

## 1 *General*

2 To attain tenure status,<sup>1</sup> a teacher shall: (1) meet tenure eligibility requirements; (2) be renewed and  
3 recommended by the Director of Schools; and (3) receive a majority vote of the Board.

## 4 **TENURE ELIGIBILITY<sup>2</sup>**

5 A teacher that meets the following requirements is eligible for tenure:

- 6 1. Has a degree from an approved four-year college or any career and technical teacher who has the  
7 equivalent amount of training established and is licensed by the State Board of Education;  
8
- 9 2. Holds a valid teacher license issued by the State Board of Education, based on training covering  
10 the subjects or grades taught;  
11
- 12 3. Has completed a probationary period of five (5) school years or not less than forty-five (45)  
13 months within the last seven-year period with the last two (2) years being employed in a regular  
14 teaching position rather than an interim teaching position; and  
15
- 16 4. Has received evaluations demonstrating an overall performance effectiveness level of “above  
17 expectations” or “significantly above expectations” as provided in the evaluation guidelines  
18 adopted by the State Board of Education, during the last two (2) years of the probationary period.

19 If a teacher has met all other requirements for tenure eligibility but has not acquired an official evaluation  
20 score during the last one (1) or two (2) years of the probationary period due to allowable circumstances  
21 outlined in state law, he/she may utilize the most recent two (2) years of available evaluation scores  
22 achieved during the probationary period to become eligible for tenure.<sup>3</sup>

## 23 **ACQUISITION OF TENURE STATUS**

24 Once a teacher is eligible for tenure, he/she shall be either recommended by the Director of Schools for  
25 tenure or non-renewed. If tenure is denied by the Board, the teacher shall be dismissed.<sup>4</sup>  
26

27 The Board of Education will grant tenure only to those teachers who can present documentation of a  
28 record of excellence as a teacher. The director of schools is responsible for documenting and  
29 presenting the recommendation for tenure to the Board of Education.

30 Documentation of a record of excellence in teaching must include:

- 1 1. Consistently high ratings on evaluations conducted by the principal and/or other evaluators
- 2 2. Specific evidence of effectiveness in teaching students (if appropriate):
- 3 a) test scores, including the annual estimate of teacher effect on student progress;
- 4 b) narrative descriptions of specific examples of effectiveness with students;
- 5 c) letters from parents;
- 6 3. Record of attendance for the last five years;
- 7 4. Letter from the principal summarizing reasons for recommendation of tenure; and
- 8 5. Other indicators of effectiveness may be included.

9 The following additional guidelines will apply:

- 10 1. The Director of Schools will recommend teachers eligible for tenure at a board meeting in ample
- 11 time to send notice of non-renewal to each teacher not recommended for tenure within five (5)
- 12 business days following the last instructional day for the school year.<sup>5</sup>
- 13 2. The decision to grant tenure is solely within the discretion of the Board.<sup>6</sup> Only those teachers
- 14 who receive a majority vote of the membership of the Board will be granted tenure.<sup>7</sup>
- 15 3. A teacher who is eligible for tenure, but tenure is denied by the Board, shall not be rehired beyond
- 16 the contract year.<sup>4</sup>
- 17 4. Teachers who earn tenure will be honored by the Board in a special ceremony, either at a board
- 18 meeting or in some other special public event.
- 19 5. No person who has been denied tenure by the Board of Education shall be employed in the school
- 20 system in any position which requires a license.
- 21 6. ~~A background check within six (6) months prior to tenure being granted.~~

## 22 **TEACHER RETURNING TO EMPLOYMENT**

23 A teacher who has acquired tenure status in the school district and later resigns shall serve a two-year

24 probationary period upon reemployment, unless the probationary period is waived by the Board upon

25 request of the Director of Schools. Upon completion of the two-year probationary period, the teacher

26 shall either be recommended by the Director of Schools for tenure or non-renewed. If tenure is denied

27 by the Board, the teacher shall be dismissed.<sup>8</sup>

## 28 **TEACHER TRANSFERRING FROM ANOTHER SCHOOL DISTRICT<sup>9</sup>**

29 A tenured or non-tenured teacher with five (5) or more years of prior service that transfers from another

30 school district to begin employment in the Franklin Special School District shall serve the regular

31 probationary period. The Board, upon the recommendation of the Director of Schools, may waive the

32 probationary period and grant tenure status or shorten the probationary period.

