

## Board of Education Regular Meeting

January 9, 2024 6:00 PM

City Hall Council Chambers

<p>I. CALL TO ORDER Procedural Item</p>	<p>Chair Butch Campbell</p>
<p>A. Pledge of Allegiance Procedural Item The Pledge of Allegiance will be led by William Knox Wright, a first grade student, along with his brother John David Wright, a second grade student both at Overall Creek Elementary and Maci Miffleton, a fifth grade student at Northfield Elementary.</p>	
<p>B. Moment of Silence Procedural Item</p>	
<p>II. APPROVAL OF AGENDA Action Item</p>	<p>Chair Butch Campbell</p>
<p>III. COMMUNICATIONS Information Item Discovery Schools' final parent night is this Thursday, January 11 at 6 p.m. Applications are due at the end of January.</p> <p>The City Schools Foundation will be distributing \$35,000 in parity grants this month. And, the Foundation is happy to announce that the honorees for Excellence in Education will be Andy and Cherry Womack. Mark your calendar for April 26.</p> <p>Candle Wishes have partnered with MCS to provide birthday assistance for 75 MCS families. Candle Wishes provides a free birthday celebration and gifts for children in need.</p> <p>Congratulations to Cason Lane's Dr. St. John and Dr. Hoens for winning the Agriculture in the Classroom Outstanding Teacher Awards. In addition to the accolades, Farm Bureau will be sending them to the National Ag in the Classroom conference in Utah this summer. Thanks to the Farm Bureau for their continued support of Ag in the Classroom.</p> <p>Cason Lane PreK would like to thank Chuy's and manager, Sam Duncan, for their donation of items for our housekeeping centers!</p> <p>The John Pittard Family would like to thank Tennessee Titan Jeffery Simmon and the Give Em A Reason Foundation for donating new shoes to our students. Spending time meeting, taking pictures, and signing autographs. Additionally, thank you to MUKA, Yolanda Gray Ruffin, Realtor, Destiny Center, Liberty Station, and Hwy231 South Church of Christ Shoes 4 All for food, games, and other donations.</p> <p>Additionally, Highway 231 South Church of Christ for provided breakfast and snacks to the JPE faculty.</p> <p>Thank you to Kim Wilson &amp; Friends, Murfreesboro Fire Rescue Department, and 1<sup>st</sup> Presbyterian Church for their food donations and food drives to support the Backpack Program.</p>	<p>Mrs. Lisa Trail</p>

<p>Overall Creek will be hosting the Storybook Breakfast benefitting the Imagination Library on Saturday, Feb. 3.</p> <p>Safety Week is scheduled for the week of January 22. All schools in collaboration with the Murfreesboro Police and Fire Departments will be conducting safety drills.</p> <p>Thank you to the many faith-based organizations, individuals and businesses who adopted families for the holidays. Some of these organizations are listed below on your agenda.</p> <p>North Boulevard Church of Christ  Kingwood Church of Christ  Turner Construction  Jarrett Construction  N&amp;S Waterproofing  First United Methodist Church  Dr. Susan Allison with Smile Creations  Murfreesboro Alumni Chapter of Kappa Alpha Psi Fraternity  The Butler Family  The Ferguson Family  John Pittard teachers and staff  Triple D Enterprises  Natalin Hammond  Michelle Austin  Delta Sigma Theta  Kingwood Church of Christ  Birkey Family  Alison Payne  Deborah Newman  Charity Evans- Woodmen Life  Donna Brown  Turner Construction</p>	
<p>A. Introduction of Mr. Daniel Owens  Information Item</p>	<p>Dr. Trey Duke</p>
<p>B. The Best of MCS-Mr. Geary Fults  Procedural Item</p>	<p>Dr. Trey Duke</p>
<p>C. Spotlight on Education-Discovery School Beta Club  Procedural Item</p>	<p>Dr. Trey Duke</p>
<p>D. Public Comment  Procedural Item</p>	<p>Chair Butch Campbell</p>
<p>E. Audit Overview by Mr. Jimmy Jobe with Jobe Hastings Audit Firm  Information Item</p>	<p>Dr. Trey Duke</p>
<p>IV. CONSENT ITEMS  Consent Agenda</p>	<p>Chair Butch Campbell</p>
<p>A. Approval of 12-12-23 Board Minutes  Consent Item</p>	
<p>B. Minor Change to Board Policy  Consent Item</p>	
<p>i. Board Memo-Consent Agenda Policy Changes  Consent Item</p>	
<p>ii. Approval of Board Policy 2.100 Fiscal Management Goals  Consent Item</p>	

iii. Approval of Board Policy 2.200 Annual Operating Budget Consent Item	
iv. Approval of Board Policy 2.400 Revenues Consent Item	
v. Approval of Board Policy 2.402 Investment Earnings Consent Item	
vi. Approval of Board Policy 2.500 Deposit of Funds Consent Item	
vii. Approval of Board Policy 2.600 Bonded Employees Consent Item	
viii. Approval of Board Policy 2.700 Accounting System Consent Item	
ix. Approval of Board Policy 2.701 Financial Reports and Records Consent Item	
x. Approval of Board Policy 2.702 Inventories Consent Item	
xi. Approval of Board Policy 2.800 Expenditure of Funds Consent Item	
xii. Approval of Board Policy 2.808 Purchase Orders and Contracts Consent Item	
xiii. Approval of Board Policy 2.809 Vendor Relations Consent Item	
xiv. Approval of Board Policy 2.900 Student Activity Funds Management Consent Item	
C. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 2.802 Payroll Procedures on Second Reading Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of Board Policy 2.703 Audits on First Reading Action Item	Ms. Lauren Bush
B. Approval of Board Policy 2.8001 Energy Management and Conservation on First Reading Action Item	Ms. Lauren Bush
C. Approval of Board Policy 2.801 Credit Cards and Credit Lines on First Reading Action Item	Ms. Lauren Bush
D. Approval of Board Policy 4.205 Magnet Schools on First Reading Action Item	Ms. Lauren Bush
E. Approval of Board Policy 6.702 Fundraising Activities on First Reading Action Item	Ms. Lauren Bush
F. Approval of Budget Amendment-FY24 GPS TISA Growth Stipend Action Item	Dr. Trey Duke
G. Approval of Budget Amendment-FY24 GPS Transfer-Safety Project Action Item	Dr. Trey Duke
H. Approval of Budget Amendment-ESP Fund Balance Action Item	Dr. Trey Duke
I. Approval of Contract-MNE Playground Contract Action Item	Dr. Trey Duke
J. Approval of Contract-GHA Technologies	Dr. Trey Duke

Action Item	
K. Approval of Contract-J & B Professional Services Agreement for Reeves Rogers Addition Action Item	Dr. Trey Duke
L. Approval of Contract-Cooperative Agreement for School Specialty Action Item	Dr. Trey Duke
M. Approval of Stipends to Ensure Qualified Case Managers Action Item	Dr. Trey Duke
N. Approval of the ESA Resolution Action Item	Dr. Trey Duke
O. Approval of Revenue and Expenditure Report Information Item	Dr. Trey Duke
VI. REPORTS AND INFORMATION Information Item	Chair Butch Campbell
A. Enrollment (PTR) Report Information Item	Mr. Ken Rocha
B. School Nutrition Update Information Item	Ms. Sandy Scheele
C. Director's Update Information Item	Dr. Trey Duke
VII. OTHER BUSINESS Information Item	Chair Butch Campbell
VIII. ADJOURNMENT Action Item	Chair Butch Campbell

### **Winners**

Addy Biles, Black and White Photography

Caleb Hodge, Creative Writing (1st place statewide)

Katherine Salter, 5th grade Language Arts

Austin Moore, 5th grade Math

Margaret Stewart, Poetry

Bentley Bergsten, 4th grade Science

Rohan Scott, 5th grade Science (1st place statewide)

Hope Clementi, 4th grade Social Studies

### **Sponsors**

Jason Page

Beth Warren

Kelley Kleppinger (Songfest)

Shea Payne (Robotics)

Jennifer Hickson (Engineering)

### **Participating Students**

Shultz Cramer

Deacon Montgomery

Jake Revett

Areeb Amao

Boston Barnes

Bentley Bergsten

Adam Hasan

Carter West

Hope Clementi

Anna Gilbert

Kael Hixson

Imran Mohamad

Violet Parkerson

Margaret Stewart

Zaeema Badmus

Nora Bahloul

Justus Baltimore

Addy Biles

Elijah Brownlow

Caleb Hodge

Myles Hopkins

Austin Moore

Sarrah Omer

Katherine Salter

Eli Sanders

Rohan Scott

Brannon King

Manar Omer

## MINUTES

### Board of Education Regular Meeting

December 12, 2023 6:00 PM

City Hall Council Chambers

<b>I. CALL TO ORDER</b> Procedural Item <b>Present:</b> Mr. Wesley Ballard, Mr. Butch Campbell, Ms. Karen Dodd, Ms. Barbara Long, Ms. Amanda Moore, Mr. Jimmy Richardson III, Mr. David Settles (6:13 p.m.).  Staff: Lisa Trail, Chris George, Lauren Bush, Robin Newell, Kim Fischer, Ken Rocha, Sheri Arnette, Angela Fairchild, Beth Prater, Amanda Brown, Tiffany Strevel, Don Bartch, Leah Bartch, Sandy Scheele, Kim Williams,  Assistant City Attorney Lauren Bush and City Liaison Bill Shacklett	Chair Butch Campbell
A. Pledge of Allegiance Procedural Item	
B. Moment of Silence Procedural Item	
<b>II. APPROVAL OF AGENDA</b> Action Item Motion to approve the agenda. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0	Chair Butch Campbell
<b>III. COMMUNICATIONS</b> Information Item <b>Absent:</b> Mr. David Settles.	Mrs. Lisa Trail
A. Recognition of Ms. Ca'Tricia Robinson-TSBA Volunteer of the Year Procedural Item	Dr. Trey Duke
B. The Best of MCS-Kim Williams Procedural Item	Dr. Trey Duke
C. Spotlight on Education-Robotics-Lea Bartch Procedural Item	Dr. Trey Duke
D. Public Comment Procedural Item	Chair Butch Campbell
<b>IV. CONSENT ITEMS</b> Consent Agenda Motion to approve consent agenda.. This motion, made by Mr. Wesley Ballard and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0	Chair Butch Campbell
A. Approval of 11-28 Board Minutes Consent Item	
B. Approval of 2024-2025 School Calendar on Second Reading Consent Item	
<b>V. ACTION ITEMS</b> Action Item	Chair Butch Campbell
A. Approval of Board Policy 2.802 Payroll Procedures on First Reading Action Item Motion to approve Board Policy 2.802 Payroll Procedures on First Reading. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0	Ms. Lauren Bush

Minutes  
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December 12, 2023  
Recorded by L. VanCleave

<p>B. Recommendation of Zoning Appeal Special Committee by Director Action Item Motion to approve the Zoning Appeal Special Committee by Director. This motion, made by Ms. Amanda Moore and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>C. Recommendation of Charter School Review Team by Director Action Item Motion to approve the Charter School Review Team by Director. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>D. Approval of Nutrition Budget Amendment-P-EBT Grant Action Item Motion to approve the Nutrition Budget Amendment-P-EBT Grant. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>E. Approval of Budget Amendment-TNALL Corp Operating Transfer Action Item Motion to approve Budget Amendment-TNALL Corp Operating Transfer. This motion, made by Ms. Amanda Moore and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>F. Approval of Budget Amendment-State Special Education Preschool Grant Action Item Motion to approve Budget Amendment-State Special Education Preschool Grant. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>G. Approval of FY24 GPS Budget Amendment-Instruction Clerical Action Item Motion to approve FY24 GPS Budget Amendment-Instruction Clerical. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p>H. Approval of the Bus Contract Action Item Motion to approve the Bus Contract. This motion, made by Mr. Wesley Ballard and seconded by Mr. Jimmy Richardson III, passed. Yea: 7, Nay: 0</p>	<p>Dr. Trey Duke</p>
<p><b>VI. REPORTS AND INFORMATION</b> Information Item</p>	<p>Chair Butch Campbell</p>
<p>A. Personnel Report Information Item</p>	<p>Dr. Trey Duke</p>
<p>B. Director's Update Information Item Dr. Duke congratulated Mr. Don Bartch for receiving Middle Tennessee Principal of the Year  Dr. Duke told the Board that this is the last full week of the first semester.  He also informed the Board that January 4 district-wide Inservice day at MTSU and the students return on January 8th.  Dr. Duke also talked to the Board about Governor Lee's Education Freedom Scholarship Plan. He said that the intent is to establish statewide school choice</p>	<p>Dr. Trey Duke</p>

<p>He said that this will apply to church-related homeschool, but not independent homeschool, but after the 2024-2025 school year, it will be open to all students.</p> <p>He said that he won't know more details until the general assembly meets.</p> <p>Dr. Duke informed the board that the Tennessee School Boards Association (TSBA) and the Tennessee Organization for School Superintendents (TOSS) have stated that their position is that funds raised should be used for public education.</p> <p>Dr. Duke said that he was most concerned with private schools because they are not subject to requirements that we are subject to.</p> <p>He said that private schools are not subject to take state-mandated tests.</p> <p>Dr. Duke also informed the Board that school letter grades will be public in the next few weeks and will apply to last year's performance.</p> <p>He said that he and Dr. Geoge are still reviewing newly released rules</p> <p>Dr. Duke feels that it's important that every dollar be reinvested into public education and that the same mandates apply to all around school testing.</p> <p>Dr. Duke told the Board that our team will keep the board informed as we receive information.</p> <p>Dr. Duke said that we haven't seen legislation yet, but we are hopeful that as we learn more we will have more to debate.</p> <p>There was much discussion regarding the voucher program and the school letter grades by the Board before adjournment.</p>	
<p><b>VII. OTHER BUSINESS</b>  Information Item  Chair Campbell wished everyone a very Merry Christmas.</p>	<p>Chair Butch Campbell</p>
<p><b>VIII. ADJOURNMENT</b>  Action Item  Motion to adjourn. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed.  Yea: 7, Nay: 0  Meeting adjourned at 7:04 p.m.</p>	<p>Chair Butch Campbell</p>

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Director of Schools

**Agenda Item Title:** Approval of Changes to the *Legal References* sections in Board Policies 2.100, 2.200, 2.400, 2.402, 2.500, 2.600, 2.700, 2.701, 2.702, 2.800, 2.808, 2.809, and 2.900

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

- Consent Agenda
- Action Item
- Reports and Information

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**Summary**

In July 2023, the Tennessee Comptroller of the Treasury provided an updated accounting manual for schools. The title of the manual was also updated. The manual, formerly known as *Tennessee Internal School Uniform Accounting Policy Manual*, is now the *Internal School Funds Manual*.

Policy 1.600 allows the Board to designate minor changes to policies as editorial in nature or as necessary to confirm a change of policy. In such cases, the Board may accept minor changes under the consent agenda without the requirement of two separate readings.

The legal references sections of Policies 2.100, 2.200, 2.400, 2.402, 2.500, 2.600, 2.700, 2.701, 2.702, 2.800, 2.808, 2.809, and 2.900 will be updated to reflect the change in manual title and change in section number, if applicable.

**Staff Recommendation**

Approve changes to the *Legal References* sections in Board Policies 2.100, 2.200, 2.400, 2.402, 2.500, 2.600, 2.700, 2.701, 2.702, 2.800, 2.804, 2.805, 2.808, 2.809, and 2.900

**Fiscal Impact**

No fiscal impact

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <b>Fiscal Management Goals</b>	Descriptor Code: <b>2.100</b>	Issued Date: <b>10/24/17</b>
		Rescinds:	Issued:

1 The Board shall practice sound fiscal management procedures which guarantee maximum use of all  
 2 resources provided. The Board assumes responsibility, within its financial capabilities, for providing at  
 3 public expense all items of equipment, supplies and services that may be required in the interest of  
 4 education in the schools under its jurisdiction.

5 In fiscal management, the Board seeks to achieve the following goals:

- 6 1. To engage in advance planning, with broad-based staff and community involvement;
- 7 2. To establish levels of funding which will provide quality education for the system's students;
- 8 3. To use the available techniques for budget development and management;
- 9 4. To provide timely and appropriate information to all staff with fiscal management  
10 responsibilities; and
- 11 5. To establish efficient procedures for accounting, reporting, purchasing and delivery, payroll,  
12 payment of vendors and contractors, and all other areas of fiscal management.

