

Committee of the Whole - Learning Model Update / Facilities Project Contracts

Duluth Public Schools, ISD 709

Agenda

Monday, December 21, 2020

VIA VIDEO CONFERENCE

Google Meet

Duluth, MN 55802

6:00 PM

(or to follow the closed session)

1. **Call to Order**
2. **Roll Call**
3. **Learning Model/Governor's Order Update** **2**
Superintendent Magas
4. **Facilities Project Management Contract (ICS)** **50**
5. **Adjournment**

2020-21 SCHOOL YEAR



**DULUTH PUBLIC SCHOOLS
RETURN TO LEARN PLANNING**

www.ISD709.org/ReturnToLearn

2020 Return to Learn

Return to Learn Update

2020 Return to Learn



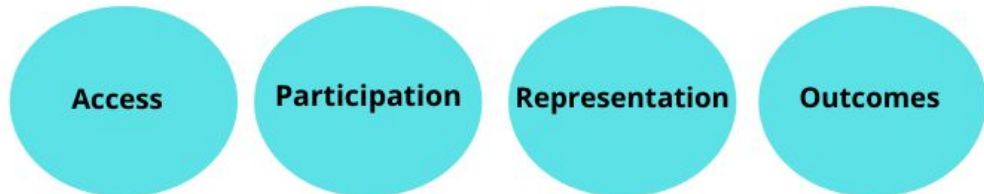
ISD 709

Guiding Principles

FOR RE-OPENING SCHOOLS

- 1 Ensure the safety and wellness of students and staff
- 2 Deliver high-quality instruction to students, regardless of delivery model
- 3 Equity: Ensuring all means all
- 4 Optimize use of resources (space & materials)
- 5 Community and stakeholder engagement in plan development

Equity Criteria:



ISD709.org/Equity

Previously Shared Model

Given current and projected COVID rates, we will be in distance learning at elementary and secondary levels will continue through at least the end of first semester on January 21, 2021.

2020 Return to Learn

Objectives

- To review the new state guidance
- To review the planning necessary to restart full in-person classes for kindergarten through second grade on Monday, January 25, and grades three through five on Monday, February 8. (*Families may choose to remain in distance learning*)

2020 Return to Learn

Governor's New Guidance

The new state guidance is designed to prioritize in-person learning for the state's youngest students. Per the Governor's announcement:

- Schools play a critical role in the health, well-being, and education of Minnesota's children.
- Youngest kids are less susceptible to serious complications from COVID-19.
- We have learned how to reduce spread in schools from success in other settings.

[Recent research shared by the CDC](#) indicates that children who tested positive for COVID 19 were more likely to have attended gatherings such as weddings, parties and playdates and not as likely to have attended child care or school in-person.

2020 Return to Learn

According to the [new state guidelines](#), returning to full in-person learning at elementary requires a rolling start, with no more than 3 grade level bands added during a two-week period.

[Minnesota's Safe Learning Plan](#) requires 2 to 5 days for preparation and transition to a less restrictive model change. We would use three days, beginning after the Martin Luther King Jr. holiday Monday January 18. Friday January 22 is semester break.

As per the state's Safe Learning Plan, our middle school and high school students must continue with distance learning, with exploration and planning for returning to in-person learning as conditions and guidance allow.

Next Steps:

- Continue planning for safe and successful return to in-person instruction
- Conduct consultation with Minnesota Department of Health regarding secondary schools on January 4th
- Implement process to determine who wishes to remain in distance learning
- Continue to monitor and implement quickly changing state and local guidance
- Continue communication and collaboration with all stakeholders

2020 Return to Learn

Additional Resource Sides

2020 Return to Learn

Based on evolving knowledge and understanding of the virus, the Safe Learning Plan has been updated so that early learning and elementary schools reduce the use of county data as a singular determining point when considering their learning models, and mitigation strategies are increased.

The intent is to help get students back in classrooms while keeping students, families, educators and staff safe.

2020 Return to Learn

Every early learning program and elementary school across the state may choose to operate an in-person or hybrid learning model as long as they are able to implement the additional mitigation strategies listed below including a rolling start process in which students will gradually be brought back in the building.

2020 Return to Learn

Middle school and high schools will follow the same protocol and parameters listed in steps one through five of the Safe Learning Plan to determine their learning models.

Policy Option	Range (14-day case rate per 10,000 people)
In-person learning for all students	0 to less than 10
Elementary in-person, Middle/high school hybrid	10 to less than 20
Both hybrid	20 to less than 30
Elementary hybrid, Middle/high school distance	30 to less than 50
Both distance	50 or more

2020 Return to Learn

Middle and high schools must either follow the plans they have shared with families about their learning model, or they can choose a more restrictive model.

2020 Return to Learn

Any school – elementary, middle, or high school – that is in-person learning or hybrid learning must implement the mitigation strategies listed below.

In order to safely transition to an in-person learning model, the Minnesota Department of Health and Minnesota Department of Education require schools implement a rolling start process in which students will gradually be brought back in the building.

For an acceptable rolling start strategy, no more than three additional grades bands can be introduced into the building in a two week time period when implementing an in-person learning model for the entire school building. This includes schools transitioning from hybrid learning or distance learning to in-person learning, and schools transitioning from distance learning to hybrid learning.