33 If a non-tenured teacher with fewer than five (5) years of service transfers from another school district,

34 such teacher shall not be eligible for tenure status until the teacher has served at least five (5) years when

35 service in both school districts is counted.

36 All tenure decisions made under this section are subject to the requirements concerning overall teacher

37 performance effectiveness levels.

## 38 **TEACHER RETURNING TO PROBATIONARY STATUS<sup>10</sup>**

- 1 Any tenured teacher who receives two (2) consecutive years of evaluations demonstrating an overall  
 2 performance effectiveness level of “below expectations” or “significantly below expectations” shall be  
 3 returned to probationary status by the Director of Schools until the teacher has received two (2)  
 4 consecutive years of evaluations demonstrating an overall performance effectiveness level of “above  
 5 expectations” or “significantly above expectations.”
- 6 When a teacher who has returned to probationary status has received two (2) consecutive years of  
 7 evaluations demonstrating an overall performance effectiveness level of “above expectations” or  
 8 “significantly above expectations,” the teacher is again eligible for tenure and shall be either  
 9 recommended by the Director of Schools for tenure or non-renewed; provided, however, that the teacher  
 10 shall be dismissed if tenure is denied by the Board.<sup>4</sup>
- 11 This section does not apply to teachers who acquired tenure prior to July 1, 2011.

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Legal References

1. TCA 49-5-501(11)(A)
2. TCA 49-5-503
3. Public Acts of 2021, Special Legislative Session  
Chapter No. 2
4. TCA 49-5-504(b)
5. TCA 49-5-409(b); Public Acts of 2021, Chapter No.  
378
6. TCA 49-2-203(a)(1)
7. TCA 49-2-202(g)
8. TCA 49-5-504(d)
9. TCA 49-5-509
10. TCA 49-5-504(e), (f)

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Cross References

- Separation Practices for Tenured Teachers 5.200  
 Separation Practices for Non-Tenured Teachers 5.201

<b>Franklin Special Board of Education</b>			
Monitoring: <b>Review: Annually in February</b>	Descriptor Term:  <b>Teacher Tenure</b>	Descriptor Code: <b>5.117</b>	Issued Date: <b>09/20/21</b>
		Rescinds: <b>5.117</b>	Issued: <b>09/21/15</b>

1 *General*

2 To attain tenure status,<sup>1</sup> a teacher shall: (1) meet tenure eligibility requirements; (2) be renewed and  
3 recommended by the Director of Schools; and (3) receive a majority vote of the Board.

4 **TENURE ELIGIBILITY<sup>2</sup>**

5 A teacher that meets the following requirements is eligible for tenure:

- 6 1. Has a degree from an approved four-year college or any career and technical teacher who has the  
7 equivalent amount of training established and is licensed by the State Board of Education;  
8
- 9 2. Holds a valid teacher license issued by the State Board of Education, based on training covering  
10 the subjects or grades taught;  
11
- 12 3. Has completed a probationary period of five (5) school years or not less than forty-five (45)  
13 months within the last seven-year period with the last two (2) years being employed in a regular  
14 teaching position rather than an interim teaching position; and  
15
- 16 4. Has received evaluations demonstrating an overall performance effectiveness level of “above  
17 expectations” or “significantly above expectations” as provided in the evaluation guidelines  
18 adopted by the State Board of Education, during the last two (2) years of the probationary period.