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Legal References

1. TCA 49-3-314(c); *Tennessee Internal School  
~~Uniform Accounting Policy~~ Funds Manual*, Section  
4-231-5

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term: <b>Annual Operating Budget</b>	Descriptor Code: <b>2.200</b>	Issued Date: <b>10/25/22</b>
		Rescinds: <b>2.200</b>	Issued: <b>10/24/17</b>

## 1 *General*

2 All school system budgets are the operational plans stated in financial terms which describe the programs  
3 to be conducted during the fiscal year beginning July 1 ending June 30 the following year.<sup>1</sup>

## 4 *Central Office*

### 5 **PREPARATION**

6 Budget planning shall include an analysis of previous staffing, curriculum and facilities, and projections  
7 requiring additional staffing, curriculum modifications, and additional facilities.

8 The budget proposal should be balanced, consistent with board policy and contract conditions, to include  
9 provisions for:

- 10 • Programs to meet the needs of the entire student body;
- 11 • Staffing arrangements adequate for proposed programs;
- 12 • Maintenance of the district's equipment and facilities; and
- 13 • Efficiency and economy.

14 Budget preparation shall be the responsibility of the Director of Schools.<sup>2</sup> The Director of Schools will  
15 establish procedures for the involvement of staff, including requests from department heads and  
16 principals, all of whom shall seek advice and suggestions from other staff and faculty members.

17 The Director of Schools and the Board Chair shall develop a budget preparation calendar no later than  
18 January 1 of the current school year. The calendar shall be used as a guide for coordinating the budgetary  
19 activities of individuals and groups, collecting budget data, reviewing budget problems, and making  
20 budget decisions.

### 21 **HEARING AND REVIEWS**

22 The proposed budget will be available for inspection by various interested citizens or groups in the office  
23 of the director of schools.

### 24 **FINAL ADOPTION PROCEDURE**

25 The Board shall adopt a budget and submit it to the City Manager for submission to the City Council  
26 for study and consideration prior to May. The Director of Schools shall file with the Commissioner of  
27 Education a copy of the budget within ten (10) days after its adoption.<sup>3</sup> Within thirty (30) days of the  
28 beginning of each school year, each school system shall submit to the Commissioner of Education, on a

- 1 form provided by the Department of Education, a complete and certified copy of its entire school budget
- 2 for the current year.

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#### Legal References

1. *Tennessee Internal School ~~Uniform Accounting~~ Policy Funds Manual*, Section 4-420
2. TCA 49-2-203(a)(9); TCA 6-36-110
3. TCA 49-2-301(b)(1)(X); TRR/MS 0520-01-02-.13(2)(a)

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <b>Revenues</b>	Descriptor Code: <b>2.400</b>	Issued Date: <b>09/13/22</b>
		Rescinds: <b>2.400</b>	Issued: <b>09/24/19</b>

1 *General*

2 Any money collected by any school shall be documented by a written receipt.

3 The schools may receive funds collected from activities and for events held at or in connection with the  
4 school, including contracts with other schools for interschool events. To be included in this accounting  
5 are all monies collected from ~~lunch rooms~~ lunchrooms, athletics, entertainments, school clubs, fees,  
6 concessions and all ~~fund-raising~~ fund-raising activities. Each principal shall determine the reconciliation  
7 method to be used for all events which require a ticket.<sup>1</sup>

8 The purchase of items intended for resale for profit through the schools shall be subject to sales tax based  
9 on the purchase price to the vendor providing the service or item. Resale items not intended to generate  
10 a profit shall be determined by the principal.

11 **FEES**

12 School fees are to be kept to a minimum and may be expended only for the purposes for which they were  
13 collected. The school shall not require any student to pay a fee to the school for any purpose, except as  
14 authorized by the Board. No fees shall be required of any student as a condition to attend the school or  
15 use its equipment.<sup>2</sup> School fees shall be waived for students who receive free or reduced-price lunches.<sup>3</sup>  
16 No student will be penalized for nonpayment of any materials fee.

17 **EXTENDED SCHOOL PROGRAM (ESP)**

18 Extended school funds shall be collected at the individual schools and receipted and deposited in the  
19 ESP bank account.<sup>4</sup>

20 **FINES**

21 A student's parent or guardian will be held responsible for any materials or property which the student  
22 loses or damages,<sup>5</sup> including textbooks, library books, equipment and buildings. A determination as to  
23 value and method of replacement or repair will be made by the Director of Schools in consultation with  
24 the principal. All money collected as fines shall be placed in the system-wide school fund.

25 **TUITION INCOME**

26 Tuition collected from nonresident students shall be placed in the system-wide school fund.

## 1 RENTAL INCOME

2 The principal will collect and remit to the central office all money received for use of a particular ~~school~~  
3 ~~facility~~school facility or other school property.

## 4 STATE AND FEDERAL AID ELIGIBILITY DETERMINATION

5 The Board is to be kept informed of all possible sources of state, federal, and other funds for the support  
6 of the schools and/or for the enhancement of educational opportunities in the Murfreesboro City Schools.  
7 The Director of Schools is to timely apprise the Board of its eligibility for general or program funds and  
8 to make recommendations for Board action.

## 9 GRANTS

10 Grants for educational purposes made available by the state and/or federal government may be sought  
11 by the school system but only when the conditions of their availability are in harmony with the  
12 purposes and policies of the Board and the laws of the state and county. Principals may apply for and  
13 receive grants, but funds must be recorded in a separate restricted fund account.<sup>6</sup>

### Legal References

1. TCA 49-2-110(a)
2. TCA 49-6-3001(a); TCA 49-2-110(c)
3. TCA 49-2-114
4. ~~Tennessee Internal School Funds Uniform Accounting Policy Manual, Section 4-3740~~
- 5.4. TCA 37-10-101, 102
6. ~~Tennessee Internal School Uniform Accounting Policy Funds Manual, Section 4-379~~

### Cross References

Fundraising Activities 2.601  
Student Activity Funds Management 2.900  
Food Service Management 3.500  
Textbooks and Instructional Materials 4.400  
Compensation Guides & Contracts 5.110  
Attendance of Non-Resident Students 6.204  
Student Fees and Fines 6.709

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# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term: <h2 style="text-align: center;">Investment Earnings</h2>	Descriptor Code: <b>2.402</b>	Issued Date: <b>09/13/22</b>
		Rescinds: <b>2.402</b>	Issued: <b>10/24/17</b>

1 *Individual Schools*

2 The building principal, with consent of the Director of Schools, is authorized to invest excess funds of  
 3 the school in savings accounts.<sup>1</sup> Interest earned on general fund accounts shall be credited to general  
 4 find revenue. Interest earned on restricted fund accounts shall be credited to revenue in each restricted  
 5 account.

6 School Food Service funds and Extended School Program funds shall be kept separate from other  
 7 school funds and interest earned on the Food Service fund deposits and the Extended School program  
 8 fund deposits shall be credited to the appropriate Food Service or Extended School’s revenue.

9 All funds shall be deposited into accounts fully protected by sufficient collateral.

10 Reports of the investments shall be made to the Board through the district’s annual audit report.

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Legal References

1. *Tennessee Internal School ~~Uniform~~  
Accounting Policy Funds* Manual, Section 6-1

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Cross References

- Deposit of Funds 2.500  
 Food Service Management 3.500

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <b>Deposit of Funds</b>	Descriptor Code: <b>2.500</b>	Issued Date: <b>09/24/19 Revised 10/12/21</b>
		Rescinds:	Issued: <b>11/28/17</b>

1 *Central Office*

2 All income payable to the school district will be deposited with the trustee, who will credit it to the  
3 appropriate account.

4 *Individual Schools*

5 All money collected at the building level must be cleared through the principal's office.

6 *Deposits*<sup>1</sup>

7 The principal shall deposit funds daily if possible, but no later than three (3) days after being received.<sup>1</sup>  
8 Deposit slips must be completed in duplicate. All checks should be listed individually on the deposit  
9 slip or an attached list, itemizing the name of the payer and the amount. The receipt numbers  
10 comprising the deposit should be written on the deposit slip. The validated duplicate deposit slip or the  
11 duplicate deposit slip with deposit receipt attached should be given to the bookkeeper.

12 Monies collected at the building level must be deposited to one of three bank accounts:<sup>2</sup>

- 13 1. General School Fund/Restricted Accounts;  
14  
15 2. School Food Service; and  
16  
17 3. Savings.

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Legal References

1. *Tennessee Internal School Uniform Accounting Policy/Funds Manual, Sections 4-4, 6-2*
2. *Tennessee Internal School Uniform Accounting Policy/Funds Manual, Section 6-1*

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <b>Bonded Employees</b>	Descriptor Code: <b>2.600</b>	Issued Date: <b>09/24/19</b>
		Rescinds: <b>FM 4</b>	Issued: <b>11/28/17</b> <b>11/01/11</b>

1 *General*

2 The Director of Schools and all other employees who handle school monies shall be bonded in order to  
3 indemnify the school system against the loss of any funds.<sup>1</sup>

4 The Board shall determine the amount of the bond, giving consideration to the total amount of money  
5 and/or property that is handled in each school.<sup>2</sup>

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Legal References

1. TCA 8-19-101; TCA 49-2-110(a)(1)
2. *Tennessee Internal School Uniform Accounting Policy Funds Manual, Sections 3-1, 4-83, 4-19*

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <h2 style="text-align: center;">Accounting System</h2>	Descriptor Code: <b>2.700</b>	Issued Date: <b>09/13/22</b>
		Rescinds: <b>2.700</b>	Issued: <b>11/28/17</b>

1     *Central Office*

2     The Director of Schools shall maintain a system of accounting arranged according to the regulations  
3     prescribed by the Commissioner of Education that provides a detailed and accurate account of all  
4     receipts and disbursements of the schools.<sup>1</sup>

5     *Individual Schools*

6     The principal of each school shall be responsible for the management of all internal accounts under  
7     their jurisdiction in accordance with the *Tennessee Internal School Funds Uniform Accounting Policy*  
8     *Manual.*<sup>2</sup>

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Legal References

1. TCA 49-2-301(b)(1)(D); TCA 49-3-316(a)(1)
2. TCA 49-2-110(d)

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Cross References

- Petty Cash 2.801  
Student Activity Funds Management 2.900

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Financial Reports and Records</b>	Descriptor Code: <b>2.701</b>	Issued Date: <b>01/15/19</b>
		Rescinds:	Issued: <b>11/28/17</b>

## 1 FINANCIAL REPORTS

### 2 *Central Office*

3 The Executive Committee shall submit to the Board at each regular board meeting a summary report of  
4 all business transacted since the last regular meeting.<sup>1</sup>

### 5 *Individual Schools*

6 Each principal shall submit, on a prescribed form, to the Director of Schools/designee at the end of  
7 each calendar month the receipts, expenditures, and cash balance of all accounts under their  
8 jurisdiction. These reports shall be made available to the Board at its request.<sup>2</sup>

## 9 FINANCIAL RECORDS

### 10 *General*

11 The Director of Schools shall maintain all financial record as required by regulation and applicable  
12 state and federal law. The Board, from time to time, may determine to extend the retention time for  
13 certain records.<sup>3</sup>

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#### Legal References

1. TCA 49-2-206(5)
2. *Tennessee Internal School Uniform Accounting Policy/Funds Manual, Sections 3-2, 3-46-5, 6-6*
3. *Tennessee Internal School Uniform Accounting Policy/Funds Manual, Sections 3-2, 4-264-24*

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#### Cross References

School Board Records 1.407

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# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	<b>Inventories</b>	Descriptor Code: <b>2.702</b>	Issued Date: <b>01/24/23</b>
		Rescinds: <b>2.702</b>	Issued: <b>03/22/22</b>

1 *General*

2 The Director of Schools shall establish an accurate inventory procedure for all school real and personal  
 3 (e.g., material and equipment) property, and this system shall be implemented at each school and  
 4 system facility. Administrative personnel shall ensure that a physical count of all such property is taken  
 5 at the end of each fiscal year, and this inventory shall be properly entered on the appropriate records  
 6 for accounting purposes.<sup>1</sup>

7 Each school shall maintain a complete inventory with a duplicate maintained in the central office.

8 **EQUIPMENT PROCURED WITH FEDERAL DOLLARS<sup>2</sup>**

9 Property records of equipment purchased with federal dollars must be maintained that include a  
 10 description of the property; a serial number or other identification number; the source of property; who  
 11 holds title; the acquisition date; the cost of the property; the percentage of federal participation in the  
 12 cost of the property; the location, use and condition of the property; and any ultimate disposition data  
 13 including the date of disposal and sale price of the property.

14 A physical inventory of the property must be ~~taken~~taken, and the results reconciled with the records at  
 15 least once every two years.

16 The Director shall establish procedures that meet all federal requirements, including guidelines for the  
 17 purchasing, inventorying, security, and disposition of all equipment purchased with federal funds.

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Legal References

- ~~1.~~ *Tennessee Internal School Uniform Accounting Policy Funds Manual, Section 4-164-23, Section 4-25*
- ~~2.~~ 1. 2 CFR § 200.311-315

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Cross References

- Surplus Property Sales 2.403
- Security 3.205
- Equipment & Supplies Management 3.300

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term:  <b>Expenditure of Funds</b>	Descriptor Code: <b>2.800</b>	Issued Date: <b>11/28/17 01/28/20</b>
		Rescinds: <b>FM 6 FM 12</b>	Issued: <b>01/01/12</b>

## 1 *Central Office*

2 All expenditures shall be approved by the Board or the Director of Schools/Designee when authorized.  
3 No expenditures shall be made except on an approved purchase order or contract. Employees of this  
4 system shall not create or authorize creation of a deficit in any fund. No expenditure may be authorized  
5 or made that exceeds the appropriation of any fund of the budget as adopted or amended, and  
6 expenditures or encumbrances will not be authorized, made, or incurred in excess of any fund balance.  
7 The Director of Schools shall develop federal grant expenditure and cash management procedures that  
8 comply with all federal laws and regulations.<sup>1</sup>

## 9 *Individual Schools*

10 Internal activity funds shall not be expended without written approval by the membership of the group.  
11 All such expenses shall be in accordance with the *Tennessee Internal School ~~Uniform Accounting Policy~~*  
12 *Funds Manual*. Restricted account expenditures require the account sponsor's approval prior to expense.  
13 No checks shall be written to employees from the internal school activity fund account. Any  
14 supplemental compensation owed to the district for extracurricular activities must be processed through  
15 the Director of Schools' office in the same manner as salary and other payroll payments. The Board shall  
16 invoice the school for reimbursement. Substitute teachers' salaries related to restricted class and club  
17 accounts ~~16~~ shall be paid by the Board and shall be reimbursed by the school from the appropriate class  
18 or club account.<sup>2</sup>

19 Employees who authorize or contract for any obligation in violation of this policy shall assume  
20 personal responsibility for the payment of the obligation, shall be subject to dismissal from  
21 employment, and shall be subject to applicable civil and criminal proceedings. Any obligation,  
22 authorization for expenditure, or expenditure made in violation of the law and this policy shall be  
23 illegal and void.<sup>3</sup>

### Legal References

1. 2 CFR § 200.403; Cash Management Improvement Act, 31 CFR Part 205
2. *Tennessee Internal School ~~Uniform Accounting Policy~~Funds Manual*, Section 5-~~23~~18
3. *Tennessee Internal School ~~Uniform Accounting Policy~~Funds Manual*, Section 5-~~14~~4-20

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Purchase Orders and Contracts</b>	Descriptor Code: <b>2.808</b>	Issued Date: <b>01/01/12</b>
		Rescinds: <b>FM 16</b>	Revised: <b>08/22/23</b>

1 *General*

2 All purchases made by the school system shall be by purchase order or formal contract, and no purchase  
3 shall be made nor payment approved unless covered by an approved purchase order.

4 Purchase orders shall include the following essentials:

- 5 1. A specification which adequately describes to the supplier the characteristics and the quality  
6 standards of the item required;
- 7 2. A firm, quoted, net delivered price, whenever possible; and  
8
- 9 3. Electronic approval from the Finance Office assigning a Purchase Order number.

10 Contracts shall be made only with responsible suppliers with the following considerations:

- 11 1. The supplier has the potential ability to perform successfully under the terms and conditions of a  
12 proposed procurement;
- 13 2. A system for contract administration shall be maintained to assure supplier conformance with  
14 terms, conditions, and specifications of the contract or purchase order, and to assure adequate  
15 and timely follow-up of all purchases;
- 16 3. Contracts shall contain such provisions or conditions which will allow for administrative,  
17 contractual, or legal remedies in instances where suppliers violate or breach contract terms and  
18 provide for such sanctions and penalties as may be appropriate.
- 19 4. All contracts, including those of individual schools, will meet all requirements of state and  
20 federal laws, rules, and regulations.<sup>1</sup>

21 *Contract Approval and Signatory Authority<sup>2</sup>*

22 The Board is responsible for the provision of financial resources through the adoption of a budget and  
23 approval of expenditures. The district requires the allocation and expenditure of funds through an  
24 appropriate contract approval process. In compliance with applicable state law, all written contracts  
25 and agreements equal to or greater than fifty thousand dollars (\$50,000.00) shall require Board  
26 approval and Executive Committee signatures. All written contracts and agreements less than or equal  
27 to fifty thousand dollars (\$50,000.00) may be approved and signed by the Director of Schools, unless

1 the contract requires Board approval in compliance with State or federal law or Board policy. The  
2 Board shall be provided with a list of written contracts and agreements with a value between twenty-  
3 five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) at the regularly scheduled  
4 Board meeting immediately following approval of the contract or agreement.