Additional Required Mitigation Strategies and Tools Schools Must Implement for Any In-Person or Hybrid Learning Model:

- Implement a rolling start process for students to be brought back to the building.
- Execute COVID-19 testing program (training and saliva test kits provided by the State; optional for school staff) every other week for all school staff, beginning January 4, 2021.
- Face masks and face shields must be worn together by school staff at all times.
- When educators cannot be six feet from students (small group and individual instruction), when possible add a clear barrier between the adult and student.

Additional Required Mitigation Strategies and Tools Schools Must Implement for Any In-Person or Hybrid Learning Model

- Face coverings must be worn when engaging in indoor physical activity (e.g., during indoor recess, indoor physical education class, or when exercising in a gym)
- For early learning and elementary schools only: All student meal times and specialist lessons must be held in the classroom or outside (weather permitting). Physical education classes may continue to be held indoors outside of individual classrooms so long as students and staff are wearing face coverings.
- For in-person only: three feet of physical distancing or more is strongly recommended

Required for In-Person and Hybrid Learning

- Prioritize COVID-19 testing every other week for all staff, beginning January 4, 2021
- Face masks and shields worn together by staff at all times
- When educators cannot be 6ft from students (small group and individual instruction), when possible add a clear barrier between the adult and student
- For early learning and elementary schools only: Students remain in classroom for entire school day, excluding outdoor recess time and physical education classes.
 - Meals will be served in the classroom
 - Teacher rotate into classrooms depending on subjects

On-site Saliva Testing for All Minnesota School Staff In-Person or Hybrid Learning

Regular testing is one of many critical strategies for controlling the spread of COVID-19 in our communities and supporting our frontline workers in schools. As Governor Walz continues to prioritize in-person learning while protecting the health and safety of students, staff and families, we know that increasing our capacity to test school staff is important.

Governor Walz has asked the Minnesota Department of Education and Minnesota Department of Health to update the Safe Learning Plan, directing all Minnesota public schools who are providing in-person learning (whether as part of an in person or hybrid learning model) to offer testing for all on-site staff every two weeks beginning January 4, 2021, or whenever they return to in-person learning after that date.

The State of Minnesota will supply schools with the training and test kits they need to conduct testing every other week. Minnesota's nonpublic and tribal schools will also have access to testing supplies if they choose to offer tests to their staff. The length of this program is contingent on funding.

In order to manage capacity of testing labs, each school will be assigned a designated day to conduct testing. School COVID-19 coordinators will be trained to oversee staffs' use of self-administered saliva tests for their school communities.

These tests will be conducted in-person and will not use the same online format as the at-home saliva tests that schools were provided at the beginning of the 2020-21 school year.

Safe Learning Plan for the 2020-21 School Year

A Localized, Data-Driven Approach

Minnesota Department of Education

Introduction

Spring 2020 brought unprecedented changes to society and our education system. Following two months of statewide distance learning, Minnesota public schools have spent summer 2020 developing contingency plans for the 2020-21 school year, based on [guidance from the Minnesota Department of Education](#) (MDE) and [public health guidelines](#) from the Minnesota Department of Health (MDH). During this time, MDE has made significant [public engagement efforts](#) to understand how we can better serve all Minnesota students and families, while protecting the health and safety of our school communities.

This document explains the Safe Learning Plan for the 2020-21 School Year and outlines resources and supports that are available to school districts and charter schools for the upcoming school year.

While reopening school buildings for in-person instruction is what we want for our students, the main priority must continue to be the health, safety and wellness of our students, staff and community.

Vision

Minnesota is the best state in the country for children to grow up in—those of all races, ethnicities, religions, economic statuses, gender identities, sexual orientations, (dis)abilities and ZIP codes.

Purpose

Ensure that every student in the state of Minnesota receives an equitable education and has equal access to learning and instruction during the COVID-19 pandemic.

Safe Learning Plan Goals

1. Prioritize the safety of students and staff
2. Prioritize in-person learning, especially for younger learners
3. Consider infectiousness and transmission risk among different ages
4. Support planning, while permitting flexibility for districts
5. Take into account disease prevalence at a local level

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Minnesotans,

While our state continues to combat COVID-19, we know Minnesotans have conflicting feelings about the upcoming school year. Some families are afraid for the safety of our students, school staff, and the families they go home to. Others are eager to get teachers and children back into the classroom, where our kids learn best. Many more feel a mixture of both. As a former teacher for more than 20 years and the parent of a child in public school, I am committed to providing the best education to our students while keeping them and their teachers safe.

I followed three principles as I worked with the Departments of Education and Health on a plan for the 2020-21 school year. First, our top priority was the safety, health, and well-being of students, staff, and families. Second, we continue to make data-driven decisions, leaning on science and research to make the best decisions for our state. And finally, we would respect the importance of local school districts, their expertise of their unique communities, and their commitment to making the best decisions for their students.

That is why we are taking a localized, data-driven approach to the 2020-21 school year that will put student and staff safety first. By bringing together the local education leaders who know their students, staff, and communities the best, and the public health experts who know the virus the best, this plan will help determine a learning model that makes the most sense for each community.

School districts and charter schools will begin in one of three models: in-person, distance learning, or a hybrid model. Experts at the Departments of Health and Education will partner with local school districts and charter schools to help determine which learning model they should use to start the school year. While there are many factors to take into consideration before opening our schools, the decision-making process will center on local data indicating the prevalence of COVID-19 in the surrounding county.