19 If a teacher has met all other requirements for tenure eligibility but has not acquired an official evaluation  
20 score during the last one (1) or two (2) years of the probationary period due to allowable circumstances  
21 outlined in state law, he/she may utilize the most recent two (2) years of available evaluation scores  
22 achieved during the probationary period to become eligible for tenure.<sup>3</sup>

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25 tenure or non-renewed. If tenure is denied by the Board, the teacher shall be dismissed.<sup>4</sup>  
26

27 The Board of Education will grant tenure only to those teachers who can present documentation of a  
28 record of excellence as a teacher. The director of schools is responsible for documenting and  
29 presenting the recommendation for tenure to the Board of Education.

30 Documentation of a record of excellence in teaching must include:

- 1 1. Consistently high ratings on evaluations conducted by the principal and/or other evaluators
- 2 2. Specific evidence of effectiveness in teaching students (if appropriate):
- 3 a) test scores, including the annual estimate of teacher effect on student progress;
- 4 b) narrative descriptions of specific examples of effectiveness with students;
- 5 c) letters from parents;
- 6 3. Record of attendance for the last five years;
- 7 4. Letter from the principal summarizing reasons for recommendation of tenure; and
- 8 5. Other indicators of effectiveness may be included.

9 The following additional guidelines will apply:

- 10 1. The Director of Schools will recommend teachers eligible for tenure at a board meeting in ample
- 11 time to send notice of non-renewal to each teacher not recommended for tenure within five (5)
- 12 business days following the last instructional day for the school year.<sup>5</sup>
- 13 2. The decision to grant tenure is solely within the discretion of the Board.<sup>6</sup> Only those teachers
- 14 who receive a majority vote of the membership of the Board will be granted tenure.<sup>7</sup>
- 15 3. A teacher who is eligible for tenure, but tenure is denied by the Board, shall not be rehired beyond
- 16 the contract year.<sup>4</sup>
- 17 4. Teachers who earn tenure will be honored by the Board in a special ceremony, either at a board
- 18 meeting or in some other special public event.
- 19 5. No person who has been denied tenure by the Board of Education shall be employed in the school
- 20 system in any position which requires a license.
- 21 6. A background check within six (6) months prior to tenure being granted.

## 22 **TEACHER RETURNING TO EMPLOYMENT**

23 A teacher who has acquired tenure status in the school district and later resigns shall serve a two-year

24 probationary period upon reemployment, unless the probationary period is waived by the Board upon

25 request of the Director of Schools. Upon completion of the two-year probationary period, the teacher

26 shall either be recommended by the Director of Schools for tenure or non-renewed. If tenure is denied

27 by the Board, the teacher shall be dismissed.<sup>8</sup>

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30 school district to begin employment in the Franklin Special School District shall serve the regular

31 probationary period. The Board, upon the recommendation of the Director of Schools, may waive the

32 probationary period and grant tenure status or shorten the probationary period.

33 If a non-tenured teacher with fewer than five (5) years of service transfers from another school district,

34 such teacher shall not be eligible for tenure status until the teacher has served at least five (5) years when

35 service in both school districts is counted.

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37 performance effectiveness levels.

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 5 expectations” or “significantly above expectations.”
- 6 When a teacher who has returned to probationary status has received two (2) consecutive years of  
 7 evaluations demonstrating an overall performance effectiveness level of “above expectations” or  
 8 “significantly above expectations,” the teacher is again eligible for tenure and shall be either  
 9 recommended by the Director of Schools for tenure or non-renewed; provided, however, that the teacher  
 10 shall be dismissed if tenure is denied by the Board.<sup>4</sup>
- 11 This section does not apply to teachers who acquired tenure prior to July 1, 2011.

---

Legal References

1. TCA 49-5-501(11)(A)
2. TCA 49-5-503
3. Public Acts of 2021, Special Legislative Session  
Chapter No. 2
4. TCA 49-5-504(b)
5. TCA 49-5-409(b); Public Acts of 2021, Chapter No.  
378
6. TCA 49-2-203(a)(1)
7. TCA 49-2-202(g)
8. TCA 49-5-504(d)
9. TCA 49-5-509
10. TCA 49-5-504(e), (f)

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Cross References

- Separation Practices for Tenured Teachers 5.200  
 Separation Practices for Non-Tenured Teachers 5.201

**1.102 BOARD MEMBERS LEGAL STATUS – *1<sup>st</sup> Reading***

Updates to this policy have been sent by the TSBA Director of Policy & Staff Attorney based on House Bill No. 72, the state law on partisan school board elections. While this law does not currently impact every district, state law allows school board elections to be conducted on a partisan basis if at least one county primary board of a political party opts-in. Previously, state law prohibited school board members from being elected on a partisan basis. Our current policy has policy language that reflects that prior requirement.