5 Notwithstanding the foregoing, the following contracts and agreements require Board approval:

- 6 1. Contracts or agreements extending beyond one (1) year, regardless of dollar amount;
- 7 2. Legal settlements involving the school district, regardless of dollar amount;
- 8 3. Real property contracts or agreements;
- 9 4. Construction contracts or agreements;
- 10 5. Charter school agreements;
- 11 6. Intergovernmental contracts or agreements;
- 12 7. Grant contracts or agreements; and
- 13 8. Collaborative conferencing memoranda of understanding, and all subsequent addenda.

14 All contracts or agreements approved by the school system must be approved as to form by legal  
15 counsel from the City Attorney's office. The Director of Schools shall develop administrative  
16 directives to implement this policy.

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Legal References

1. TCA 49-2-203(a)(3); *Tennessee Internal School  
Uniform Accounting Policy Funds Manual*, Section  
A-1
2. TCA 49-2-203; TCA 49-2-206

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term:  <b>Vendor Relations</b>	Descriptor Code: <b>2.809</b>	Issued Date: <b>11/28/17 01/15/19</b>
		Rescinds: <b>BO 31 FM 9</b>	Issued: <b>06/01/11</b>

1 *General*

2 Each order shall be placed on the basis of quality, price, and delivery. Past service will be a factor if all  
3 other considerations are equal.

4 No person officially connected with or employed by the school system shall be an agent for, or have any  
5 financial compensation or reward of any kind from any vendor for the sale of supplies, materials,  
6 equipment or service.<sup>1</sup>

7 *Individual Schools<sup>2</sup>*

8 Schools shall execute a written agreement with vendors for all fundraisers. The agreement shall include,  
9 but not be limited to, the following information:

- 10 1. The division of profits that result from the activity;
- 11 2. Payment of sales tax;
- 12 3. Delivery date(s);
- 13 4. Package prices or other charges; and
- 14 5. Scheduled dates of service.

15 Vendors visiting separate schools shall contact and secure the permission of the Director of Schools  
16 and principal's office prior to visiting the school. Vendors' visitations to schools shall not be permitted  
17 to interfere with the normal instructional and learning process.

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Legal References

- 1. TCA 49-6-2003
- 2. *Tennessee Internal School ~~Uniform Accounting~~  
~~Policy-Funds Manual~~, Section 4-32*

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Cross References

- Visitors to the Schools 1.501
- Advertising & Distribution of Materials in Schools 1.806
- Student Solicitations/Fund-Raising 6.701

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Student Activity Funds Management</b>	Descriptor Code: <b>2.900</b>	Issued Date: <b>11/28/17 01/15/19</b>
		Rescinds:	Issued:

1 *Individual Schools*

2 The activity funds of each school shall include athletic and student organization funds and any other  
3 fund belonging to any student group, class, or activity.

4 Whatever the source, all student activity funds shall be under the jurisdiction of the Board and under the  
5 specific control of the school principal. Contracts with fundraising agencies must comply with Board  
6 policy and be approved in writing by the Director of Schools.

7 Principals and/or sponsors who knowingly authorize/allow unapproved fundraising activities shall be  
8 subject to disciplinary action.<sup>1</sup>

9 Student activity funds shall be deposited in respective school activity accounts. Proper records of receipts  
10 and disbursements shall be maintained in accordance with the *Tennessee Internal School ~~Uniform~~*  
11 *Accounting Policy-Funds Manual*.<sup>2</sup>

12 Funds should benefit the students that raised the funds and should be expended as expeditiously as  
13 possible.

14 Revenue raised for specific purposes must be expended for that purpose, unless otherwise authorized in  
15 writing by both the activity group sponsor and the principal.<sup>3</sup>

16 An annual audit of the account and records of all student activity funds shall be conducted as a part of  
17 the audit of all other district funds.<sup>4</sup>

18 Any unencumbered class or activity funds automatically revert to the general activity fund of the school  
19 when a class graduates or an activity is discontinued.

20 Funds derived from activities sponsored by parent-teacher associations, parent-teacher organizations or  
21 other support organizations are not subject to this policy, unless such funds are in sole custody of the  
22 school.<sup>5</sup> Such organizations shall comply with the provisions of state law.<sup>6</sup>

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Legal References

1. *Tennessee Internal School ~~Funds~~uniform Accounting Policy Manual*, Sections 4-31, 4-32
2. TCA 49-2-110(d)
3. *Tennessee Internal School ~~Uniform Accounting Policy~~Funds Manual*, Section 4-1 through 4-3
4. TCA 49-2-112(a)(1)-(2)
5. TCA 49-2-110(f)
6. TCA 49-2-601 through 611

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Cross References

Student Solicitations/Fund-Raising 6.701

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Payroll Procedures</b>	Descriptor Code: <b>2.802</b>	Issued Date: <b>11/28/17 01/15/19</b>
		Rescinds: <b>FM 17, 2.803</b>	Issued: <b>01/01/12</b>

## Pay Periods and Payday Schedule

If the end of a pay period falls on a non-working day, employees will be paid on the last working day prior to the end of the pay period. However, checks will be dated to coincide with the end of the pay period. No advance payments of salary shall be made. Payroll procedures shall be as follows:

1. All certified personnel shall be paid on twelve (12) monthly installments.
2. All support personnel that are on the bi-weekly pay structure shall be paid according to the bi-weekly pay schedule as determined prior to the start of each school year.
3. Substitute teachers shall be paid on the same pay date as all hourly personnel.

## Method of Payment

Employees are paid through a direct deposit to their banking institution of choice. Employees may change their banking institution for direct deposit at any time.

## Payroll Deductions

Specific approval by the Board is required for payroll deductions, except as otherwise provided by law. Any deduction made in compliance with the requirements of federal, State, or local law, such as federal or State withholding income taxes and federal social security taxes may be made without requesting approval from the employee. Otherwise, deductions made from an employee's paycheck are made only upon written authorization of the employee or an order from a court of competent jurisdiction.

Voluntary employee benefit deductions are administered by the Human Resources Department and include, but are not limited to, group medical, dental, vision, life, 403(b), and other appropriate group insurance.

Other voluntary deductions may be approved by the Director of Schools, such as supplemental retirement contributions, United Way donations, or contributions to other quasigovernmental or charitable organizations. Employees may arrange to make contributions to those entities through written authorization signed by the employee. An employee may change or terminate any voluntary salary deduction upon written notification to the Finance Director.

Upon appropriate written authorization, the Board shall make deductions approved by the Board from the salary of the employee. Authorization must be made on forms provided by the Board and filed in the office of the Director of Schools.

An employee may change or terminate any salary deduction upon written notification, to the Director of Schools or his/her designee.

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1 Payroll procedures shall be as follows:

2 1. All certified personnel shall be paid on twelve (12) monthly installments.

3 2. All support personnel that are on the bi-weekly pay structure shall be paid according to the bi-  
4 weekly pay schedule as determined prior to the start of each school year.

5 3. Substitute teachers shall be paid on the same pay date as all hourly personnel.  
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Cross References  
Compensation Guides and Contracts 5.110  
Resignation 5.204  
Retirement 5.205

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**Agenda Item Title:** Approval of changes to Board Policy 2.703 on first reading

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

Board Policy 2.703 has been updated to include statutory language detailing the requirements for corrective action planning in the event of audit findings.

**Staff Recommendation**

Approve changes to Board Policy 2.703 on first reading

**Fiscal Impact**

No fiscal impact

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term:  <b>Audits</b>	Descriptor Code: <b>2.703</b>	Issued Date: <b>11/28/17 01/15/19</b>
		Rescinds: <b>FM 7</b>	Issued: <b>11/01/11</b>

1 *General*

2 An audit of all fiscal accounts, including accounts and records of all school student activity finds, shall  
3 be made by a certified public accountant following the end of each fiscal year.<sup>1</sup> The certified public  
4 accountant shall be selected by the Board.

5 The Director of Schools shall furnish or make copies of the audit available to the proper authorities as  
6 prescribed by law,<sup>2</sup> including the Board.

7 When an administrative change occurs during the fiscal year and the position is responsible for the  
8 expenditure of funds, a special audit of accounts involved shall be conducted.

9 The special audit shall be as extensive as the Board may determine.

10 AUDIT FINDINGS<sup>3</sup>

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11 A corrective action plan shall be developed to address any findings on the annual audit. The plan shall  
12 include the following:

- 13 1. Name(s) of the individual responsible for implementing the plan;
- 14 2. The corrective action taken or planned; and
- 15 3. Anticipated completion date.

16 The corrective action plan shall be submitted to the Office of the Comptroller of the Treasury.

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Legal References

1. TCA 49-2-112(a)(1), (c)(1); TCA 49-2-110(a)
2. TRR/MS 0520-01-02-.13(3)(d)
- 2-3. [TCA 9-3-407](#)

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Cross References

- Student Activity Funds Management 2.900
- Student Solicitations/Fundraising 6.701

**Agenda Item Title:** Approve changes to Board Policy 2.8001 on first reading

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

Board Policy 2.8001 has been updated to reflect administrative changes within the school district. This policy is revised to give the Director of Schools the discretion to develop and implement a sustainable energy plan for the school district, taking into account the needs of each school.

Additionally, because energy conservation is directly related to the operational management of the school district, it is recommended that this policy be reclassified as a Section 3 operational policy with the descriptor code 3.209.

**Staff Recommendation**

Approve changes to Board Policy 2.8001 on first reading

**Fiscal Impact**

No fiscal impact

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Energy Management and Conservation</b>	Descriptor Code: <b><del>2.800</del>3.209</b>	Issued Date: <b>11/28/17 01/28/20</b>
		Rescinds: <b>FM 14</b>	Issued: <b>09/01/13</b>

- 1 It is the intent of Murfreesboro City Schools to use energy resources in a safe and efficient manner  
2 with an ongoing focus on identifying and implementing cost saving measures and developing a  
3 commitment to identified energy management practices among staff and students. To promote energy  
4 management and conservation, the Director of Schools shall develop and implement a sustainable  
5 energy plan for the district. The district will maintain accurate records of energy consumption and cost  
6 of energy.
- 7 ~~It is the policy of Murfreesboro City Schools to ensure that every effort is made to conserve energy and~~  
8 ~~natural resources while exercising sound financial management. To minimize the impact increased~~  
9 ~~energy costs have on the district's operating budget, energy management efforts are to be implemented~~  
10 ~~district wide without infringement upon the educational mission of the district. Maintenance of the~~  
11 ~~learning environment shall always take precedence over energy conservation measures.~~
- 12 ~~The judicious use of the various energy systems of each facility will be the joint responsibility of the~~  
13 ~~principal and/or site director, district Energy Manager and the Maintenance Supervisor to ensure that~~  
14 ~~an efficient energy posture is maintained on a daily basis. It shall be the responsibility of each district~~  
15 ~~employee and student to actively participate in conservation efforts.~~
- 16 ~~Accurate records of energy consumption and the cost of energy will be maintained by the district's~~  
17 ~~Finance Office. The principal, district Energy Manager and/or Director will provide leadership and~~  
18 ~~support for energy management and conservation. All operations of district facilities will be governed~~  
19 ~~by established administrative rules and guidelines designed to implement the Board's intent to manage~~  
20 ~~and conserve the district's energy resources.~~
- 21 ~~Murfreesboro City Schools shall amend its policy and action plan as required, to strive for the~~  
22 ~~following:~~
- 23 ~~1. Continuing compliance with the most recent adoption of American Society of Heating~~  
24 ~~Refrigeration Air Conditioning Engineers (ASHRAE) Standard 90.1 (the minimum standard~~  
25 ~~for energy efficiency);~~
- 26 ~~2. Continuing compliance with the most recent version of ASHRAE Standard 62.1 (the minimum~~  
27 ~~standard for indoor air quality); and~~
- 28 ~~3. Continuing compliance with the most recent version of ASHRAE Standard 55 (the minimum~~  
29 ~~standard for human comfort).~~

**Agenda Item Title:** Adoption of Board Policy 2.801 on first reading

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

Board Policy 2.801 is a new policy proposed to comply with requirements of the *Tennessee Internal School Funds Manual* for application and use of credit cards and credit lines by school employees.

**Staff Recommendation**

Approve adoption of Board Policy 2.801 on first reading

**Fiscal Impact**

No fiscal impact

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <h2 style="text-align: center;">Credit Cards and Credit Lines</h2>	Descriptor Code: <b>2.801</b>	Issued Date: <a href="#">Click here to enter a date.</a>
		Rescinds:	Issued:

1 Employees must first receive written authorization from the Director of Finance to apply for a credit  
 2 card in the name of the school or district. “Credit card” means any bank-issued credit card account, store-  
 3 issued credit card account (p-card), financial institution-issued credit card account, or any other card  
 4 account allowing the holder to purchase goods or services on credit or to transact with the account and  
 5 any debit or gift card account related to the receipt of grant funds.

6 District credit cards shall be maintained by the Director of Finance through procedures developed and  
 7 maintained in the Finance Department for the purchase of appropriate goods and services for district or  
 8 school-related purposes only.<sup>1</sup> All credit cards will be kept in a secure location at the central office and  
 9 the account number will remain confidential.

10 Credit card users shall be held accountable for appropriate use of credit cards/credit lines. Use of a credit  
 11 card/credit line for unauthorized purchases shall be grounds for disciplinary action, including termination  
 12 of employment. Unauthorized purchases include, but are not limited to, cash advances, personal items,  
 13 and purchases that do not have adequate supporting documentation. Employees will be required to  
 14 reimburse the school district for any unauthorized purchases. If an employee fails to reimburse the  
 15 district, the district may deduct the amount from the employee’s paycheck or hold the employee’s  
 16 paycheck until payment is made. Cash advances using district credit cards are strictly prohibited.

17 Any employee that purchases items with the credit card or through an approved credit line shall follow  
 18 the guidelines outlines below:

- 19 1. Original receipts for each purchase shall be turned in to the bookkeeper or Purchasing Agent  
 20 within twenty-four (24) business hours of purchase.
- 21 2. The bookkeeper or Purchasing Agent shall validate that purchases documented by the original  
 22 receipt match the physical inventory that was purchased.
- 23 3. All purchases shall be for the school district; under no circumstances can a credit card or credit  
 24 line be used to make personal purchases.
- 25 4. The credit card user or department will be responsible for any incurred finance or late charges.

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Legal References

1. *Tennessee Internal School Funds Manual*, Section 4-8; Section 4-13 through 4-15

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Cross References

- Executive Committee 1.301  
 Purchasing 2.805  
 Purchase Orders and Contracts 2.808

**Agenda Item Title:** Adopt Board Policy 4.205 on first reading

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

Consent Agenda

Action Item

Reports and Information

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**Summary**

Board Policy 4.205 is a new policy recommendation that provides clarity on the establishment of magnet schools as open-zoned schools of choice based on application and selection criteria established by the Director of Schools.

**Staff Recommendation**

Approve adoption of Board Policy 4.205 on first reading

**Fiscal Impact**

No fiscal impact

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in January</b>	Descriptor Term: <b>Magnet Schools</b>	Descriptor Code: <b>4.205</b>	Issued Date: <b>12/14/23</b>
		Rescinds:	Issued: <b>12/14/23</b>

1 Murfreesboro City Schools will maintain open-zoned, schools of choice for the purpose of providing  
2 challenging curriculum that is innovative, theme-based and may emphasize certain subjects or adopt  
3 distinct instructional models.<sup>1</sup> Student enrollment in magnet schools will be based on application and  
4 selection criteria.

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5 The Director of Schools shall establish written standards for the application, qualification, selection, and  
6 enrollment of students in magnet schools. These standards shall be objective and take into account  
7 multiple criteria that best predict a student's potential for success in the school or program. Students  
8 residing outside of Murfreesboro City, but within Rutherford County, may apply for entrance to magnet  
9 schools operated by Murfreesboro City, however priority will be given to students residing within the  
10 Murfreesboro City school district.