Throughout the school year, we will need to be flexible and adapt with the fluid nature of this pandemic. The Departments of Education and Health will work with school districts and local health professionals to consistently track the virus to determine if and when a school may need to adjust their learning plan. School districts and charter schools will be required to ensure all families have the option to choose distance learning for their student, no matter where they live. Teachers and staff will be given similar flexibility.

And the state will provide more than \$430 million to support help schools, educators, students, and families through this uncertain time. We will provide face coverings for every student, educator, and staff member. We will fund a comprehensive testing plan for educators and staff, and we will help cover costs for cleaning supplies, technology needs, Wi-Fi access, and mental health support.

School districts and public health officials have a lot of important work to do, but the ultimate success of this process isn't just up to them. It's also in the hands of each and every Minnesotan. Our schools reflect their surrounding communities. For this to work, we need Minnesotans to come together to slow the spread of COVID-19. We need everyone to do their part to help get our kids and our teachers back in the classroom safely.

Stay safe,

A handwritten signature in black ink that reads "Tim Walz".

Governor Tim Walz

[ADDED 12/16/20]: Note: The Safe Learning Plan has been updated so that starting on January 18, 2021, every elementary school across the state may choose to operate an in-person learning model as long as they are able to implement all updated health and safety measures. See [Prioritizing In-Person Learning for Young Learners](#).

Governor Walz's [Executive Order 20-82](#) states that all Minnesota public schools must adhere to parameters determined by MDH in implementing or shifting between the three learning models laid out in the 2020-21 school year planning guidance: in-person learning, hybrid learning and distance learning.

To begin the 2020-21 school year, MDH has developed parameters using county public health data to support the determination of learning models for each school district and charter school. These parameters are detailed in the [Safe Learning Model Guidance](#) section of this document. To be responsive to the ever-changing public health situation throughout the state, MDH will update this plan as needed.

If a school district or charter school chooses to dial back to a more restrictive learning model than what is required by the Safe Learning Model Guidance, it must notify the education commissioner through the Learning Model Portal within 24 hours of beginning the new learning model.

If a school district or charter school is considering dialing forward to a less restrictive learning model than what is required under the Safe Learning Model Guidance, it must work with its [Regional Support Team](#) to consult with local public health officials, MDH or MDE as needed.

Pursuant to [Minnesota Statutes, section 12.21, subdivision 3\(11\)](#), the education commissioner is authorized to order a school district or charter school to dial back to a more restrictive learning model if the commissioner, in consultation with MDH and the school district or charter school, determines the learning model being used by the district or charter school is no longer safe. More restrictive models of instruction may be necessary for individual classrooms within a school based on household exposure.

As explained in [MDE's 2020-21 School Year Planning Guidance](#), regardless of learning model, all school districts and charter schools must offer an equitable distance learning option to all families who choose not to attend in-person learning due to medical risks or any other safety concerns. Families are not required to provide documentation of risks.

Per [Executive Order 20-94](#), school districts and charter schools are strongly encouraged to consult with their local bargaining unit to create a teaching and learning environment that allows teachers to provide asynchronous instruction to students who are in-person and students who are learning remotely. School districts and charter schools may consider other models of hybrid learning schedules that allow teachers to most effectively meet the needs of students both in person and remotely.

As school districts and charter schools implement in-person learning, hybrid learning and distance learning throughout the 2020-21 school year, they must continue to ensure they are adhering to the requirements and recommendations outlined in [MDH’s 2020-2021 Planning Guide for Schools](#), which provides guidance in the following areas:

- Social distancing and minimizing exposure
- Face coverings
- Protecting vulnerable populations
- Hygiene practices
- Cleaning and materials handling
- Monitoring for illness
- Handling suspected or confirmed COVID-19 cases
- Water and ventilation systems
- Transportation guidance
- Supporting mental health and well-being

Safe Learning Model Guidance

This section outlines localized determinations of the safest learning models for the start of the 2020-21 school year, as well as some of the critical questions and factors that school districts and charter schools, in consultation with local public health officials, Regional Support Teams, MDH and MDE, must consider when making the decision to select or transition to another learning model, based on the impact of COVID-19 in their community. [See Appendix A for a list of key terms.](#)

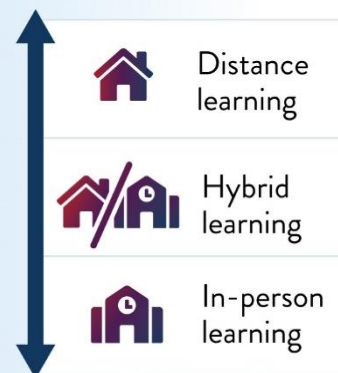
Determining a Safe Learning Model at the Start of the School Year

Communities across Minnesota are experiencing the impact of COVID-19 in different ways. While some areas of the state have seen significant outbreaks, other communities have experienced steady or relatively low numbers of new cases. While there are many factors to take into consideration when determining an appropriate learning model for

How do schools determine their safe learning model?

- STEP 1** Minnesota Department of Health (MDH) will use data from counties to determine a base learning model for public schools.
- STEP 2** Minnesota Department of Education (MDE) will share county data and the consultative process for public schools to engage with education and public health experts to review their county health data and safe learning plans.
- STEP 3** Public schools, with their incident command team, will evaluate their ability to implement required and recommended health best practices.
- STEP 4** Public schools, in consultation with public health, will determine a learning model to begin the school year and communicate that decision with their school community.*
- STEP 5** Public schools and MDH will monitor the community and school-level impact of COVID-19 on a regular basis. Adjustments will be made to the learning model if needed.