<b>Franklin Special Board of Education</b>			
Monitoring: <b>Review: Annually, in September</b>	Descriptor Term: <b>Board Members Legal Status</b>	Descriptor Code: <b>1.102</b>	Issued Date: <b>Proposed</b>
		Rescinds: <b>1.102</b>	Issued: <b>02/12/18</b>

1 The legal status of board members shall be as follows:<sup>+</sup>

2 **NUMBER OF MEMBERS<sup>1</sup>**

3 The board is composed of six (6) members.

4 **QUALIFICATIONS**

5 Members of the Board shall be at least 21 years of age and residents of the school district. They ~~are to~~  
6 ~~be elected on a non-partisan basis<sup>1</sup> and~~ shall be citizens of recognized integrity, intelligence, and ability  
7 to administer the duties of the office.<sup>2</sup> To qualify as a candidate, an individual must show proof of  
8 graduation from high school or receipt of a GED **or HiSET.**<sup>3</sup>

9 **TERMS OF OFFICE**

10 Members of the board shall serve four (4) year terms.<sup>1</sup>

11 **METHOD OF ELECTION**

12 Members of the Board shall be elected by qualified voters of the Franklin Special School District at the  
13 August election.

14 **VACANCIES**

15 Vacancies shall be declared to exist on account of death, resignation, ~~removal from the district which~~  
16 ~~elected him, removal from the school system,~~ **moving out of the district,**<sup>4</sup> or through due process  
17 proceedings.<sup>3 5</sup>

18 When a vacancy occurs, the unexpired term shall be filled by the remaining members of the Board. Such  
19 appointment shall continue until the next biennial election.<sup>5 6</sup> At such election a person shall be elected  
20 to either fill the unexpired term of office created by the vacancy or to a full term of office.

21 **RESIGNATION**

22 A thirty (30) day notice is requested of any Board member who wishes to resign the position. Such  
23 resignation shall be presented in writing to the **C**hairman of the Board.

---

Legal References

1. TCA 49-2-201(a)(1)
2. TCA 49-2-202(a)(1)
3. TCA 49-2-202(a)(4)
4. TCA 49-2-202(a)(2)
5. TCA 8-47-101; TCA 49-1-611; TCA 49-2-202(e)(2)
6. TCA 49-2-202(e)(1)

# Franklin Special Board of Education

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term: <b>Board Members Legal Status</b>	Descriptor Code: <b>1.102</b>	Issued Date: <b>02/12/18</b>
		Rescinds: <b>1.102</b>	Issued: <b>09/14/98</b>

1 The legal status of board members shall be as follows:<sup>1</sup>

## 2 **NUMBER**

3 The board is composed of six (6) members.

## 4 **QUALIFICATIONS**

5 Members of the Board shall be at least 21 years of age and residents of the school district. They are to  
6 be elected on a non-partisan basis<sup>1</sup> and shall be citizens of recognized integrity, intelligence, and ability  
7 to administer the duties of the office.<sup>2</sup> To qualify as a candidate, an individual must show proof of  
8 graduation from high school or receipt of a G.E.D.

## 9 **TERMS OF OFFICE**

10 Members of the board shall serve four (4) year terms.<sup>1</sup>

## 11 **METHOD OF ELECTION**

12 Members of the Board shall be elected by qualified voters of the Franklin Special School District at the  
13 August election.