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## Legal References

1. 34 CFR 280.4(b)

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**Agenda Item Title:** Approval of changes to Board Policy 6.702 on first reading

**Board Meeting Date:** January 9, 2024

**Department:** Legal

**Presented by:** Lauren Bush

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

### Summary

School-sponsored fundraising activities are allowed by State law, and requirements for fundraising activities are provided by guidelines published in the *Tennessee Internal School Funds Manual*. Given the financial nature of fundraising requirements, it is recommended that this policy be reclassified to the fiscal management policy section with the descriptor code 2.601.

Additionally, several changes were made to school-sponsored fundraising requirements in the most recent version of the *Tennessee Internal School Funds Manual*. These updates are reflected in the edits proposed in this version of Policy 6.702.

### Staff Recommendation

Approve changes to Board Policy 6.702 on first reading

### Fiscal Impact

No fiscal impact

### Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

# Murfreesboro City School Board

Monitoring: <b>Review: Annually, in April</b>	Descriptor Term: <h2 style="text-align: center;">Fundraising Activities</h2>	Descriptor Code: <b>6.702 2.601</b>	Issued Date: <b>05/25/21 04/28/20 09/24/19</b>
		Rescinds: <b>BO 31</b>	Issued: <b>04/79; 07/01; 09/07; 06/11; 04/23/19</b>

1 School-sponsored fundraising activities shall be for the purpose of supplementing money for  
 2 school programs and not for replacing funds which are the responsibility of the local board of  
 3 education. School-sponsored fundraising activities shall, in general, contribute to the educational  
 4 experience of the students and shall not conflict with the instructional program. A fundraiser is defined  
 5 as any activity conducted by the school that is intended or designed to generate a profit and provide  
 6 supplemental revenue for the general fund or an individual club or class account. Fundraising activities  
 7 may include vending operations, bookstores, pictures, concessions, carnivals, book sales, candy sales,  
 8 magazine sales, walk-a-thons, car washes, bake sales, or similar activities. Fundraising shall be kept at  
 9 an absolute minimum and shall serve only to provide for goods and/or services that will enhance the  
 10 educational objectives of the school as determined by the principal. The Director of Schools shall  
 11 develop administrative procedures for fundraising activities.

12 ~~A copy of this policy~~ Information regarding fundraising activities shall be included in the parent  
 13 handbook issued to parents at the beginning of each school year.

14 **DEFINITIONS**

15 ~~Fundraiser—For the purposes of this policy, a fundraiser is any activity conducted by the school that is~~  
 16 ~~intended or designed to generate a profit and provide supplemental revenue for the general fund or an~~  
 17 ~~individual club or class account. Fundraising activities may include vending operations, bookstores,~~  
 18 ~~pictures, concessions, carnivals, book sales, or similar activities. Fundraising activities do not include~~  
 19 ~~membership dues, fines, and similar fees.~~

20 ~~In Murfreesboro City Schools, each fundraiser will be designated either as an ACTIVE fundraiser or a~~  
 21 ~~PASSIVE fundraiser at the time the event is planned.~~

22 ~~ACTIVE Fundraiser—An Active Fundraiser involves the children during instructional time in the~~  
 23 ~~school day.~~

24 ~~PASSIVE Fundraiser—A Passive Fundraiser does not involve the children during the instructional~~  
 25 ~~time during the school day but is held during a non-instructional period of the day, such as, lunch,~~  
 26 ~~recess, class-changing time, or outside of school hours.~~

27 **DESIGNATION OF A FUNDRAISER**

1 How a school structures the fundraiser determines whether it is designated as Active or Passive. The  
2 principal and the PTO/Booster club shall work together jointly to set up the fundraiser. (i.e., to  
3 determine whether to have an assembly to use part of the instructional day, or structure the fundraising  
4 event so that it compliments or encompasses a curricular objective, etc.) For example, if an assembly is  
5 planned to introduce or conclude the fundraiser (i.e., a party), even for only a 20-minute period during  
6 instructional time, the fundraiser becomes an ACTIVE fundraiser, even if the majority of the  
7 fundraiser is done during non-instructional time.

8 ~~Examples of current fundraisers are:~~

- 9 ~~1. ACTIVE— School pictures (fall and spring pictures will count as one fundraiser), some “fun-~~  
10 ~~runs”, book fairs (maximum of two which will count as one fundraiser), “read-a-thon” and~~  
11 ~~“sausage and cheese sales” if an assembly or celebration party during instructional time is used~~  
12 ~~as an incentive, assemblies where children pay to admission to attend (teacher/student~~  
13 ~~basketball 30 games, etc.)~~
- 14 ~~2. PASSIVE— Restaurant sponsored days, Kroger Cares, vending machines, bookstores, yearbook~~  
15 ~~sales, etc.~~

## 16 GENERAL GUIDELINES

17 The following general guidelines shall be followed:

- 18 1. Fundraising companies and other salespersons shall obtain permission in writing from the  
19 Director of Schools or designee in order to visit the schools.
- 20 2. Any commission payable by companies shall be paid in the form of reduced prices to the  
21 students or paid into the activity fund of the school for use by the school. No school employee  
22 shall personally benefit from any fundraising activity.
- 23 3. All fundraising activities, including online fundraising activities must have prior written  
24 approval from the principal and Director of Schools ~~(or designee)~~. A fundraiser form will be  
25 available in the office and through each school bookkeeper and must be completed prior to  
26 advertising the fundraiser. The authorization request shall contain the following information:<sup>1</sup>
  - 27 a. A list of the proposed fundraising activities,
  - 28 b. Purpose of the fundraising activity,
  - 29 c. Proposed uses of funds raised,
  - 30 d. Expected student involvement in fundraising activity (school-wide or individual class or  
31 club), and
  - 32 e. Margin of profit and how it is to be paid to the school, and.
  - 33

f. Method of payment of sales or use tax to vendor or ~~TN~~Tennessee Department of Revenue

4. Students shall not be excused from a regular class to participate in a fundraising activity, unless ~~it is an Active fundraiser~~ approved by the Director of Schools.

5. No grade in a subject or course shall be affected by a student's participation in a fundraising activity. No points shall be added to or removed from grades because of, or to encourage, fundraising participation.

6. Children will not be dismissed from school as a reward for fundraising.

~~6.~~ <sup>7.</sup> Door-~~to-to~~-door sales are strongly discouraged and not endorsed by the school system.

8. The awarding of a grand prize to individual students based on a total dollar amount collected is prohibited. However, it is permissible to award prizes when students reach certain levels. Off-campus activities, such as pizza parties, shall not be used as rewards ~~for~~ children. If end-of-fundraising celebrations are used to encourage participation, no child shall be excluded from the celebration based on the child's fundraising input. For example, if a DJ party or pizza party is planned for the class, all children in the class will be invited to attend.

9. No quotas shall be imposed on students involved, and their efforts shall be voluntary. Students who do not participate in fundraising activities shall not be punished or discriminated against in any way.

10. Each school is limited to four (4) ~~ACTIVE~~ fundraisers occurring during the school day per school year, inclusive of ~~PTA/PTO~~ school support organization fundraisers.

~~11.~~ Funds derived from fundraising events to be deposited in the General Fund or the individual school's activity funds can be spent for the following purposes including, but not limited to ~~:-~~

~~a.~~ <sup>11.</sup> materials, supplies, and equipment that enhance the instructional programs provided by the Board through its operational budget.

~~12.~~ <sup>11.</sup> Funds derived from fundraising events may not be used for:

a. Memberships of any kind,

b. Staff gifts and meals~~:-~~

c. Staff training and travel that benefits the student body.

~~13.~~ <sup>12.</sup> Funds derived from fundraising events to be deposited into a restricted account of the individual school's activity funds must be spent for the purposes approved. The purpose shall be reduced to written form and on file at each school for audit purposes.

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1 13. Fundraising events conducted by a school support organization, such as a PTA, PTO, or  
 2 Booster Club, shall be governed by the same conditions that apply to the school and comply  
 3 with Board Policy 2.404, School Support Organizations.

4  
 5 14. ~~District employees who knowingly authorize or allow unapproved fundraising activities~~  
 6 ~~involving students may be subject to disciplinary action.~~

7 This policy shall not be construed as preventing a teacher from using instructional or informational  
 8 materials even though the materials might include reference to a brand, a product, or a service.

### 9 LOTTERIES

10 No fundraising activity shall be conducted that distributes prizes or makes awards to winners based  
 11 upon the purchase of chances and who are chosen through a random selection process.<sup>2</sup>

### 12 ONLINE FUNDRAISING

13 Individual schools may establish school-wide online fundraising accounts. The accounts must meet all  
 14 fundraising requirements established by the Board and the *Internal School ~~Uniform Accounting~~*  
 15 *~~Policy/Funds~~ Manual*. The principal or designee of each school shall have access to the established  
 16 fundraising account to ensure that all funds are properly accounted for, and that the information is  
 17 recorded in the school's accounting records by the designated personnel. Online fundraising shall not  
 18 be used on behalf and for the benefit of an outside party.

19 Employees shall not engage in online fundraising for personal gain in their official capacity as district  
 20 employees nor make any reference to non-school sponsored fundraisers, online or otherwise, that  
 21 would lead another to believe such activity is an approved school fundraiser.

### 22 FUNDRAISING FOR NON-EDUCATIONAL PURPOSES<sup>3</sup>

23  
 24 On approval of the principal, an employee may be authorized to raise and use funds for the following  
 25 noneducational purposes:

- 26 1. Bereavement support;
- 27 2. Award recognition;
- 28 3. Employee morale;
- 29 4. Banquets;
- 30 5. Other situations at the principal's discretion.

31 These funds shall be derived from ~~vending machine revenue from machines designated for teacher use~~  
 32 ~~only or donations.~~ sources of revenue approved by the Director of Schools.

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Legal References

1. *Tennessee Internal School Uniform Accounting Policy/Funds Manual*, Section 4-3228
2. Tenn. Op. Att’y Gen. No. 03-049 (Apr. 22, 2003)
3. *Public Act of 2019, Chapter No. 134* TCA 49-2-134

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Cross References

Student Activity Funds Management 2.900  
Staff Gifts and Solicitations 5.605

**Agenda Item Title:** FY24 General Purpose Fund 141 Amend new TISA Growth Funds

**Board Meeting Date:** January 9, 2024

**Department:** Finance

**Presented by:** Trey Duke, Director

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

TN school districts that experience current-year growth in the TISA allocation (base, weights, and direct funding only) generated by students in nonvirtual schools in the LEA in excess of 1.25%, as compared to the prior year, are eligible for a fast growth stipend. In November 2023, MCS received notice that it qualified to receive a TISA fast growth stipend.

A portion of these funds will be budgeted in FY24 to fund previously approved school safety and security projects.

**Staff Recommendation**

To approve the FY24 budget amendment to recognize new revenue and expenditures of \$250,000 in the General Purpose Schools fund.

**Fiscal Impact**

New TISA revenue of \$250,000 will be budgeted to fund school safety and security projects in the Maintenance equipment budget category.

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
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General Purpose Schools Fund 141  
Fiscal Year 2023-24

FY24 TISA Growth Funds

Account Number	Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>				
141 R 46510	State of TN - TISA	59,149,465	59,399,465	250,000
<b>Total Increase in Revenues</b>		<b>\$ 59,149,465</b>	<b>\$ 59,399,465</b>	<b>\$ 250,000</b>

<u>Expenditures</u>				
141 E 72620 790	Operation of Plant - Other Equipment	369,367	619,367	250,000
<b>Total Increase in Expenditures</b>		<b>\$ 369,367</b>	<b>\$ 619,367</b>	<b>\$ 250,000</b>

CHANGE IN FUND BALANCE (CASH) -

To budget \$250,000 in new FY24 TISA growth funds for school security needs.

Beth Proter 1/3/24

Reviewed by Finance Director/Finance Manager

Date

Approved	<input checked="" type="checkbox"/>	<u>Tracy Duck</u>	<u>02/03/24</u>
Declined	<input type="checkbox"/>	Director of Schools	Date

**Agenda Item Title:** FY24 General Purpose Fund 141 Transfer Safety Project

**Board Meeting Date:** January 9, 2024

**Department:** Finance

**Presented by:** Trey Duke, Director

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

In June 2023, the Board approved several school safety projects in the FY24 General Purpose Schools budget. This budget amendment transfers previously approved funds in the Maintenance major budget category to align with the Public Schools Safety grant budget. In addition to budgeting \$250,000 in new TISA growth funds, this transfer will fully fund one of the approved projects.

**Staff Recommendation**

To move \$93,139 from Maintenance & Repair – Buildings to Other Equipment within the same major budget category to fund school safety and security projects and align with the state approved Public Schools Safety grant budget.

**Fiscal Impact**

Moving funds within the same major budget category has no impact to fund balance.

**Connection to MCS’s Five-Year Strategic Plan**

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# Murfreesboro

City Schools

## INTER-FUND BUDGET TRANSFER/AMENDMENT REQUEST

Budget Fiscal Year 2023-2024 General Purpose Schools Fund 141 - Safety Equipment  
 Board of Education Meeting January 9, 2024

Account	Description	Increase	Decrease
141 E 72620 335	Maintenance of Plant - Maintenance/Repair Building		93,139
141 E 72620 790	Maintenance of Plant - Other Equipment	93,139	
<b>Total</b>		\$ 93,139	\$ 93,139

Explanation: The FY24 Maintenance & Repair budget included \$130,000 set aside for school safety and security.  
This transfer moves \$93,139 from Maintenance & Repair to Other Equipment within the same  
major budget category to align with the Public Safety School grant budget. In addition to the new  
TISA growth revenue, this transfer will fund previously approved school safety projects.

Beth Proter 1/03/24  
 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	<u>Bobby W. Duke III</u>	<u>01/03/2024</u>
Declined	<input type="checkbox"/>	Director of Schools	Date

**Agenda Item Title:** FY24 ESP Budget Amendment Playground Equipment from Fund Balance

**Board Meeting Date:** January 9, 2024

**Department:** Finance

**Presented by:** Trey Duke

**Board Agenda Category:**

Consent Agenda

Action Item

Reports and Information

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### Summary

This amendment budgets \$194,000 from the audited ESP fund balance to recognize additional FY24 expenditures in Other Capital Outlay for a new playground at Mitchell Neilson Elementary. This is a one-time capital expenditure needed to cover the cost of the expanded scope of work and a shade cover.

This project was approved by the Board as part of the five-year plan.

### Staff Recommendation

Approve the amendment to reduce fund balance and increase current year expenditures by \$194,000.

### Fiscal Impact

The amendment reduces fund balance by \$194,000 to recognize additional funds in Other Capital Outlay.

### Connection to MCS's Five-Year Strategic Plan

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Murfreesboro City Schools Budget Amendment

BOE Approval

1/9/2024

Extended School Program Fund 146  
Fiscal Year 2023-2024

MNE Playground from Fund Balance

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET AS PASSED OR	AMENDED	AMENDMENT INCREASE
		PREV AMENDED	BUDGET	(DECREASE)
146 Q 39000	<u>Equity</u> Fund Balance (audited)	6,214,334	6,020,334	(194,000)
<b>Total Change to Fund Balance</b>		<b>\$ 6,214,334</b>	<b>\$ 6,020,334</b>	<b>\$ (194,000)</b>

Expenditures		ORIG BUDGET	AMEND BUDGET	INCREASE
146 E 73300 799	Community Services - Other Capital Outlay	524,252	718,252	194,000
<b>Total Increase in Expenditures</b>		<b>\$ 524,252</b>	<b>\$ 718,252</b>	<b>\$ 194,000</b>

CHANGE IN FUND BALANCE (CASH)

\$ -

To budget \$194,000 from ESP fund balance for additional funds needed to build a new playground at Mitchell Neilson Elementary.

Kim P... .. 12/22/23  
Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	<u>Bobby J. DeWitt</u>	<u>12/22/23</u>
Declined	<input type="checkbox"/>	Director of Schools	Date

**Agenda Item Title:** Approve agreement with Boyce Ballard Construction for replacement of the Mitchell-Neilson Elementary Playground

**Board Meeting Date:** January 9, 2024

**Department:** Director's Office

**Presented by:** Trey Duke

**Board Agenda Category:**

Consent Agenda

Action Item

Reports and Information

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**Summary**

The Purchasing Department for Murfreesboro City solicited and received bids on behalf of Murfreesboro City Schools for the demolition of existing playgrounds and construction of a new playground at Mitchell-Neilson Elementary. Bid responses were reviewed by Murfreesboro City's Purchasing and Project Development Departments, Johnson + Bailey Architects, P.C., and Murfreesboro City Schools. Boyce Ballard Construction was the lowest bidder for Project ID ITB-12-2024.