Safe learning models:

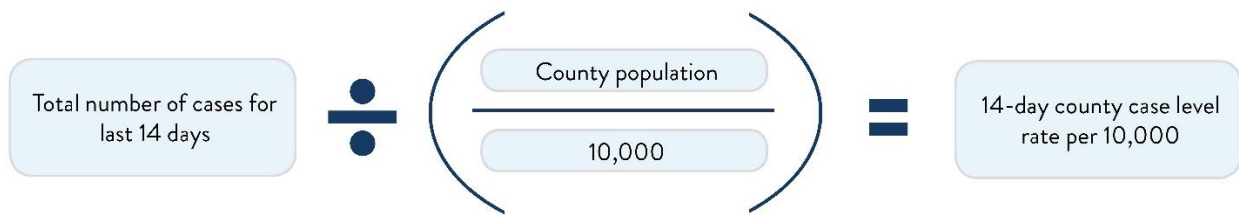


* Regardless of learning model, all public schools must offer an equitable distance learning option to all families.

school opening, the decision-making process should first center on local data indicating the level of viral activity in the surrounding community. School districts and charter schools are encouraged to use the following process in assessing²⁵ and determining an appropriate learning model for school opening:

1. Consult the MDH learning model selection parameters as indicated by county-level data to determine the base learning model.

To determine the base learning model, school districts and charter schools will be advised of the [bi-weekly case rate \(over 14 days\) by county of residence](#). These data are the number of cases by county of residence in Minnesota over 14 days per 10,000 people by date of specimen collection (when a person was tested). While any increase in case incidence represents greater potential risk, schools may consider a bi-weekly case rate of 10 or more cases per 10,000 to be an elevated risk of disease transmission within the local community, especially when the level of cases per week is sustained or increasing over time.



Learning Model Parameters

Number of cases per 10,000 over 14 days, by county of residence	Learning Model
0-9	In-person learning for all students
10-19	In-person learning for elementary students; hybrid learning for secondary students
20-29	Hybrid learning for all students
30-49	Hybrid learning for elementary students; distance learning for secondary students
50+	Distance learning for all students

A school district or charter school whose enrollment includes a large proportion of students from an adjacent county should use data from the county with the highest bi-weekly case rate to inform the recommended learning model. It is also important to take into account any notable increases or decreases in county-level case data to inform decision-making. For example, a school district or charter school whose most recent bi-weekly county-level data is 28 cases per 10,000 over 14 days would be recommended to operate a hybrid learning model for all students; however, if the case count has increased each week for the last month, a school may consider whether it is more appropriate to operate using a model which has fewer students learning in-person.

The learning model determination may not be the same for all grades. The research has shown much more limited transmission of COVID-19 in younger children. This knowledge, combined with understanding that distance learning is more difficult with younger learners and creates a more significant burden on families, should lead districts and schools to always consider ways to keep elementary students in-person where it is safe and possible.

Note: Districts and charter schools may have already decided to be more restrictive in their learning model prior to the consultative process and may choose to engage with a consultant to confirm or modify their plan.

2. Consult with health officials as needed to examine the local epidemiology behind county-level data to assess whether increases or higher numbers of cases are likely the result of isolated outbreaks or whether they may be indicative of more widespread community transmission. 26

Local information about outbreaks, community spread, and the groups of people becoming ill at the highest rate are also useful components in understanding how COVID-19 is impacting the community. In some cases, high county-level case rates may be the result of a known, isolated outbreak in a specific local employer or workplace that may be unlikely to impact the school setting. However, the high county-level case rates may also be indicative of more widespread community transmission as the result of larger exposures. It is important for school districts and charter schools, particularly those who would like to discuss operating a different learning model than the model determined based on the defined parameters, to consult with health officials when they have questions about the local epidemiology of COVID-19 in their community.

Note: Districts and charter schools may have already decided to be more restrictive in their learning model prior to the consultative process and may choose to engage with a consultant to confirm or modify their plan.

On July 30, 2020, superintendents and charter school leaders will receive an email from MDE with contact information and directions about how to schedule a consultation to support their learning model determination.

Superintendents and charter school leaders may also choose to consult with local public health officials regarding their learning model determinations.



Beginning August 24, 2020, school districts and charter schools will work with their [Regional Support Teams](#) to support implementation and ongoing evaluation of their learning model.

3. Evaluate the ability to implement required and recommended health best practices to inform decision-making at the school or district level.

It is important for school districts and charter schools to account for their level of preparedness and capacity to implement the required and recommended mitigation strategies outlined in MDH's [2020-2021 Planning Guide for Schools](#). All schools must implement the required health practices, which are considered the minimum level of implementation from which schools may not be less restrictive. As part of the learning model determination process, school districts and charter schools should carefully assess their preparations to ensure all required health practices are addressed to confirm they are prepared to operate with students learning in-person, regardless of whether they plan to operate a full in-person or hybrid learning model.