## 14 **VACANCIES**

15 Vacancies shall be declared to exist on account of death, resignation, removal from the district which  
16 elected him, removal from the school system,<sup>4</sup> or through due process proceedings.<sup>3</sup>

17 When a vacancy occurs, the unexpired term shall be filled by the remaining members of the Board. Such  
18 appointment shall continue until the next biennial election.<sup>5</sup> At such election a person shall be elected to  
19 either fill the unexpired term of office created by the vacancy or to a full term of office.

## 20 **RESIGNATION**

21 A thirty (30) day notice is requested of any Board member who wishes to resign the position. Such  
22 resignation shall be presented in writing to the chairman of the Board.

---

Legal References

1. TCA 49-2-201
2. TCA 49-2-202(a)(1); TCA 49-2-202(a)(4)
3. TCA 8-47-101; TCA 49-1-611; TCA 49-2-202(e)
4. TCA 49-2-202(e)
5. Tennessee Constitution, Article VII, Section 2

	FES					JES					LES					MES					PGES			
	Female	Male	Teachers	Avg		Female	Male	Teachers	Avg		Female	Male	Teachers	Avg		Female	Male	Teachers	Avg		Female	Male	Teachers	Avg
Pre-Kindergarten (P3)	0	3	2	1.5		2	2	1	4.0		3	1	1	4.0		2	5	1	7.0		1	1	1	0
Pre-Kindergarten (P4)	16	14	1	30.0		11	10	1	21.0		6	14	1	20.0		6	13	1	19.0		11	13	1	24
Kindergarten	26	33	3	19.7		27	28	4	13.8		43	44	5	17.4		42	55	5	19.4		28	29	3	19
Pre-First				0.0					0.0					0.0					0.0					0
Grade 1	26	25	3	17.0		23	35	4	14.5		57	43	6	16.7		51	52	6	17.2		32	31	4	15.75
Grade 2	44	29	5	14.6		19	27	4	11.5		42	42	5	16.8		41	54	5	19.0		20	32	4	13
Grade 3	25	23	3	16.0		30	22	3	17.3		26	46	4	18.0		46	42	5	17.6		29	43	4	18
Grade 4	38	19	3	19.0		22	26	3	16.0		45	50	5	19.0		48	42	5	18.0		39	26	4	16.25
Total Students	175	146		321		134	150		284		222	240		462		236	263		499		160	175		335
Asian	9		3%			30		12%			20		5%			45		9%			10		3%	
Black	39		14%			65		25%			35		8%			46		10%			20		6%	
Hispanic-All Races	38		13%			61		24%			141		32%			77		16%			129		42%	
Native American	1		0%			0		0%			0		0%			2		0%			2		1%	
Hawaiian/Pacific Islander	1		0%			1		0%			4		1%			4		1%			0		0%	
White	200		69%			102		39%			238		54%			302		63%			148		48%	
TOTAL WITHOUT PRE-K	288					259					438					476					309			
	FIS					FMS					PGMS													
	Female	Male	Teachers	Avg		Female	Male	Teachers	Avg		Female	Male	Teachers	Avg										
Grade 5	125	148	12	22.8							35	38	3	24.3333										
Grade 6	123	137	12	21.7							38	35	3	24.3333										
Grade 7						120	133	12	21.1		35	56	4	22.75										
Grade 8						110	144	12	21.2		54	46	4	25										
Total Students	248	285		533		230	277		507		162	175		337										
Asian	35		7%			24		5%			14		4%											
Black	79		15%			95		19%			18		5%											
Hispanic-All Races	121		23%			144		28%			123		36%											
Native American	3		1%			4		1%			3		1%											
Hawaiian/Pacific Islander	0		0%			1		0%			2		1%											
White	295		55%			239		47%			177		53%											
TOTAL WITHOUT PRE-K	533					507					337													
TOTAL WITHOUT PRE-K	3147				TOTAL WITH PRE-K	3278				TOTAL PRE-K	134													

Grade	Average Size
K-3	16.6
4-6	20.1
7-8	22.5

FSSD Demographics - 02/28/2022

FRANKLIN SPECIAL SCHOOL DISTRICT  
Investment Report  
January 31, 2022

Local Government Investment Pool
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Interest Rate for January .04%