**Staff Recommendation**

Recommend approval of the construction agreement with Boyce Ballard Construction for the replacement of the Mitchell-Neilson Elementary Playground

**Fiscal Impact**

The contract sum is \$594,000.00 and includes an alternate fabric shade structure in this cost. The alternate price for the shade structure is \$22,700.00.

**Connection to MCS's Five-Year Strategic Plan**

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# DRAFT AIA® Document A101™ - 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the ←→ninth (9<sup>th</sup>) day of ←→January in the year twenty twenty-four (←→2024)

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

BETWEEN the Owner:

(Name, legal status, address and other information)

« City of Murfreesboro, Tennessee, » « a municipality organized under the laws of the State of Tennessee »

« 111 West Vine Street → Street »

« Murfreesboro, Tennessee 37130 »

←→

and the Contractor:

(Name, legal status, address and other information)

←→←→

←→

←→

←→ Boyce Ballard Construction, LLC

10-B Public Square North

Murfreesboro, TN 37130

for the following Project:

(Name, location and detailed description)

←→

←→

←→ Playground Replacement- Mitchell-Neilson Elementary School

711 West Clark Boulevard

Murfreesboro, TN 37129

ITB-12-2024

The Architect:

(Name, legal status, address and other information)

Johnson+Bailey Architects P.C.

100 East Vine Street, Suite 700

Murfreesboro, TN 37130

←→←→

←→

←→

←→

The Owner and Contractor agree as follows.

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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.

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

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-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.

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

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 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 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[ X ] Not later than eighty-one ( 81 ) calendar days from the date of commencement of the Work.

[ ] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be five hundred seventy-one thousand three hundred dollars («») (\$ «») 571,300.00), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Alternates**

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Pre-Engineered Fabric Shade Structure	\$22,700.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

§ 4.4 Unit prices, if any:

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

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

**§ 4.5 Liquidated Damages**

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$500.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« § 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order. »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

§ 5.1.2 At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 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;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .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; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 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%) »

§ 5.1.7.1.1 The following items are not subject to retainage:

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

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

« »

§ 5.1.8 [Intentionally omitted.]

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

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

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

« »

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this 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.)*

« »  
« »  
« »  
« »

### § 6.2 Binding Dispute Resolution

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other (Specify)

« AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures»

If the Owner and Contractor 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 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:  
(Name, address, email address, and other information)

« Craig Tindall, City Manager »  
« 111 West Vine Street »  
« Murfreesboro, TN 37130 »  
« Tel: (615) 849-2629 »  
« Email: ctindall@murfreesborotn.gov »

« or his designee as indicated in writing from time to time. »

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

« »  
« »  
« »  
« »  
« »

« Mike Boyce »

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User Notes:

(913913456)

10-B Public Square North  
Murfreesboro, TN 37130  
Tel: (615) 630-2447  
mike@boyceballard.com

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, 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.)*

<< >>

§ 8.7 Other provisions:

<< >>

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A, Contractor's Insurance and Bonds Requirements
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
- .4 [AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit](#), dated as indicated below:  
*(Insert the date of the E203–2013 incorporated into this Agreement.)* [Intentionally Omitted](#)

Commented [AT1]: May want to include in future contracts.

<< >>

- .5 Drawings

Number	Title	Date
00 01 15	Drawing Index	August 25, 2023

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- .6 Specifications

Section	Title	Date	Pages
00 01 10	Project Specifications	August 25, 2023	153

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- .7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	December 4, 2023	2

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

The Sustainability Plan:

Title	Date	Pages

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 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 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor'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.)

Advertisement for Bids, November 21, 2023 ←→  
Instructions to Bidders, November 21, 2023  
Bid Form, November 21, 2023

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

OWNER (Signature)

« Shane McFarland, » «~~Mayor~~ Mayor »  
(Printed name and title)

CONTRACTOR (Signature)

« » « »  
(Printed name and title)

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

## EXHIBIT A

### CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Contractor must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

#### 1. **Commercial General Liability Insurance.**

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
  - a. Include the per project aggregate endorsement;
  - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
  - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
  - d. Includes a severability of interest clause; and
  - e. Waive all rights of recovery against the Additional Insureds.

2. **Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

#### 3. **Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
  - 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
  - 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.
4. **Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.
5. **Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.
6. **Umbrella Coverage.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$5,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.
7. **Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.
8. **Builder's Risk.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Work, including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.
9. **Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.
10. **Term of Coverage**
  - 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

**11. Subcontractor and Lower-Tier Entities Insurance Requirements**

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
  - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
  - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
  - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
  - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

**12. Other Policy Provisions.** Each policy to be furnished by Contractor and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;
- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and

12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

**13. Certificates and Endorsements**

13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;

13.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.

13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

**14. Reduction in Coverage.** Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

**15. Suppliers and Materialmen Coverages**

15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

15.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

**16. Condition Precedent to Starting Work**

16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with

the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

17. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

18. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

19. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

20. **Performance Bond and Payment Bond.**

20.1 The Contractor shall provide surety bonds as follows:

Type	Penal Sum (\$0.00)
Performance Bond	100% of Contract Sum
Labor and Material Payment Bond	100% of Contract Sum

20.2 Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

20.3 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the Owner, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.

20.4 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.

20.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.



# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Playground Replacement- Mitchell-Neilson Elementary School  
711 West Clark Boulevard  
Murfreesboro, TN 37129  
~~«Murfreesboro City Schools Cooling Tower Replacements»~~  
«»  
«»  
«ITB-0312-2024»»  
« »

### THE OWNER:

(Name, legal status and address)

« City of Murfreesboro, Tennessee, »«a municipality organized under the laws of the State of Tennessee »  
«111 West Vine Street »  
«Murfreesboro, TN 37130»

### THE ARCHITECT:

(Name, legal status and address)

Johnson+Bailey Architects P.C.  
100 East Vine Street, Suite 700  
Murfreesboro, TN 37130  
~~«CMTA»»~~  
207 Broad Street, Suite 203  
Chattanooga, Tennessee 37402»»  
«»

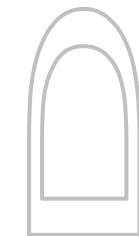
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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information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

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, except as set forth in Sections 5.3 and 5.4, (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.

#### § 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms

in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

#### **§ 1.1.10 Owner Disclaimer of Warranty**

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

#### **§ 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. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

**§ 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.

**§ 1.2.3.1** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

**§ 1.2.3.2** Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

#### **§ 1.2.4 Inconsistencies in Contract Documents**

**§ 1.2.4.1** Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

**§ 1.2.4.2** In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

**§ 1.2.4.3** In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

### **§ 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**

**§ 1.4.1** 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.

**§ 1.4.2** All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

**§ 1.4.3** The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

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

**§ 1.5.1** The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. 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 this Project is not to be construed as publication in derogation of the Owner's ownership interest.

**§ 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 following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. 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**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 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 and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **§ 1.9 Confidentiality**

**§ 1.9.1** The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

**§ 1.9.2** The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

**§ 1.9.3** The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

**§ 1.9.4** The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

**§ 1.9.5** Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

## 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. 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" refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

### § 2.1.2 [Intentionally Deleted]

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

[Intentionally Deleted.]

### § 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 Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

§ 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 Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

### § 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 five business days 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 or nullify 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.

## § 2.6 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## 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.

### § 3.2 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. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 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 design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may

require. 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.

**§ 3.2.2.1** The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

**§ 3.2.2.2** In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

**§ 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 or made known to 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. 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 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. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 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.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

- .1 By making requests for substitutions in accordance with this Section, the Contractor:
- a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

- c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

**.2** The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

### **§ 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, labor, 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. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

**§ 3.5.3** For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

### **§ 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** Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In

connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.3** 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim 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;
- .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; and
- .4** the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

**§ 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.

**§ 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** Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor 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 and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. 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. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

**§ 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, or fails to provide submittals in accordance with the approved 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.

**§ 3.10.4** The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report

constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

**§ 3.10.5** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor’s compliance with the construction schedule.

**§ 3.10.5.1** The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

**§ 3.10.5.2** The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

**§ 3.10.6** The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner’s premises or any tenants or invitees thereof. The Contractor shall, upon the Owner’s request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

### **§ 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. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. 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.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 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.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

§ 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. 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 concept expressed 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 specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

### § 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.

**§ 3.13.2** Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

**§ 3.13.3** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

**§ 3.13.4** Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

**§ 3.13.4.1** Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

**§ 3.13.4.2** The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

### **§ 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. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

**§ 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 Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

### § 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, or made known to, 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 and Owner's agents and employees 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), including loss of use resulting therefrom, 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 Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

## 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. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 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 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 payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

§ 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. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

§ 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 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 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 matter relating to aesthetic effect in connection with administration of the Contract 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 No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the

Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

§ 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

§ 5.3.1 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.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

### § 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 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of 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.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

## **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.

§ 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.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

### **§ 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 Contractor that are not apparent.

§ 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.

### § 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 as provided in Section 7.4.

§ 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. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

### § 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.

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

### § 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. All Construction Change Directives must be on the form designated by Owner.

§ 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 The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; 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 method and the adjustment shall be determined by the Architect 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, the stipulated allowance for overhead and profit as stated in Section 7.3.13.. 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 sales tax and 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.

**§ 7.3.11** The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.14 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

#### § 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. 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.

### 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 notice to proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 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, 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 by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

## 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

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, 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.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

## § 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 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.

§ 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.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 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. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

**§ 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.

**§ 9.3.3.1** The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

**§ 9.3.3.2** The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

**§ 9.3.3.3** Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

## **§ 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.

**§ 9.4.3** If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

### **§ 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.

**§ 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. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.5.5** In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

**§ 9.5.6** If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

## **§ 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.

**§ 9.6.4.1** Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

**§ 9.6.4.2** Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 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.

### § 9.7 Failure of Payment

§ 9.7.1 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.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

### § 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 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. The Architect will make only one inspection to determine Substantial

Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 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.

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

### § 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.

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 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. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

§ 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;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or

- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

§ 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.

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

## 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.

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

### § 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 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. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 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.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

#### § 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 concealed and undisclosed 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. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, 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.

#### § 10.4 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, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as ~~Addendum-Exhibit~~ A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

§ 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

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. 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, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, 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 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.

**§11.6** Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

## **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.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before 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. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contractor is responsible.

#### **§ 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. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. 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. 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 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.

§ 12.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 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 or elsewhere in the Contract Documents, 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. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, 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. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

§ 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.

### § 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

### § 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

### § 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission

of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

### § 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegatee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

### § 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

### § 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

### § 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

### § 13.13 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

## 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 60 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; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

§ 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 persistently 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 persistently 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 persistently 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 sum of the costs of finishing the Work and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2.6 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

#### § 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 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of 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; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a 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. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not

commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 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.

#### § 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.

#### § 15.1.6 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 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

#### § 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.

Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

#### § 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 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, a 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** The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

**§ 15.3 Mediation**  
[Intentionally Omitted]

**§ 15.4 Arbitration**  
All disputes shall be addressed in accordance with Addendum B.

**ADDENDUM A**

**Contractor's Standard Form Subcontract**

**[Cover page – See attached]**

## **ADDENDUM B**

### **DISPUTE RESOLUTION PROCEDURES**

#### **1. Disputes**

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 Contractor and the Owner will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
  - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
  - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

#### **2. Emergency Arbitration**

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
  - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
  - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
  - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")

- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
  - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
  - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

### **3. Non-Emergency Arbitration**

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
  - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
  - b. The two arbitrators then each select a third arbitrator.
  - c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.

- 3.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a “Proposed Resolution”).
- a. Each Party’s Proposed Resolution must be fully dispositive of the dispute.
  - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
  - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
  - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
  - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
  - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.

4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the Owner will continue to make payment to Contractor in accordance with the Contractor Agreement.

5. **Exceptions**

- 5.1 Neither the Owner nor Contractor are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.
- 5.2 The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.
- 5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

**Agenda Item Title:** Approve participation in cooperative purchasing agreement with GHA Technologies

**Board Meeting Date:** January 9, 2024

**Department:** Finance

**Presented by:** Trey Duke

**Board Agenda Category:**

Consent Agenda

Action Item

Reports and Information

---

### Summary

Murfreesboro City Schools is seeking to enter into a cooperative purchasing agreement with GHA Technologies for the purchase of audio/visual equipment, including Promethean interactive displays. State statute allows local governments to participate in cooperative purchasing agreements for the procurement of any supplies or services. The cooperative agreement submitted to the Board for approval would allow the school system to purchase audio and visual products at the same price and under the same terms of the contract awarded by NCPA, Contract Number 01-110.

### Staff Recommendation

Recommend approval of cooperative purchasing agreement with GHA Technologies

### Fiscal Impact

Individual school accounts provide the funding source for materials purchased under this cooperative agreement. The cost of equipment purchases will exceed \$50,000.00 collectively but will align with the budgets provided for each school.

### Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



2552 South Church Street, Suite 100  
Murfreesboro, TN 37127-6342  
Phone: 615-893-2313  
Fax: 615-893-2352  
cityschools.net

MURFREESBORO CITY SCHOOLS  
AND  
GHA TECHNOLOGIES, INC.

Murfreesboro City Schools is a local education agency pursuant to Tennessee Code Annotated § 49-1-103(2). Murfreesboro City Schools agrees to participate in the master agreement with NCPA, a wholly-owned subsidiary of OMNIA Partners, pursuant to Tennessee Code Annotated § 12-3-1205 to allow Murfreesboro City Schools to purchase AUDIO/VISUAL PRODUCTS AND SERVICES at the same price and under the same terms of the contract awarded under NCPA CONTRACT#01-110. Murfreesboro City Schools agrees to be financially and legally responsible for all goods and services purchased under the cooperative purchasing agreement.

MURFREESBORO CITY SCHOOLS

\_\_\_\_\_  
Dr. Bobby N. Duke, III  
Director of Schools

\_\_\_\_\_  
Date

Approved as to Form: \_\_\_\_\_  
Lauren Bush, Assistant City Attorney

By signature below, GHA TECHNOLOGIES, INC. acknowledges that Murfreesboro City Schools is purchasing AUDIO/VISUAL PRODUCTS AND SERVICES pursuant to NCPA CONTRACT#01-110 and subject to the terms of the contract awarded. GHA TECHNOLOGIES, INC. agrees to make Murfreesboro City Schools aware of any substantive or legal changes to the contract referenced above, including termination of the agreement by either party.

INSERT VENDOR NAME

  
\_\_\_\_\_  
Authorized Agent

12/12/2023  
Date

Print Name: Josh Decker

Title: VP of Sales

**Agenda Item Title:** Approve professional services agreement with J + B Architects for Reeves-Rogers Elementary Administrative Addition

**Board Meeting Date:** January 9, 2024

**Department:** Director's Office

**Presented by:** Trey Duke

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

Johnson + Bailey Architects submitted a proposal for architectural services for the administrative addition at Reeves-Rogers Elementary School. This project will consist of a 4,000 square foot addition, 600 square feet of renovation, and a new exterior entrance canopy. These modifications will provide a secured access entry point to the school and provide upgrades for administrative and student support. The proposal from Johnson + Bailey Architects includes a schematic floor plan, project schedule, and construction budget.

**Staff Recommendation**

Recommend approval of the professional services agreement with J + B Architects for Reeves-Rogers Elementary Administrative Addition

**Fiscal Impact**

The Johnson + Bailey Architects proposal recommends a project construction budget of \$2,135,416.00. The total fee proposed for architectural services is \$135,116.00, with supplemental architectural services provided as necessary on an hourly basis pursuant to the fee schedule outlined in the agreement. Available county shared bonds will be used as the funding source for this project in lieu of using the Murfreesboro City Schools fund balance.

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



**Johnson + Bailey Architects P.C.**

January 3, 2024

Mr. Don Barch  
Assistant Superintendent of School Operations  
Murfreesboro City Schools  
2552 South Church Street  
Murfreesboro, TN 37127

Re: Administration Addition at  
Reeves Rogers Elementary School  
Murfreesboro, TN  
J+B No. 2204

Dear Mr. Barch:

In response to your request, Johnson + Bailey Architects is pleased to submit the following proposal for architectural services for the referenced project. This project will consist of a 4,000 square foot addition, 600 square feet of renovation, and new exterior entrance canopy. These modifications are to provide a secured access entry point to the facility and provide upgrades for administrative and student health support.

A proposed Schematic Floor Plan dated 11-27-23 is attached for your reference.

A proposed Project Schedule dated 11-27-23 is attached.

A proposed Construction Budget dated 1-3-24 is attached. We recommend a project construction budget of \$2,136,416.

We propose to provide full architectural services for this project, including civil, structural, mechanical, electrical, and plumbing engineering, along with landscape design. The scope of services includes Schematic Design, Design Development, Construction Documents, Bidding, and Construction Administration services as described in AIA Document B101 - 2017, Standard Form of Agreement Between Owner and Architect. Services also include submitting documents and obtaining the required approvals from to the City of Murfreesboro Board of Zoning Appeals, Planning Commission, Building & Codes, and the State of Tennessee Fire Marshal's Office.