Required for In-Person and Hybrid Learning

- Masking Policy
- PPE for direct support student services
- Build routines of hygiene education & practices
- Daily cleaning and frequent cleaning of high touch surfaces throughout the day
- Building level COVID-19 program coordinator, with optional student counterpart
- Limiting nonessential visitors/volunteers/external groups
- Discontinue large gatherings/activities that do not allow for social distancing
- Monitoring and excluding for illness

Required for Hybrid Learning

- Social distancing of 6 feet at all times in school buildings
- School facilities at 50% capacity
- Transportation at 50% capacity
- Sufficient staffing levels to meet the requirements of the model

If a school district or charter school determines they are not able to successfully implement the required health practices for in-person or hybrid learning, they should implement distance learning for all students.

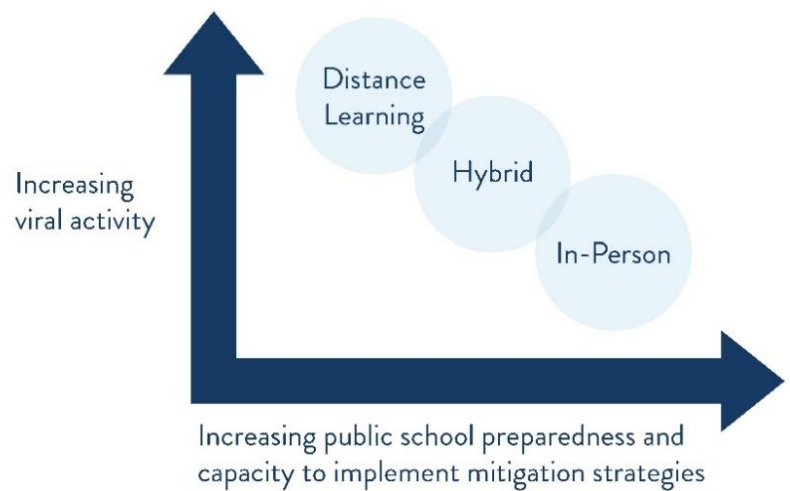
4. Determine the learning model to begin the school year.

After completing a thorough review of the base learning model in the context of the local epidemiology of COVID-19 and assessing preparedness to implement all required health practices, school districts and charter schools must make a determination of the learning model to begin the school year for each school. In making this determination, school districts and charter schools should use their current incident command team or advisory council consisting of school board members, bargaining units, staff, students and families. School districts and charter schools must report their learning model for each building to MDE before implementation. Additionally, the model(s) and plan, along with contingency plans for the other learning model scenarios, must be posted on the school district or charter school website. See the [Communicating Plans with Students and Families](#) section of this document.

Note: All school districts and charter schools must offer an equitable distance learning model to all families who choose not to attend in-person learning (whether as part of an in-person learning model or hybrid learning model) due to medical risks or other safety concerns. Families are not required to provide documentation of risks.

5. Monitor the community and school-level impact of COVID-19 on a regular basis in consultation with public health to determine if adjustments are needed.

After the initial selection of a learning model for school opening, the decision to shift to an alternative learning model should center on the impact of COVID-19 at the school level, while maintaining awareness of changes in viral activity in the community through continued review of the bi-weekly county-level case data ([described under #1 above](#)). School districts and charter schools considering making a change in their learning model for a school or entire district must do so first and foremost in the interest of safety for school staff and students. It is also important to respect the impact a shift in learning model will have on the school community. Making a change requires significant coordination and communication, even when well thought-out plans are in place, and therefore, any recommendation or decision to change learning models should not be taken lightly. With this in mind, school districts and charter schools may consider the general framework below to guide their decision-making.



As viral activity increases within a community or school (e.g., when there are increasing numbers of cases over a short period of time or clusters of cases are identified), the need to adjust to a learning model that reduces the number of people in a school building and requires more stringent mitigation strategies also increases. By contrast, schools using a distance or hybrid learning model that experience a declining level of viral activity in the school and/or surrounding community, as indicated by county-level case data, may consider cautiously shifting their learning models to increase the number of students learning in-person.

If a school district or charter school chooses to dial back to a more restrictive learning model than what is required by the Safe Learning Model Guidance, it must notify the education commissioner through the Learning Model Portal within 24 hours of beginning the new learning model.

If a school district or charter school is considering dialing forward to a less restrictive learning model than what is required under the Safe Learning Model Guidance, it must work with its [Regional Support Team](#) to consult with local public health officials, MDH or MDE as needed.

In making these determinations, school districts and charter schools should use their current incident command team or advisory council consisting of school board members, bargaining units, staff, students and families. If the learning model changes, the school district or charter school must update the learning model information on its website. See [Communicating Plans with Students and Families](#) section of this document.

The education commissioner retains statutory authority to order the transition from in-person instruction to a distance learning model if it is determined—after consultation with MDH—that in-person instruction is no longer safe due to concerns related to COVID-19.

Based on Minnesota’s evolving knowledge and understanding of the virus, the Safe Learning Plan has been updated so that early learning and elementary schools reduce the use of county data as a singular determining point when considering their learning models, and mitigation strategies are increased to help get students back in classrooms while keeping students, families, educators and staff safe.

Starting on January 18, 2021, every early learning program and elementary school across the state may choose to operate an in-person or hybrid learning model as long as they are able to implement the additional mitigation strategies listed below including a rolling start process in which students will gradually be brought back in the building. Early learning programs and elementary schools that are not currently in an in-person or hybrid learning model, or have not already announced their plans to implement their in-person or hybrid learning model prior to January 18, 2021 cannot move to in-person or hybrid before January 18, 2021.

Middle school and high schools will follow the same protocol and parameters listed in steps one through five of the Safe Learning Plan to determine their learning models. Middle and high schools must either follow the plans they have shared with families about their learning model, or they can choose a more restrictive model.