General Investment Account	
Beginning Balance	\$ 1,009.05
Interest	0.03
Withdrawals	
Deposits	
Total Invested	\$ 1,009.08
Debt Service Investment Account	
Beginning Balance	\$ 1,188.55
Interest	0.04
Withdrawals	
Deposits	
Total Invested	\$ 1,188.59
Capital Projects Investment Account	
Beginning Balance	\$ 2.69
Interest	-
Withdrawals	-
Deposits	-
Total Invested	\$ 2.69
Construction Investment Account	
Beginning Balance	\$ 16,813,794.20
Interest	543.89
Withdrawals	(2,734,491.64)
Deposits	-
Total Invested	\$ 14,079,846.45

FRANKLIN SPECIAL SCHOOL DISTRICT  
Investment Report  
January 31, 2022

First Tennessee Bank
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General Purpose Checking	
Beginning Balance	\$ 1,842,772.90
Receipts	15,169,874.18
Receipts - Loan from First Horizon (Tax Anticipation)	
Loan fr Debt Svc.	216,000.00
Loan fr Capital	
Interest	602.68
Transfer from Investments	
Transfer to Investments	
Pmt of Tax Anticipation Loan to First Horizon	(4,070,312.50)
Loan to Debt Svc.	
Repymt Pmt of Loan to - Debt Svc.	
Disbursements	(4,610,416.07)
Ending Balance	\$ 8,548,521.19
Debt Service Checking	
Beginning Balance	\$ 217,294.76
Receipts	2,060,644.07
Receipts - Loan Payment fr GP	
Loan fr GP	
Interest	102.91
Transfer from Investments	
Transfer to Investments	
Loan to GP	(216,000.00)
Disbursements	
Ending Balance	\$ 2,062,041.74
Capital Projects Checking	
Beginning Balance	\$ 240,978.48
Receipts	63,757.99
Interest	20.60
Loan to GP	
Transfer from GP    Loan	
Reimb fr GP-Exp	
Disbursements	(29,124.27)
Ending Balance	\$ 275,632.80
Construction Checking	
Beginning Balance	\$ 58,589.64
Receipts	
Interest	6.18
Transfer fr LGIP	2,734,491.64
Transfer to LGIP	
Disbursements	(2,734,490.73)
Ending Balance	\$ 58,596.73