We propose a fee for the above noted services for a percentage of construction cost as outlined in the State Building Commission Architect/Engineer Fee Formula. This is a sliding fee schedule which is used by the State of Tennessee, and is calculated by the formula  $35 / (\log P - 1.15)$ , where P is the construction cost. This formula reduces the fee as the size of the project increases. Due to our ongoing working relationship with Murfreesboro City Schools, we are waiving the 1.25 architectural fee multiplier normally included for renovation work. Base on a building construction cost of \$1,987,000.00, the fee percentage would be 6.8%, resulting in a total fee of \$135,116.00.

In the event that you find this proposal acceptable, please prepare an AIA Document B101 - 2007, Standard Form of Agreement Between Owner and Architect, for execution.

Mr. Don Bartch  
January 3, 2024  
Page 2

Your consideration of Johnson + Bailey Architects for this project is sincerely appreciated. If you have any questions concerning this matter, please do not hesitate to call.

Sincerely,

JOHNSON + BAILEY ARCHITECTS P.C.



R. Lyle Lynch, Architect

encl: Schematic Floor Plan dated 11-27-23  
Project Schedule dated 11-27-23  
Construction Budget dated 1-3-24

cc: Scott Elliott

# Project Schedule

## Administration Addition at Reeves Rogers Elementary School

11-27-23

- December 13, 2023 Start Site Survey
- January 11, 2024 City Council approval of A/E Agreement
- January 12, 2024 Architect's Notice to Proceed
- January 15, 2024 Complete Site Survey
- January 15, 2024 Review Schematic Floor Plan with City Schools Staff
- January 16, 2024 Start Design Development Phase
- February 5, 2024 Review Design Development Drawings with City Schools Staff
- February 6, 2024 Start Construction Documents Phase
- February 9, 2024 Submit Site Plans and Exterior Elevations to BZA
- February 28, 2024 BZA Approval
- March 14, 2024 Submit Site Plans and Exterior Elevations to Planning Commission
- April 4, 2024 Complete Construction Documents
- April 5, 2024 Submit Construction Documents to State Fire Marshal
- April 5, 2024 Submit Construction Documents to Murf. Building & Codes
- April 26, 2024 Receive Review Comments from State Fire Marshal
- May 1, 2024 Planning Commission Approval
- May 10, 2024 Resubmit to State Fire Marshal
- May 24, 2024 State Fire Marshal Approval
- June 3, 2024 Advertise and Release Bid Documents
- July 2, 2024 Receive Bids
- July 3, 2024 Release Bid Tabulation
- July 25, 2024 City Council Approval of Owner/Contractor Agreement
- August 5, 2024 Notice-to-Proceed
- August 5, 2025 Substantial Completion
- August 12, 2025 State Fire Marshal Inspection & Approval
- August 18, 2025 Certificate of Occupancy

# DRAFT AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ←→ninth (9<sup>th</sup>) day of ←→January in the year ←→2024  
(In words, indicate day, month and year.)

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

←→←→  
←→  
←→  
←→City of Murfreesboro  
111 West Vine Street  
Murfreesboro, Tennessee 37130

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

←→←→  
←→  
←→  
←→Johnson + Bailey Architects P.C.  
100 East Vine Street  
City Center, Suite 700  
Murfreesboro, Tennessee 37130

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

←→  
←→  
←→Administration Addition at  
Reeves Rogers Elementary School  
1807 Greenland Drive, Murfreesboro TN 37130  
J+B No. 2204

The Owner and Architect agree as follows.

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

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



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**TABLE OF ARTICLES**

1	INITIAL INFORMATION
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12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

**ARTICLE 1 INITIAL INFORMATION**

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

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

§ 1.1.1 The Owner's program for the Project:

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

~~Incorporated by reference- Johnson + Bailey Architects P.C. proposal letter dated November 27, 2023 January 3, 2024~~ ←→

§ 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.)*

« »

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

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

~~\$1,987,000.00 One Million, Seven Hundred Eighty Seven Thousand Dollars (\$1,787,000.00)~~ ←→

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

.1 Design phase milestone dates, if any:

«→To be determined

.2 Construction commencement date:

«→To be determined

.3 Substantial Completion date or dates:

«→To be determined

.4 Other milestone dates:

«→To be determined

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Traditional tri-partite construction through competitive bidding process and subsequent negotiated contract«→»

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§ 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.)

«→»

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204 2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

«→»  
«→»  
«→»  
«→»  
«→»

«→»Scott Elliott, Manager of Project Development  
111 West Vine Street  
Murfreesboro, TN 37130  
615-893-6441  
sellott@murfreesborotn.gov

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

«→»

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

.1 Geotechnical Engineer:

~~.2~~ Civil Engineer:

←→  
←→  
←→  
←→

~~.3~~ Other, if any:

←→  
←→  
←→  
←→

←→

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

R. Lyle Lynch  
Johnson+Bailey Architects P.C.  
100 East Vine Street, Suite 700  
Murfreesboro, TN 37130  
615-890-4560  
Rlynch@jbarchitects.com

←→  
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←→

~~§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2.  
(List name, legal status, address, and other contact information.)~~

~~§ 1.1.11.1 Consultants retained under Basic Services:~~

~~.4~~ Structural Engineer:

←→  
←→  
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~~.2~~ Mechanical Engineer:

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←→

~~.3~~ Electrical Engineer:



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§ 1.1.11.2 Consultants retained under Supplemental Services:

None←→

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

None ←→

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

~~§ 1.3.1 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 and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, 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.~~

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

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

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

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. Architect shall not cancel or modify any insurance coverage required by this Agreement without at least thirty (30) days' prior written notice to Owner.

§ 2.5.1 Commercial General Liability with policy limits of not less than ~~←→one million dollars (\$←→1,000,000.00)~~ for each occurrence and ~~←→one million dollars (\$1,000,000.00←→)~~ in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$1,000,000.00) ~~(\$ )~~ per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) ~~(\$ )~~ each employee, and one hundred thousand dollar (\$100,000.00) ~~(\$ )~~ policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$1,000,000.00) ~~(\$ )~~ per claim and one million dollars (\$1,000,000.00) ~~(\$ )~~ in the aggregate.

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

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 Indemnification. The Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from any and all claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner arise out of or result from Architect's negligent acts or omissions or intentional misconduct in performing work under this Agreement, except to the extent that such claims arise from the negligent acts or omissions of the City or its employees and agents. Architect's obligation to indemnify, save and hold harmless the Owner shall not be limited to the amount of insurance actually secured under this Agreement, including any insurance above the minimum required, but shall extend to the full amount on any claims, loss or damage incurred or awarded, including costs, expenses and attorneys' fees.

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§ 2.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall exercise due professional care in endeavoring to comply with the requirements imposed by governmental authorities having jurisdiction over the Project, including, but not limited to, applicable Americans with Disabilities Act (ADA) standards. The Architect shall use the standard care ordinarily utilized by other architects designing projects under the applicable standards and in identifying requirements imposed by governmental authorities. The Architect shall also identify to the Owner requirements that may be interpreted as conflicting with other requirements imposed by law.

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### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. ~~The Architect shall review thoroughly the services and information for completeness and sufficiency and provide timely written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.~~

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

~~§ 3.1.7 The Architect shall assist the Owner in determining allowable construction time and amount of liquidated damages.~~

~~§ 3.1.8 In accordance with the standard of care, The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.~~

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

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

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

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

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

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

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Owner's approval of the documents must be in writing to be binding against either party.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Owner's approval of the documents must be in writing to be binding against either party.

### § 3.4 Construction Documents Phase Services

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

~~§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding. The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.~~

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

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

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

#### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

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

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

~~§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~

~~§ 3.6.1.4 The Architect shall be responsible for conducting progress meetings not less than monthly or as needed. The Architect shall also be responsible for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.~~

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§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (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.

§ 3.6.2.2 The Architect ~~has and the Owner shall have~~ the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or ~~otherwise with reasonable promptness timely so as not to affect the Contract Time or the Contract Sum.~~

~~§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents; provided however, the Owner, with advice~~

and assistance from the Architect, shall make final decisions on matters relating to aesthetic effect, Contract Sum, and/or Contract Time.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor**

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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 (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.4 Submittals**

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. ~~of the schedule.~~ The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, ~~in a timely manner so as not to affect the Contract Time or the Contract Sum with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.~~

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

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

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such

requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may ~~order-authorize~~ 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. Subject to Section 4.32, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

- .1 confirm proposed change is a material change to the Contract;
- .2 confirm appropriate credits are included for Work not completed;
- .3 verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
- .4 confirm that the appropriate back up documentation is included and mathematically correct including mark ups and taxes pursuant to the requirements of the Contract Documents.

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#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

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

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Contractor to review the facility operations and performance.



Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>

**§ 4.1.2 Description of Supplemental Services**

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

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

**The Architect is to perform all required Programming and Design Services, and to coordinate all work with the Owner's Consultants. <->**

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

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

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**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

**§ 4.2 Architect's Additional Services**

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

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- ~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
- ~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- .68 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .79 Evaluation of the qualifications of entities providing bids or proposals;
- .840 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .944 Assistance to the Initial Decision Maker, if other than the Architect.

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

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

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

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

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

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~twenty-one (21)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner, with the Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.3.1 The Owner has the right to reject any portion of the Architect's Work on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design Work or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is

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likely to exceed the budget for Cost of the Work. If at any time the Architect's Work is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design Work or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to Work previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional Work or Changes in Services without such written approval by Owner.

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

§ 5.5 The Owner ~~shall may elect~~ to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Owner may, in its sole discretion, request that the Architect secure these services by contracting with a third party.

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.11 Consistent with and in accordance with the applicable standard of care owed by Architect, ~~The~~ Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect. The Owner shall provide timely written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. ~~provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.~~

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall ~~promptly-timely~~ 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.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

~~§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect, in consultation with the Owner, shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

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

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 undertake a good faith effort to obtain necessary and timely approval of City Council for an increase in the budget for the Cost of the Work, as may be necessary, and then if the approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6. If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

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

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

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive, irrevocable, royalty-free, right and license to use the Architect's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovation, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by Owner or Owner's representatives using the Architect's Instruments of Service. The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the

~~Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

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

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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

### § 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

[ < > ] Arbitration pursuant to Section 8.3 of this Agreement

[ ~~X~~ < > ] Litigation in a court of competent whose jurisdiction includes Rutherford County, Tennessee

[ < > ] Other: (Specify)

< >

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

~~§ 8.3 [Intentionally Omitted] Arbitration~~

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

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

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

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

~~§ 8.3.4 Consolidation or Joinder~~

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

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

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

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

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**ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments of undisputed amounts to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven (7) days' written notice to the Owner before suspending services. In the event of a suspension of services, in accordance herewith, the Architect shall have no liability to the Owner for delay or damage

caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension ~~and shall negotiate with the Owner~~ any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project ~~for more than thirty (30) consecutive calendar days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules for completion. Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

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

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

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

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

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

~~.1 — Termination Fee:~~

~~←→~~

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

~~←→ [Intentionally Omitted]~~

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 ~~and Section 9.7.~~

§ 9.10 ~~In the event of any termination under this Article, the Architect consents to the Owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.~~

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## ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. ~~The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.~~

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

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

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

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

~~A fixed fee of \$135,116.00 One Hundred Twenty Two Thousand, Five Hundred Eighty Eight Dollars (\$122,588.00)~~

~~.1 Stipulated Sum  
(Insert amount)~~



~~.2 Percentage Basis  
(Insert percentage value)~~

~~(~~←~~ ~~→~~) % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

~~.3 Other  
(Describe the method of compensation)~~



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

~~Hourly rates for services indicated in this Agreement. ←→~~

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

~~Hourly rates for services indicated in this Agreement. ←→~~

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~←→0~~ percent ( ~~←→0~~%), or as follows:  
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

~~Hourly rates for services indicated in this Agreement.  
←→~~

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

<del>Schematic &amp; Design</del> <del>Development Phase</del>	<del>←→Thirty-Five</del>	percent (	<del>←→35</del>	)	%)
<del>Construction Documents</del> <del>Design Development Phase</del>	<del>←→Forty</del>	percent (	<del>←→40</del>	)	%)
<del>Construction Documents</del> <del>Bidding or Negotiation Phase</del>	<del>←→Five</del>	percent (	<del>←→5</del>	)	%)
<del>Procurement</del> <del>Construction Phase</del>	<del>←→Twenty</del>	percent (	<del>←→20</del>	)	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>)</b>	<b>%)</b>

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§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent

budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. ~~The Architect's rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect's rates may be negotiated with the Owner. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

Employee or Category	Rate (\$0.00)
<u>Architectural Services</u>	
<u>Principal Architect</u>	<u>\$200.00 per hour</u>
<u>Staff Architect</u>	<u>\$150.00 per hour</u>
<u>Intern Architect</u>	<u>\$125.00 per hour</u>
<u>Field Representative</u>	<u>\$100.00 per hour</u>
<u>Draftsman</u>	<u>\$100.00 per hour</u>
<u>Administrative Personnel</u>	<u>\$65.00 per hour</u>

§ 11.8 Compensation for Reimbursable Expenses

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

- ~~.1 Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.13 Permitting and other fees required by authorities having jurisdiction over the Project;~~
- ~~.24 Printing, reproductions, plots, and standard form documents;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.37 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~
- ~~.48 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~
- ~~.5 Third party exploration tests for investigations of existing roof substrates~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 Site office expenses;~~
- ~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~
- ~~.12 Other similar Project related expenditures.~~

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~ten~~ percent (~~10~~%) of the expenses incurred.

~~§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

« »

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of ~~« » zero dollars (\$0.00 « »)~~ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

**§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect'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 Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

~~« » % « » Three percent (3%) per annum~~

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

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

« »

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- ~~.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~*(Insert the date of the E203-2013 incorporated into this agreement.)*~~

~~« »~~

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

~~[ « » ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*~~

~~« »~~

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

<->

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

Johnson + Bailey Architects P.C. proposal letter dated ~~November 27, 2023~~ January 3, 2024

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

City of Murfreesboro

Johnson + Bailey Architects P.C.