If a middle school or high school is considering dialing forward to a less restrictive learning model than what is required under the Safe Learning Model Guidance, it must consult with its Regional Support Team. Consults for middle and high schools seriously considering transitioning to hybrid or in-person learning will begin on a first-come-first serve basis (with priority given based on desired start date) on January 4, 2021. Middle and high schools requiring a consult to move to hybrid or in-person learning cannot implement their new learning plan before January 18, 2021.

Starting on January 18, 2021, any school – elementary, middle, or high school – that is in-person learning or hybrid learning must implement the mitigation strategies listed below.

Implement a Rolling Start

In order to safely transition to an in-person learning model, the Minnesota Department of Health and Minnesota Department of Education require schools implement a rolling start process in which students will gradually be brought back in the building.

For an acceptable rolling start strategy, no more than three additional grades bands can be introduced into the building in a two week time period when implementing an in-person learning model for the entire school building. This includes schools transitioning from hybrid learning or distance learning to in-person learning, and schools transitioning from distance learning to hybrid learning.

Example 1:

- January 18-29 (K-2 in-person learning; Grades 3-5 distance learning – even if they had been in hybrid)
- February 1-15 (K-5 in-person learning)

Example 2:

- January 18 – 29 (K-1 in-person; Grades 2-6 distance learning – even if they had been in hybrid)
- February 1 – 15 (K-3 in person; Grades 4-6 distance learning – even if they had been in hybrid)
- February 22 – March 4 (K-6 in person)

- Implement a rolling start process for students to be brought back to the building.
- Execute COVID-19 testing program (training and saliva test kits provided by the State; optional for school staff) every other week for all school staff, beginning January 4, 2021.
- Face masks and face shields must be worn together by school staff at all times.
- When educators cannot be six feet from students (small group and individual instruction), when possible add a clear barrier between the adult and student.
- Face coverings must be worn when engaging in indoor physical activity (e.g., during indoor recess, indoor physical education class, or when exercising in a gym)
- For early learning and elementary schools only: All student meal times and specialist lessons must be held in the classroom or outside (weather permitting). Physical education classes may continue to be held indoors outside of individual classrooms so long as students and staff are wearing face coverings.
- For in-person only: three feet of physical distancing or more is strongly recommended

Transition Time

As always, school leaders must meet with their Incident Command Team prior to determining a learning model transition.

Schools must use at least two and may use up to five previously scheduled instructional days for planning as permitted by Executive Order 20-82 for staff to come back into the building and prepare for students transitioning into in-person or hybrid learning with the additional mitigation measures. If a district or charter school has already used their five transition days, you must notify MDE and additional planning days may be allocated. Staff must use the designated planning days to plan for the change in instructional delivery including but not limited to curriculum prep, to follow the updated mitigation strategies of pods, classroom meals, for staff orientation, family/teacher conferences, etc.

Returning to School Protocols

School districts and charter schools that have been in distance learning for the entirety of the 2020-21 school year should follow first day of school processes to ensure students and families feel welcome returning to school. This may even include holding “back to school” family conferences. Additionally, schools should consider implementing practices laid out in the Supporting Students and Families section of MDE’s 2020-21 Planning Guidance for Minnesota Public Schools, such as:

- Continue prioritizing relationships and well-being
- Teach behavior expectations and incorporate social and emotional learning
- Ensure the mental health needs of students and staff are being addressed

Required for In-Person and Hybrid Learning

- Prioritize COVID-19 testing every other week for all staff, beginning January 4, 2021.
- Face masks and face shields worn together by staff at all times.
- When educators cannot be 6ft from students (small group and individual instruction), when possible add a clear barrier between the adult and student.
- For early learning and elementary schools only: Students remain in classroom for entire school day, excluding outdoor recess time and physical education classes.
 - Meals will be served in the classroom
 - Teachers rotate into classrooms depending on subjects

It is not possible to account for every scenario that schools may encounter over the course of a school year. The scope and duration of transitions between learning models will depend on many factors, and will be made using the most up-to-date information about COVID-19 and the specific cases in the community during the consultative process. Included below are brief narrative descriptions of the general assumptions that would support each learning model, including the impact on the school community, staffing, the ability to trace and isolate close contacts, testing capacity, extracurricular activities, and staffing levels. The narratives are accompanied by planning scenarios, which can help inform a decision to shift between learning models.

These learning models apply to each individual school and recommendations based on health parameters vary by grade. This is because the risk of COVID-19 transmission is lower for younger students, and public health strategies, like consistent groupings or cohorting commonly practiced in elementary schools, are demonstrated to mitigate and prevent transmission. Further, in-person learning is more critical at younger ages due to child development.

Scenario 1: In-person learning for all students

Previously issued planning requirements and recommendations for Scenario 1 assume that minimal to moderate community spread is occurring, but the impact on the school community in terms of confirmed cases among students and staff is relatively small. Sporadic cases may be occurring, but in general, each confirmed case can be traced to a likely source of exposure and where all or most close contacts can be identified and excluded in the school setting. Staffing is assumed to be sufficient to continue in-person instruction. This planning scenario also assumes that contact tracing can be completed quickly and that all or most close contacts can be notified and excluded within 24 hours of being notified of the confirmed case. Most extracurricular activities may be held, provided they follow current public health guidance.