Fnd Y Acct	Obj	Pri	Loc	Prj	Acct	General Purpose	2021-22		February 2021-22		2021-22		Encumbered Amount	Unencumbered Balance
							Original Budget	Revised Budget	Monthly Activity	FYTD Activity				
141														
141 E	71100					Regular Education Program	27,161,989.00	27,160,823.26	2,091,337.92	14,571,935.79	61,226.50	12,527,660.97		
141 E	71150					Alternative Schools	89,000.00	89,000.00	42,407.95	84,815.90	0.00	4,184.10		
141 E	71200					Special Education Program	6,151,982.00	6,217,693.04	456,512.89	2,993,136.29	92,921.11	3,131,635.64		
141 E	72110					Attendance	0.00	0.00	0.00	0.00	0.00	0.00		
141 E	72120					Health Services	246,791.00	245,903.00	12,772.29	103,998.66	2,899.23	139,005.11		
141 E	72130					Other Student Support	1,038,757.00	1,020,257.00	73,035.31	534,348.16	9,383.67	476,525.17		
141 E	72210					Regular Instruction Program	2,932,547.00	2,997,307.37	232,920.56	1,629,413.92	20,361.53	1,347,532.92		
141 E	72220					Special Education Instruction	1,384,290.00	1,455,949.87	109,114.51	734,528.71	23,166.31	698,254.85		
141 E	72250					TECHNOLOGY	1,188,218.00	1,188,218.00	70,003.54	784,069.04	2,830.00	401,318.96		
141 E	72310					Board Of Education Services	1,515,880.00	1,514,580.00	119,980.50	1,018,389.37	120,774.66	375,415.97		
141 E	72320					Director of Schools	490,988.00	490,988.00	38,026.18	274,845.45	8,396.20	207,746.35		
141 E	72410					Office Of The Principal	3,674,138.00	3,674,843.00	299,363.54	2,233,733.63	31,456.35	1,409,653.02		
141 E	72510					Fiscal Services	719,965.00	719,965.00	59,506.75	451,059.16	901.24	268,004.60		
141 E	72520					Human Resources	360,539.00	360,539.00	25,205.29	193,708.26	7,646.87	159,183.87		
141 E	72610					Operation Of Plant	3,513,915.00	3,513,915.00	296,156.49	2,210,173.39	121,555.36	1,182,186.25		
141 E	72620					Maintenance Of Plant	742,036.00	691,984.00	53,583.80	483,411.21	50,871.81	157,700.98		
141 E	72710					Transportation	2,059,958.00	2,068,046.00	150,242.03	1,106,189.89	56,313.79	905,542.32		
141 E	72810					Central And Other	142,304.00	142,304.00	17,378.57	91,052.95	9,032.19	42,218.86		
141 E	73100					Food Supplies	0.00	0.00	0.00	0.00	0.00	0.00		
141 E	73300					Community Service	358,335.00	358,335.00	357.00	1,366.57	0.00	356,968.43		
141 E	73400					Early Childhood Education	502,026.00	581,838.89	45,217.92	290,662.37	600.00	290,576.52		
141 E	81300					Education Debt Service	0.00	0.00	0.00	0.00	0.00	0.00		
141 E	82130					Principal	216,700.00	216,700.00	18,227.00	145,861.75	73,045.25	-2,207.00		
141 E	82230					Interest	42,265.00	42,265.00	500.00	24,666.75	1,862.75	15,735.50		
141 E	82330					Other Debt Service	0.00	0.00	0.00	0.00	0.00	0.00		
141						General Purpose	54,512,623.00	54,751,454.43	4,211,850.04	29,961,366.22	695,244.82	24,094,843.39		







End T Acct	Obj	Pri	Loc	Prg	Acct	2021-22 Original Budget	2021-22 Revised Budget	February 2021-22 Monthly Activity	2021-22 FYTD Activity	Encumbered Amount	Unencumbered Balance
143					Food Service						
143	E	73100			Food Supplies	2,459,137.00	2,459,137.00	246,427.30	1,510,545.10	813,600.39	134,991.51
143	.				Food Service	2,459,137.00	2,459,137.00	246,427.30	1,510,545.10	813,600.39	134,991.51

Fnd T Acct	Obj	Pri	Loc	Prq	Acct	2021-22		2021-22		2021-22		2021-22		Uncollected	
						Original Budget	Budget Revisions	Revised Budget	February 2021-22 Monthly Activity	FYTD Activity	Balance				
146					Community Service (MAC)										
146 R 43581					Community Services Fees	1,164,691.00	0.00	1,164,691.00	87,311.20	700,557.56	464,133.44				
146 R 43584					Registration Fees-School Year	24,769.00	0.00	24,769.00	735.00	23,405.00	1,364.00				
146 R 43585					Registration Fees-Summer	8,067.00	0.00	8,067.00	0.00	175.00	7,892.00				
146 R 43990					Other Charges For Services	0.00	0.00	0.00	0.00	0.00	0.00				
146 R 44120					Lease/Rentals	33,912.00	0.00	33,912.00	2,826.00	25,434.00	8,478.00				
146 R 44170					Miscellaneous Refunds	31,000.00	0.00	31,000.00	0.00	0.00	31,000.00				
146 R 44570					Contributions & Gifts	4,500.00	0.00	4,500.00	1,012.00	1,747.00	2,753.00				
146 R 44990					Other Local Revenue	0.00	0.00	0.00	0.00	0.00	0.00				
146 R 46590					Other State Education Funds	80,231.00	0.00	80,231.00	6,494.36	31,205.36	49,025.64				
146					Community Service (MAC)	1,347,170.00	0.00	1,347,170.00	98,378.56	782,523.92	564,646.08				