**OWNER (Signature)**

<-><-> Craig Tindall, City Manager

Date:

(Printed name and title)

City of Murfreesboro

**APPROVED AS TO FORM:**

Signature

Adam Tucker, City Attorney

Date:

**ARCHITECT (Signature)**

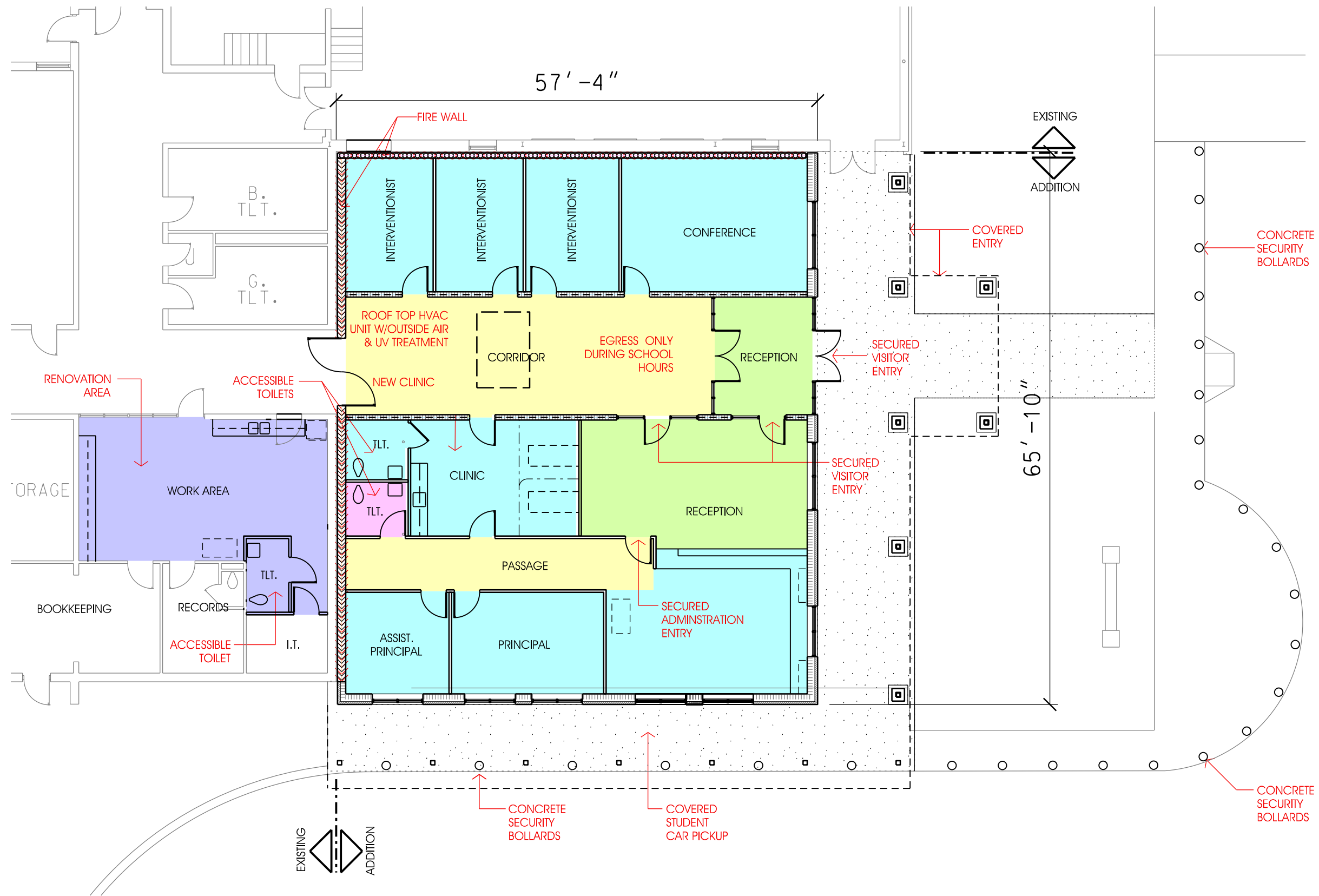
John T. Trail, Vice President

Date: <-><->

(Printed name, title, and license number, if required)

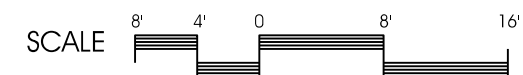
## Construction Budget - Administration Addition at Reeves Rogers Elementary School dated 1-3-24

Building Addition	4,000 Sq. Ft.	\$330/Sq. Ft.	\$1,320,000
Exist. Building Renovations	600 Sq. Ft.	\$240/Sq. Ft.	\$144,000
New Building Canopy	1,700 Sq. Ft.	\$190/Sq. Ft.	\$323,000
Aesthetic Improvements to Existing Building			\$200,000
Building Subtotal			\$1,987,000
A/E Services		6.80%	\$135,116
Site Survey			\$3,300
Construction Testing			\$11,000
Total			\$2,136,416



# Administration Addition at Reeves Rogers Elementary School

Murfreesboro City Schools  
Murfreesboro, Tennessee



**Agenda Item Title:** Approve participation in cooperative purchasing agreement with School Specialty, Inc.

**Board Meeting Date:** January 9, 2024

**Department:** Finance

**Presented by:** Trey Duke

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

### Summary

Murfreesboro City Schools is seeking to enter into a cooperative purchasing agreement with School Specialty for the purchase of school furniture. State statute allows local governments to participate in cooperative purchasing agreements for the procurement of any supplies or services. The cooperative agreement submitted to the Board for approval would allow the school system to purchase school furniture, services, and installation at the same price and under the same terms of the contract awarded by Omnia Partners, Contract Number R191815.

### Staff Recommendation

Recommend approval of cooperative purchasing agreement with School Specialty, Inc.

### Fiscal Impact

Individual school accounts provide the funding source for materials purchased under this cooperative agreement. The year-to-date cost of equipment purchases is \$65,225.00.

### Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



2552 South Church Street, Suite 100  
Murfreesboro, TN 37127-6342  
Phone: 615-893-2313  
Fax: 615-893-2352  
cityschools.net

MURFREESBORO CITY SCHOOLS  
AND  
SCHOOL SPECIALTY, INC.

Murfreesboro City Schools is a local education agency pursuant to Tennessee Code Annotated § 49-1-103(2). Murfreesboro City Schools agrees to participate in the master agreement with School Specialty, Inc. through Omnia Partners pursuant to Tennessee Code Annotated § 12-3-1205 to allow Murfreesboro City Schools to purchase furniture, installation, and related services at the same price and under the same terms of the contract awarded under Contract Number R191815. Murfreesboro City Schools agrees to be financially and legally responsible for all goods and services purchased under the cooperative purchasing agreement.

MURFREESBORO CITY SCHOOLS

\_\_\_\_\_  
Dr. Bobby N. Duke, III  
Director of Schools

\_\_\_\_\_  
Date

Approved as to Form: \_\_\_\_\_  
Lauren Bush, Assistant City Attorney

By signature below, School Specialty, Inc. acknowledges that Murfreesboro City Schools is purchasing furniture, installation, and related services pursuant to Omnia Partners Contract Number R191815 and subject to the terms of the contract awarded. School Specialty, Inc. agrees to make Murfreesboro City Schools aware of any substantive or legal changes to the contract referenced above, including termination of the agreement by either party.

SCHOOL SPECIALTY, INC.

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Agenda Item Title:** Stipend for Qualified Special Education Case Managers

**Board Meeting Date:** January 9, 2024

**Department:** Special Education and Human Resources

**Presented by:** Trey Duke, Director

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

The district has several vacant special education positions which are responsible for serving as Special Education caseload managers for students with individualized education plans. Approved and qualified staff will receive a quarterly stipend to compensate them for the management of additional caseloads until the vacant position is filled.

**Staff Recommendation**

To approve the stipends as outlined for special education teachers who manage caseloads for vacant positions for the remainder of the 2023-2024 school year.

**Fiscal Impact**

Eligible employees who manage the entire IEP caseload for a vacant position will be paid \$1,200 per nine weeks or until the position is filled. Teachers who manage half of the IEP caseload for a vacant position will be paid \$600 per nine weeks. Caseloads can be divided between a maximum of four teachers for the nine weeks or until the position is filled.

**Connection to MCS's Five-Year Strategic Plan**

- Known:** Every student will be *known* through whole-child programs and support.
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## **Stipends for Qualified Special Education Case Managers**

Employees that serve as a case manager for vacant positions shall receive stipends to compensate them for the management of additional caseloads. Eligible employees shall be compensated according to the following guidelines:

- Employees are only eligible to receive this stipend if they are certified in the area for which they are providing extra case management support and are in compliance with their assigned caseload.
- Eligible employees shall receive written approval from the Director of Special Education and the school principal detailing a plan for the division of IEPs and direct instructional services.
- Eligible employees will assume the primary responsibility for managing the IEP plans and ensure all are in compliance.
- Eligible employees will complete a stipend agreement.
- Eligible employees who manage the entire IEP caseload for a vacant position will be paid \$1,200 each nine weeks or until the position is filled. Teachers who manage half of the IEP caseload for a vacant position will be paid \$600 each nine weeks. Caseloads can be divided between a maximum of four teachers each nine weeks or until the position is filled. For example:
  - One certified special education teacher in a school with one vacant position agrees to manage the IEPs and direct instruction for the vacant position. This teacher will receive \$1,200 each nine weeks or up to \$4,800 total for the year.
  - Three certified special education teachers in a school with one vacant position agree to split the caseload for a vacant position. Each teacher will receive \$400 each nine weeks, or up to \$1,600 total each for the year.
- Teachers managing the full caseload for a vacant interim position will receive \$133 per week or until the vacant interim position is filled.
- Stipend payments will be processed in January for the 1<sup>st</sup> semester and in June for the 2<sup>nd</sup> semester. Stipends will be paid as a separate check and will not be included in the payroll.
- If the vacant position is filled, the caseload will transition to the newly hired teacher. If this is prior to the end of the nine weeks, the stipend will be prorated at a daily rate.

*Eligible employees for special education stipend:*

BEST Teachers, CDC Teachers, Resource Teachers, Gifted Case Managers, Speech Language Pathologist

**Agenda Item Title:** Approval of a Resolution to Oppose Education Savings Account Legislation

**Board Meeting Date:** January 9, 2024

**Department:** Director of Schools

**Presented by:** Trey Duke

**Board Agenda Category:**

- Consent Agenda
  - Action Item
  - Reports and Information
- 

**Summary**

On November 28, 2023, Governor Bill Lee proposed to expand Tennessee’s current education savings account program throughout the state to allow approximately 20,000 K-12 students to be eligible for the program to attend a private or home school. The proposal, currently referred to as the “Education Freedom Scholarship Act” would offer \$7075.00 annually for each participating student. A draft of the bill has not been published and the final details of the legislation are undetermined at this time.

The proposed resolution broadly opposes any state funding being appropriated for an education savings account program or other similar voucher programs. If approved, the resolution will be signed and delivered to the Governor, the Lieutenant Governor, the Speaker of the House, and every member of the General Assembly.

**Staff Recommendation**

Approve the resolution opposing education savings account legislation.

**Fiscal Impact**

No fiscal impact

**Connection to MCS’s Five-Year Strategic Plan**

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- Empowered:** Every student will be *empowered* through academic success

## **A RESOLUTION TO OPPOSE EDUCATION SAVINGS ACCOUNT PROGRAMS**

WHEREAS, the Murfreesboro City Schools Board of Education emphatically believes that public education is a critical contributor to local communities as pillars of education, employment, and family engagement;

WHEREAS, legislation proposed by Governor Bill Lee on November 28, 2023, would create an education savings account program that will, in part, allow taxpayer dollars to pay tuition and fees at participating private schools for approximately 20,000 students annually;

WHEREAS, proposed legislation would allocate approximately \$7,075.00 per student participating in the education savings account program which is more than the per pupil allocation that public schools receive from the State;

WHEREAS, Tennessee continues to rank in the bottom 10 states for school spending per pupil (U.S. Census Bureau) and does not provide adequate funding for its public schools, and any diversion of needed resources for an education savings account program would further diminish the ability of Tennessee public schools to meet mandated accountability standards and address achievement gaps among students;

WHEREAS, the Constitution of the State of Tennessee requires the Tennessee General Assembly to “provide for the maintenance, support, and eligibility standards of a system of free *public* schools” with no reference to the maintenance or support of private schools;

WHEREAS, private schools may choose to deny students, are not required to meet the same academic standards as public schools, and are not required report test results, graduation rates, or other performance measures to the public or parents whose children attend the private school;

WHEREAS, the Board believes that competition is beneficial for the overall quality of education, but asserts that competition must be on fair terms, especially when involving the receipt of taxpayer funding in the form of education savings accounts, vouchers, or similar taxpayer-funded programs; and,

WHEREAS, Murfreesboro City Schools provides a high-quality education to every student who lives within its geographic boundaries, is eligible to attend, and seeks an education at a district school, including students with needs beyond those of their typically developing peers, despite underfunded and unfunded mandates from the Tennessee legislature.

NOW, THEREFORE, BE IT RESOLVED, the Murfreesboro City Schools Board of Education hereby opposes any legislation or other similar effort to create an education savings account, voucher, or similar taxpayer-funded program in Tennessee.

BE IT FURTHER RESOLVED, that if legislation is considered by the Tennessee General Assembly to create an education savings account, voucher, or similar taxpayer-funded program

in Tennessee, such legislation should subject participating private schools to the same accountability standards and educational mandates of public schools for purposes of public transparency.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be delivered to the Governor, the Lieutenant Governor, the Speaker of the House, and every member of the General Assembly.

ADOPTED THIS 9<sup>th</sup> day of January 2024.

---

**MURFREESBORO CITY SCHOOLS BOARD OF EDUCATION**

  
\_\_\_\_\_  
Butch Campbell, Chair

  
\_\_\_\_\_  
Jimmy Richardson, III, Vice Chair

  
\_\_\_\_\_  
Wesley Ballard

  
\_\_\_\_\_  
Karen Dodd

  
\_\_\_\_\_  
Bobby N. Duke III, Director of Schools

  
\_\_\_\_\_  
David Settles

  
\_\_\_\_\_  
Amanda Moore

  
\_\_\_\_\_  
Barbara Long

**COMPARISON OF BUDGET TOTALS**  
**July 1, 2023 Through November 30, 2023**

<b>TOTAL INCOME</b>	<b>7/1/23 - 11/30/23</b>	<b>\$</b>	<b>33,212,370</b>
<b>TOTAL EXPENSES</b>	<b>7/1/23 - 11/30/23</b>		<b><u>36,333,510</u></b>
<b>NET INCOME</b>	<b>11/30/23</b>	<b>\$</b>	<b><u><u>(3,121,141)</u></u></b>

**YEAR-TO-DATE REVENUE COMPARISON**

	BUDGET CLASS.	2022-23 BUDGET	2022-23 YTD REV.	2022-23 OVR/(UNDR) BUDGET	2022-23 % Received	2023-24 BUDGET	2023-24 YTD REV.	2023-24 OVR/(UNDR) BUDGET	2023-24 % Received
1	40110-Current Prop. Tax	15,000,000	794,038	(14,205,962)	5.3%	15,000,000	797,522	(14,202,478)	5.3%
2	40210-Local Option Sales Tax	14,300,000	4,269,846	(10,030,154)	29.9%	14,300,000	4,252,699	(10,047,301)	29.7%
3	40000-41110-Other County Rev	1,761,800	621,085	(1,140,715)	35.3%	1,761,800	545,210	(1,216,590)	30.9%
4	43300-44000-Other Local Revenue (Interest, Tuition)	950,926	228,755	(722,171)	24.1%	977,926	375,872	(602,054)	38.4%
	<i>SUBTOTAL LOCAL REVENUE</i>	\$ 32,012,726	\$ 5,913,724	\$ (26,099,002)		\$ 32,039,726	\$ 5,971,303	\$ (26,068,423)	
5	46310-Project Diabetes Grant	142,600	-	(142,600)	0.0%	93,900	-	(93,900)	0.0%
6	46510-TISA	52,851,000	21,140,400	(31,710,600)	40.0%	59,149,465	23,687,898	(35,461,567)	40.0%
7	46515-Early Childhood Ed. (VPK Grant)	1,063,812	345,029	(718,783)	32.4%	1,063,812	171,555	(892,257)	16.1%
8	46590-Other State Education (Summer Learning Grant)	1,521,737	-	(1,521,737)	0.0%	-	-	-	N/A
9	46610-Career Ladder Program	82,000	40,308	(41,692)	49.2%	56,000	36,640	(19,360)	65.4%
10	46591-Coordinated School Health (ended FY23)	100,000	41,474	(58,526)	41.5%	-	-	-	N/A
11	46595-Family Resource (ended FY23)	29,600	12,338	(17,262)	41.7%	-	-	-	N/A
12	46800-46990-Safe Schools Grant (ends 12/31/23)	302,513	13,388	(289,125)	4.4%	523,542	-	(523,542)	0.0%
	<i>SUBTOTAL STATE REVENUES</i>	\$ 56,093,262	\$ 21,592,937	\$ (34,500,325)		\$ 60,886,719	\$ 23,896,093	\$ (36,990,626)	
13	47000- Federal Funds	516,921	-	(516,921)	0.0%	24,000	-	(24,000)	0.0%
	<i>SUBTOTAL FEDERAL REVENUES</i>	\$ 516,921	\$ -	\$ (516,921)		\$ 24,000	\$ -	\$ (24,000)	
14	49100-49800 Insurance Recovery/Indirect Costs	455,000	-	(455,000)	0.0%	460,000	21,078	(438,922)	4.6%
15	49810-City of Murfreesboro Allocation	7,885,103	3,285,460	(4,599,643)	41.7%	7,885,103	3,285,460	(4,599,643)	41.7%
16	49820-City TN All Corp Grant	500,000	-	(500,000)	0.0%	323,745	38,436	(285,309)	11.9%
	<i>SUBTOTAL OPERATING TRANSFERS</i>	\$ 8,840,103	\$ 3,285,460	\$ (5,554,643)		\$ 8,668,848	\$ 3,344,974	\$ (5,323,874)	
	<b>TOTAL REVENUES</b>	<b>\$ 97,463,012</b>	<b>\$ 30,792,121</b>	<b>\$ (66,670,891)</b>	<b>31.6%</b>	<b>\$ 101,619,293</b>	<b>\$ 33,212,370</b>	<b>\$ (68,406,923)</b>	<b>32.7%</b>