What situations under Scenario 1 may not necessitate a transition to a hybrid or distance learning model?

- Single, standalone cases are confirmed, but close contacts in the school setting can be quickly identified and are limited to individual classrooms or areas in the school. In this case, temporary distance learning could be implemented for the affected classroom(s) and space(s), rather than shifting the learning model for the entire school or school community.
- Multiple cases are identified, but can be linked to a specific classroom or individual activity with minimal impact or exposures to other classrooms/activities in the school setting. All close contacts can be quickly identified and are limited to individual classrooms and/or activities. In this case, temporary distance learning could be implemented for the affected classrooms, rather than shifting the learning model for the entire school or school community.
- Multiple cases are identified, but are linked to a clear alternative exposure that is unrelated to the school setting and unlikely to be a source of exposure for the larger school community.
 - For example, social or household clusters where multiple people who attend the same school have become ill as a result of the social or household exposure.

Scenario 2: Hybrid model with strict social distancing and capacity limits

Previously issued planning requirements and recommendations outlined for Scenario 2 assume that moderate to substantial community spread is occurring, and there may be a higher degree of impact on the school community with multiple confirmed cases among students and staff. There may be higher numbers of confirmed cases over shorter periods of time, and/or clusters of cases identified within classrooms or the school community generally, however all or most close contacts can still be identified and excluded in the school setting. Staffing is assumed to be sufficient to

continue in-person instruction, but measures, including overall capacity limits, are needed to allow for strict social distancing that further mitigates the risk of transmission. Testing capacity is generally assumed to be high enough that symptomatic individuals can access testing as needed from local clinics, and asymptomatic school staff and educators who are close contacts are prioritized in state testing guidance. Coursework and extracurricular activities with higher risk for transmission are modified to reduce risk or discontinued.

What situations may necessitate a transition to a hybrid learning model?

- The number of students and school staff who are absent or who are sent home with influenza- or COVID-19-like illness reaches approximately 5% of the total number of students and staff in a school within a single week.
- A significant community outbreak is occurring or has recently occurred (e.g., large community event or large local employer) that has the potential to impact staff, students and families served by the school community, but has not yet resulted in increased cases within the school setting.
 - Outbreaks in the community occurring in a setting that does not have a strong connection to the school (e.g., long-term care facility, local religious institution or correctional facility) are unlikely to result in a recommendation to shift to a hybrid learning model.

Scenario 3: Distance learning only

Previously issued planning requirements and recommendations outlined for Scenario 3 assume that substantial, uncontrolled community spread is occurring and/or there is a significant degree of impact on the school community, with multiple confirmed cases or large scale outbreaks occurring among students and staff. This planning scenario also accounts for situations where staffing may be impacted to the degree that a school is not able to offer in-person instruction. Extracurricular activities are discontinued. In general, implementation of a distance learning model should occur for a minimum of one incubation period (two weeks) when there is evidence of substantial, uncontrolled community transmission or significant levels of illness in the school setting.

What situations may necessitate a transition to a distance learning only model?

- A distance learning only model could be considered for short periods of time if confirmed cases are identified but contact tracing and notification of close contacts in the school setting cannot be completed within 24 to 36 hours. This short-term use of distance learning may allow schools to coordinate with local and state health officials to complete contact tracing and develop a clearer picture of the COVID-19 situation impacting the school while supporting continuity in learning.
- Multiple cases are identified within a short time period (e.g., several cases in one week or within a 14-day time period) that occur across multiple classrooms or activities, and a clear connection between cases or to a suspected or confirmed case of COVID-19 cannot be easily identified.
- A significant community outbreak is occurring or has recently occurred (e.g., large event or large local employer) and is impacting multiple staff, students and families served by the school community.
- Substantial, uncontrolled community transmission is occurring at the county, regional, or state level, and there are multiple confirmed cases of COVID-19 among students and/or staff.

Considerations for moving back to hybrid or in-person learning after a distance learning period

- After implementing a distance learning model due to high levels of viral transmission in the school or local geographic community, districts or schools should wait a minimum of two to three weeks before bringing any students back for in-person or hybrid learning. This timeframe is sufficient that most people in the school community who will develop symptoms of illness could be identified and self-quarantine, as appropriate.
- During the period of distance learning, a school district or charter school should consult with local public health officials, MDH and MDE if it is considering dialing forward to hybrid or in-person learning. This process will ensure that districts and schools are working with health officials to assess the level of viral activity occurring

within the local community, as well as the impact on the school community, to determine whether the situation has improved to the point that hybrid or in-person learning may be appropriate. 33

- A school may consider using a hybrid learning model after a distance learning period was required due to high levels of viral transmission in the school or local geographic community. The hybrid model could be used as a bridge to safely move back toward the model of in-person learning for all students. For example, a school could operate using a hybrid learning model for two incubation periods (28 days) and carefully monitor for any additional clusters of confirmed cases of COVID-19 before transitioning back to a full in-person learning model.

Regional Support Teams

The Regional Support Teams are a partnership between local public health officials, MDE, MDH and regional service cooperatives to support school districts and charter schools in navigating the impacts of the COVID-19 pandemic on the 2020-21 school year.

Beginning August 24, 2020, school districts and charter schools will work with Regional Support Teams to consult regarding implementation and ongoing evaluation of their learning model.

In the interim, on July 30, 2020, superintendents and charter school leaders will receive an email from MDE with contact information and directions about how to schedule a consultation to support their learning model determination.