Fnd T Acct	Obj Prj Loc	Frg Acct	2021-22		February 2021-22		2021-22		Encumbered		Unencumbered	
			Original Budget	Revised Budget	Monthly Activity	FYTD Activity	Amount	Balance				
146	Community Service (MAC)											
146 E 73300	---	---	1,341,799.00	1,381,999.48	100,185.60	779,255.28	25,897.31	576,846.89				
146 E 99100	---	---	0.00	0.00	0.00	0.00	0.00	0.00				
146	---	---	1,341,799.00	1,381,999.48	100,185.60	779,255.28	25,897.31	576,846.89				

Fnd T Acct	Obj	Pri	Loc	Prq	Acct	2021-22		February	2021-22		Uncollected
						Original Budget	Budget Revisions	Revised Budget	Monthly Activity	FYTD Activity	
156					Debt Service						
156 R	40610	---	----	---	Current Year Property Tax	6,540,270.00	0.00	782,401.94	3,127,310.54	3,412,959.46	
156 R	40620	---	----	---	Prior Year Property Tax	50,000.00	0.00	744.83	29,054.30	20,945.70	
156 R	40630	---	----	---	Interest & Penalty	10,500.00	0.00	43.95	3,167.91	7,332.09	
156 R	40640	---	----	---	Pick-Up Taxes	20,000.00	0.00	720.25	12,723.55	7,276.45	
156 R	44110	---	----	---	Interest Earned	1,000.00	0.00	183.77	505.12	494.88	
156 R	44990	---	----	---	Other Local Revenue	0.00	0.00	0.00	0.00	0.00	
156 R	49800	---	----	---	Transfers In	0.00	0.00	0.00	0.00	0.00	
156 -	-----	---	----	---	Debt Service	6,621,770.00	0.00	784,094.74	3,172,761.42	3,449,008.58	

Fnd T Acct	Obj	Prj	Loc	Prj	Acct	2021-22		February 2021-22		2021-22		Encumbered		Unencumbered		
						Original Budget	Revised Budget	Monthly Activity	FYTD Activity	Amount	Balance					
156					Debt Service											
156 E	72310				Board Of Education Services	132,110.00	132,110.00	15,707.65	63,456.74	0.00	68,653.26	0.00	68,653.26			
156 E	82130				Principal	3,235,000.00	3,235,000.00	0.00	0.00	0.00	3,235,000.00	0.00	3,235,000.00			
156 E	82230				Interest	2,796,803.00	2,796,803.00	0.00	1,404,772.16	0.00	1,392,030.84	0.00	1,392,030.84			
156 E	82330				Other Debt Service	1,500.00	1,500.00	0.00	750.00	0.00	750.00	0.00	750.00			
156 -					Debt Service	6,165,413.00	6,165,413.00	15,707.65	1,468,978.90	0.00	4,696,434.10	0.00	4,696,434.10			





End T Acct	Obj	Prj	Loc	Prq	Acct	2021-22 Original Budget	2021-22 Budget Revisions	2021-22 Revised Budget	February 2021-22 Monthly Activity	2021-22 FYTD Activity	Uncollected Balance
						69,488,065.00	2,125,830.96	71,613,895.96	7,545,248.06	41,692,002.47	29,921,893.49
Grand Revenue Totals											

Number of Accounts: 329

\*\*\*\*\* End of report \*\*\*\*\*

End T Acct	Obj	Prj	Loc	Prq	Acct	2021-22 Original Budget	2021-22 Revised Budget	February 2021-22 Monthly Activity	2021-22 FVID Activity	Encumbered Amount	Unencumbered Balance
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						87,821,171.00	93,078,750.49	7,405,019.88	55,284,675.41	8,457,499.81	29,336,575.27
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Grand Expense Totals

Number of Accounts: 4599

\*\*\*\*\* End of report \*\*\*\*\*