YEAR-TO-DATE EXPENDITURE COMPARISON

NOVEMBER 2023

PAGE 1

	BUDGET CLASS.	2022-23 BUDGET	2022-23 YTD EXP.	2022-23 OVR/(UNDR) BUDGET	2022-23 %	2023-24 BUDGET	2023-24 YTD EXP.	2023-24 OVR/(UNDR) BUDGET	2023-24 %
1	71100-Reg. Instruction	54,131,308	17,784,180	(36,347,128)	32.9%	55,820,819	\$ 18,896,948	(36,923,871)	33.9%
2	71200-Sp. Ed. Instruction	11,069,380	3,461,383	(7,607,997)	31.3%	12,284,140	3,936,544	(8,347,596)	32.0%
3	71400-Student Body Ed.	-	-	-	N/A	-	-	-	N/A
4	72110-Attendance	182,175	75,244	(106,931)	41.3%	160,965	64,444	(96,521)	40.0%
5	72120-Health Services	618,920	155,421	(463,499)	25.1%	1,072,249	298,111	(774,138)	27.8%
6	72130-Guidance	3,310,196	1,054,336	(2,255,860)	31.9%	3,623,785	1,276,302	(2,347,483)	35.2%
7	72210-Reg. Instr. Support	2,391,127	883,160	(1,507,967)	36.9%	2,448,513	916,532	(1,531,981)	37.4%
8	72220-Sp. Ed. Support	1,826,392	596,177	(1,230,215)	32.6%	1,882,110	617,553	(1,264,557)	32.8%
9	72250-Technology	2,464,180	933,372	(1,530,808)	37.9%	2,674,265	1,105,638	(1,568,627)	41.3%
10	72310-Bd. Of Education	1,751,350	719,739	(1,031,611)	41.1%	1,852,181	969,855	(882,326)	52.4%
11	72320-Office of Supt.	423,750	158,879	(264,871)	37.5%	438,963	161,872	(277,091)	36.9%
12	72410-Office of Principal	5,217,780	1,888,272	(3,329,508)	36.2%	5,628,525	2,080,239	(3,548,286)	37.0%
13	72510-Fiscal Services	754,345	325,934	(428,411)	43.2%	886,045	389,187	(496,858)	43.9%
14	72520-Personnel Services	505,320	199,530	(305,790)	39.5%	594,415	244,696	(349,719)	41.2%
15	72610-Oper. Of Plant	6,691,130	2,422,692	(4,268,438)	36.2%	6,371,800	2,117,366	(4,254,434)	33.2%
16	72620-Maint. Of Plant	3,092,033	876,065	(2,215,968)	28.3%	3,748,432	1,109,493	(2,638,939)	29.6%
17	72710-Pupil Transp.	4,092,271	1,307,275	(2,784,996)	31.9%	4,221,565	1,430,203	(2,791,362)	33.9%
18	73300-Community Service	444,655	120,420	(324,235)	27.1%	522,655	157,641	(365,014)	30.2%
19	73400-Early Childhood Educ.	1,166,640	348,801	(817,839)	29.9%	1,079,995	347,462	(732,533)	32.2%
20	76100-Reg. Cap. Outlay	130,000	33,704	(96,296)	25.9%	171,872	135,669	(36,203)	78.9%
21	82130-Education Debt Serv.	-	-	-	N/A	-	-	-	N/A
22	99100-Operating Transfers	776,800	118,235	(658,565)	15.2%	217,610	77,755	(139,855)	35.7%
	<b>TOTALS</b>	<b>101,039,752</b>	<b>33,462,820</b>	<b>\$ (67,576,932)</b>	<b>33.1%</b>	<b>105,700,904</b>	<b>36,333,510</b>	<b>\$ (69,367,394)</b>	<b>34.4%</b>

# Period 4 Enrollment and Attendance Summary

11/10/23 - 12/14/23

## Average Attendance Percentage

**94.5%**

-0.04% from previous period

## 2023-24 through Current Period

**9,408 students**

10 students from previous period

## Truancy

*10+ Days Unexcused Absences*

**75 Students**

-76 students from previous year at this same time

## Chronic Absenteeism

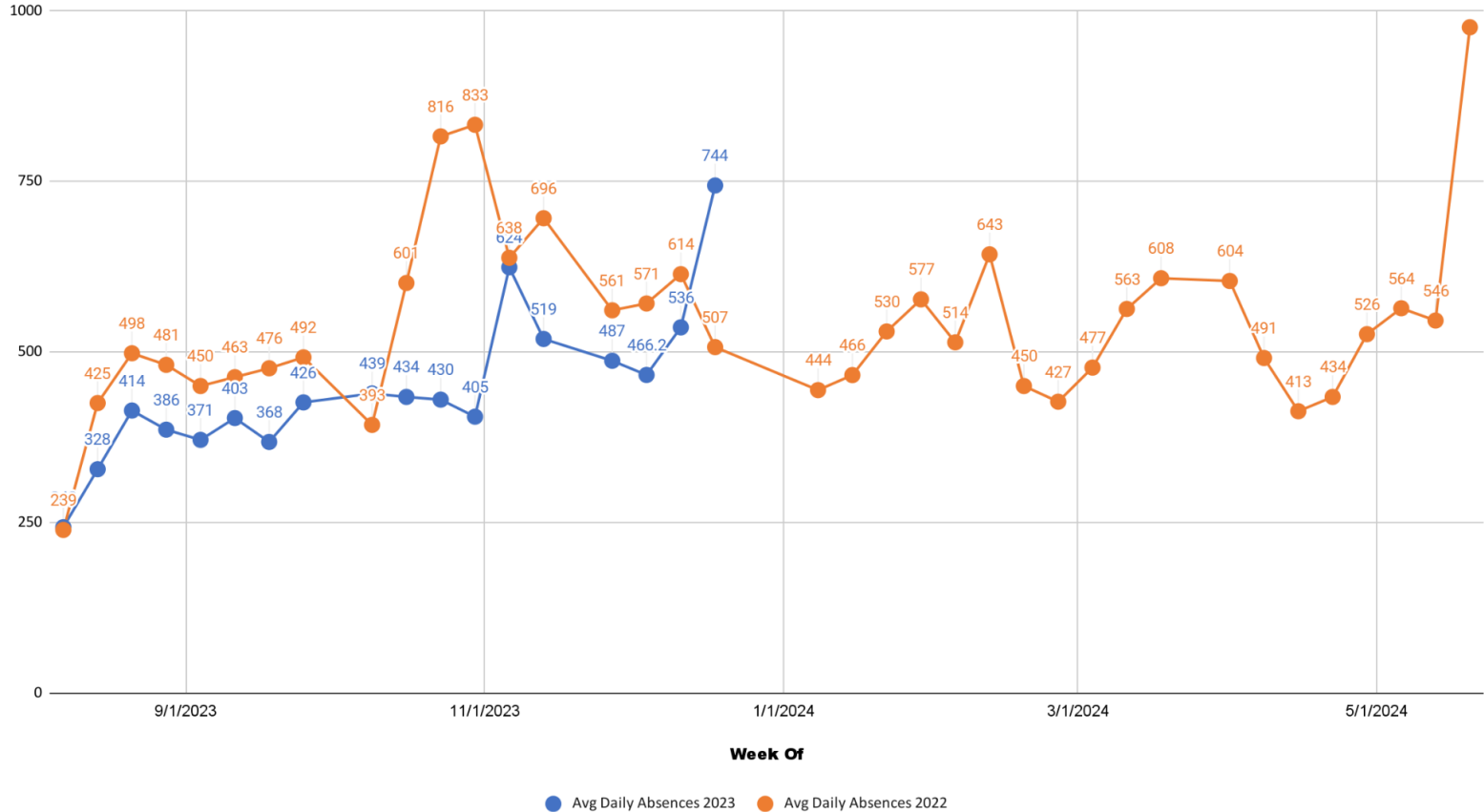
*10+ Days Excused and Unexcused Absences*

**12% (1,097 students with 8+ Days)**

-7% from previous year at this same time

Regular Education PTR	Pupils	Teachers	PTR
Kindergarten through 3rd Grade	5,570	300	18.57
4th Grade through 6th Grade	3,179	157	20.25
District Totals	8,749	457	19.14

## Average Daily Absences 2023 vs Average Daily Absences 2022



## Enrollment Period 4 - 11/10/2023 to 12/14/2023

	K-6 Gen Ed Totals	PS VPK	PS SpEd	PS Peers	CDC	BEST	Deaf Ed	TOTALS
Black Fox	795	39			33			867
Bradley	354							354
Cason Lane	700	99	30	20	32			881
Discovery	391							391
Erma Siegel	787		16	12	25		3	843
Hobgood	605				15			620
John Pittard	750	40	23	9	23			845
Mitchell-Neilson	532	40	24	11		18		625
Northfield	614	20	14	12	41			701
Overall Creek	977				12			989
Reeves-Rogers	362							362
Salem	949				19			968
Scales	933				29			962
								9408

Total Growth Over Period 9 22-23	
Period 9 2022-2023 -----	<b>9301</b>
Growth from 22-23 to 23-24 ---	<b>107</b>

TISA Funded Growth Over Period 9 22-23	
Period 9 2022-2023 -----	<b>8881</b>
Growth from 22-23 to 23-24 ---	<b>118</b>

TISA Funded Growth by Reporting Period	
Period 4 2022-2023 -----	<b>8938</b>
Growth from 22-23 to 23-24 ---	<b>61</b>

Average Attendance Percentage
94.5%

Totals	8749	238	107	64	229	18	3	9408
	K-6 Gen Ed Total	PS VPK	PS SpEd	PS Peers	CDC	BEST	Deaf Ed	
TISA Funded	8749				229	18	3	8999
Non-TISA Funded		238	107	64				409

## PTR Period 4 - 11/10/2023 to 12/14/2023

	Kindergarten			1st Grade			2nd Grade			3rd Grade			Total	Total	K-3 PTR	4th Grade			5th Grade			6th Grade			Total	Total	4-6 PTR	Total K-6
	P	#	PTR	P	#	PTR	P	#	PTR	P	#	PTR	Pupils	Teachers	Ratio	P	#	PTR	P	#	PTR	P	#	PTR	Pupils	Teachers	Ratio	
<b>Black Fox</b>	121	6	20.17	110	6	18.33	154	8	19.25	110	6	18.33	495	26	19.04	107	5	21.40	124	5	24.80	69	3	23.00	300	13	23.08	<b>795</b>
<b>Bradley</b>	46	3	15.33	64	3	21.33	52	3	17.33	43	3	14.33	205	12	17.08	57	3	19.00	50	3	16.67	42	2	21.00	149	8	18.63	<b>354</b>
<b>Cason Lane</b>	114	7	16.29	125	7	17.86	113	6	18.83	103	6	17.17	455	26	17.50	106	5	21.20	104	5	20.80	35	2	17.50	245	12	20.42	<b>700</b>
<b>Discovery</b>	60	3	20.00	60	3	20.00	60	3	20.00	60	3	20.00	240	12	20.00	66	3	22.00	66	3	22.00	19	1	19.00	151	7	21.57	<b>391</b>
<b>Erma Siegel</b>	126	7	18.00	120	7	17.14	152	8	19.00	127	7	18.14	525	29	18.10	135	6	22.50	127	6	21.17				262	12	21.83	<b>787</b>
<b>Hobgood</b>	116	6	19.33	88	5	17.60	94	5	18.80	90	5	18.00	388	21	18.48	87	4	21.75	79	4	19.75	51	3	17.00	217	11	19.73	<b>605</b>
<b>John Pittard</b>	121	6	20.17	103	6	17.17	115	6	19.17	114	6	19.00	453	24	18.88	116	6	19.33	133	6	22.17	48	3	16.00	297	15	19.80	<b>750</b>
<b>Mitchell-Neilson</b>	81	4	20.25	101	6	16.83	63	4	15.75	86	5	17.20	331	19	17.42	71	4	17.75	78	4	19.50	52	3	17.33	201	11	18.27	<b>532</b>
<b>Northfield</b>	89	5	17.80	93	5	18.60	106	6	17.67	88	5	17.60	376	21	17.90	102	5	20.40	114	5	22.80	22	1	22.00	238	11	21.64	<b>614</b>
<b>Overall Creek</b>	158	8	19.75	140	7	20.00	168	8	21.00	157	8	19.63	623	31	20.10	153	8	19.13	169	8	21.13	32	2	16.00	354	18	19.67	<b>977</b>
<b>Reeves-Rogers</b>	68	3	22.67	54	3	18.00	52	3	17.33	69	4	17.25	243	13	18.69	64	3	21.33	55	3	18.33				119	6	19.83	<b>362</b>
<b>Salem</b>	126	8	15.75	161	8	20.13	154	8	19.25	162	8	20.25	603	32	18.84	166	8	20.75	125	7	17.86	55	3	18.33	346	18	19.22	<b>949</b>
<b>Scales</b>	151	8	18.88	170	9	18.89	173	9	19.22	139	8	17.38	633	34	18.62	162	8	20.25	138	7	19.71				300	15	20.00	<b>933</b>
<b>Totals by Grade</b>	Kindergarten			1st Grade			2nd Grade			3rd Grade			4th Grade			5th Grade			6th Grade									
	1377	74	18.61	1389	75	18.52	1456	77	18.91	1348	74	18.22	1392	68	20.47	1362	66	20.64	425	23	18.48				<b>8749</b>			
															<b>Total K-6</b>													

Regular Education PTR			Pupils	Teachers	PTR
Kindergarten thru Third Grade	-----		5570	300	18.57
Fourth Grade thru Sixth Grade	-----		3179	157	20.25
District Totals			8749	457	19.14

## TRUANCY 10+ Days (Unexcused Absences)

	Period 1		Period 2		Period 3		Period 4		Period 5		Period 6		Period 7		Period 8		Period 9	
	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23
<b>Black Fox</b>	-	2	-	1	1	4	5	7		18		24		30		48		62
<b>Bradley</b>	-	2	1	2	1	4	1	7		3		11		5		15		24
<b>Cason Lane</b>	-	7	1	12	4	14	6	31		41		60		57		83		104
<b>Discovery</b>	-	-	-	-	-	-	-	-		1		2		-		1		3
<b>Erma Siegel</b>	-	-	-	-	-	3	1	3		7		11		13		21		29
<b>Hobgood</b>	-	-	1	2	-	9	7	9		25		23		38		61		87
<b>John Pittard</b>	1	2	2	9	6	22	14	29		28		63		65		95		110
<b>Mitchell-Neilson</b>	-	5	-	3	3	11	12	19		28		42		38		68		90
<b>Northfield</b>	-	2	2	4	3	7	3	12		14		18		19		27		38
<b>Overall Creek</b>	-	-	4	1	2	1	2	1		2		3		2		7		9
<b>Reeves-Rogers</b>	1	-	2	-	6	4	10	6		9		24		28		44		70
<b>Salem</b>	-	6	1	6	4	9	10	18		18		34		33		60		73
<b>Scales</b>	-	-	-	-	2	3	4	9		15		34		44		65		94
<b>Total Students</b>	<b>2</b>	<b>26</b>	<b>14</b>	<b>40</b>	<b>32</b>	<b>91</b>	<b>75</b>	<b>151</b>	<b>-</b>	<b>209</b>	<b>-</b>	<b>349</b>	<b>-</b>	<b>372</b>	<b>-</b>	<b>595</b>	<b>-</b>	<b>793</b>

## Chronic Absenteeism = missing 10% or more (Excused and Unexcused)

	Period 1 (2+ days)		Period 2 (4+ days)		Period 3 (6+ days)		Period 4 (8+ days)		Period 5 (10+ days)		Period 6 (12+ days)		Period 7 (14 + days)		Period 8 (16+ days)		Period 9 (18+ days)	
	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23	23-24	22-23
<b>Black Fox</b>	170	165	129	119	97	123	100	133		117		112		121		104		88
<b>Bradley</b>	75	94	49	84	38	87	29	76		69		69		50		45		45
<b>Cason Lane</b>	161	210	113	207	100	199	103	180		160		157		131		138		124
<b>Discovery</b>	30	47	16	35	10	65	14	46		35		33		28		21		18
<b>Erma Siegel</b>	109	151	71	120	55	112	47	119		95		92		81		71		61
<b>Hobgood</b>	151	182	119	156	130	176	123	155		137		139		156		126		115
<b>John Pittard</b>	142	153	112	153	101	139	100	139		116		131		132		113		110
<b>Mitchell-Neilson</b>	136	156	120	121	117	169	116	144		131		136		143		108		101
<b>Northfield</b>	126	178	113	137	89	156	73	112		100		103		107		91		80
<b>Overall Creek</b>	163	179	111	126	92	132	95	122		100		92		77		65		57
<b>Reeves-Rogers</b>	78	110	67	84	66	80	67	74		66		73		62		70		68
<b>Salem</b>	141	180	114	159	107	155	97	140		121		131		114		107		106
<b>Scales</b>	153	227	141	230	138	231	133	225		206		196		163		155		141
<b>District Total</b>	1635	2032	1275	1731	1140	1824	1097	1665	-	1453	-	1464	-	1365	-	1214	-	1114
<b>Internal %</b>	18%	23%	14%	20%	13%	21%	12%	19%	-	16%	-	17%	-	15%	-	14%	-	13%