Team Structure

Regional Support Teams are structured in a way that allows efficient communication from the school and district level to the state level in the event of a confirmed case of COVID-19 in a school building.

As shown in the graphic on this page, the first step in this process is for a superintendent or charter school leader to contact their assigned service cooperative lead. The lead will then contact MDH and/or local public health officials to begin the response process, who will notify the Regional Support Team regarding appropriate next steps.

The Regional Support Teams are made up of rapid response staff, health consultants and testing event planners.

Rapid Response

- State lead to direct and oversee response to districts and schools:
 - Coordination across state supports and regional service cooperatives.
 - Works with State Testing Workgroup, oversees school testing event team.
 - 3-4 school testing staff who help execute events when local communities need support.
- Leads from regional service cooperatives (9):
 - Main point of contact for school districts and charter schools in region.
 - Shares updates and information between school districts/charter schools and local public health officials, MDH, MDE and other state partners.
 - Supports schools in completing contact tracing surveys.
 - Facilitates connections with local public health officials, MDH, MDE, and other state partners as needed.



- MDH epidemiologists, assigned by region and paired with regional service cooperatives and local public health officials
- Connect with regional supports to help respond to health and epidemiology questions
- Supports state reporting and trends on COVID-19 and implications for schools
- Supports local and state health officials in tracking cases, testing events, and school closures

Face Coverings

According to [Executive Order 20-81 and 20-94](#), all K-12 students, staff, and other persons present inside school buildings and district offices, on school grounds where social distancing cannot be maintained, or onboard school transportation vehicles, must wear a face covering. Students who have medical conditions, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering are not required to wear a face covering. For students who are able to wear a face covering and refuse, school districts or charter schools are strongly discouraged from using suspension but may require such students to move to distance learning.

Face coverings are meant to protect other people in case the wearer does not know they are infected. A face shield (a clear plastic barrier that covers the face) allows visibility of facial expressions and lip movements for speech perception and may be used as an alternative to a face covering in certain situations.

Face coverings should not be placed on anyone under age 2, anyone who has trouble breathing or is unconscious, anyone who is incapacitated or otherwise unable to remove the face covering without assistance, or anyone who cannot tolerate a face covering due to a developmental, medical or behavioral health condition.

Ideally, face coverings should be worn in combination with other infection control measures, including social distancing, but face coverings are especially important in settings where social distancing is difficult to maintain. As the Centers for Disease Control and Prevention (CDC) has explained, face coverings are most effective when they are worn by all individuals in public settings when around others outside of their households, because many people infected with COVID-19 do not show symptoms. Consistent with this guidance, Minnesota has strongly recommended widespread use of face coverings since April 2020. On July 22, 2020, Governor Walz signed [Executive Order 20-81](#), requiring face coverings in all indoor public spaces in Minnesota, including K-12 school buildings.

The State of Minnesota will provide the following supplies to all public and private schools:

- Every K-12 student will receive one cloth face covering.
- Every school staff member will receive one cloth face covering.
- Every school will receive three disposable face masks per student.
- Every school will receive face shields for all licensed teachers and 50% of non-licensed staff.

[ADDED 12/16/20]: Beginning January 18, 2021, all staff who are teaching in-person, whether as part of an in-person or hybrid learning model, must wear both a face covering and face shield when interacting with students.

Responding to Confirmed Cases of COVID-19

When a confirmed case of COVID-19 is identified in a school community, it is important for school districts and charter schools to work closely with local public health and MDH officials through the Regional Support Teams to identify whether the person who is ill was present on school grounds while infectious, and whether that resulted in any close contact exposures among students or staff. Because of the potential for asymptomatic and pre-symptomatic transmission of COVID-19, it is important that close contacts of students or staff with COVID-19 are quickly identified,

informed of the need to quarantine at home, and encouraged to seek testing, even if they are not showing any symptoms. In general, testing of close contacts should not occur until either a person becomes symptomatic or at least 5 to 7 days have passed since their last exposure to the confirmed case to guard against a false negative test result, which can occur when a person is tested too early in the incubation period. Even if a close contact tests negative, they must remain in quarantine for a full 14 days, as some people develop infection at the end of their incubation period. The CDC does not recommend universal testing of all students and staff.

In addition to the identification and notification of close contacts, school districts and charter schools should consider the questions outlined below in consultation with health officials to determine whether additional mitigation strategies are needed to protect the school community.

- **How many cases are there, and are they close in time together, or spread out over several weeks?** Sporadic, single confirmed cases are not necessarily worrisome on their own, especially if students or staff did not attend school while infectious or the potential exposures in the school setting are limited (e.g., few classrooms or activities are impacted). Multiple cases that are identified closer together in time (e.g., within one week) could indicate that a significant, unidentified exposure occurred and/or that a higher level of transmission is occurring.
- **Are new cases traceable to the school community or are they likely the result of a different exposure (e.g., household exposure, travel)?** It is concerning to see cases that can be clearly traced back to an exposure within the school setting, as it may be an indication that transmission is occurring between members of the school community. Cases that can be traced back to a different exposure, such as a cluster of cases within a household or a likely exposure to a positive case while traveling, indicate that attendance in school was not the likely source of illness.
- **Where are the cases occurring, and do they have any common themes?** If cases seem to be concentrated based on a common trait such as a physical location (e.g., confined to one building within a school) or to a specific group within the school (e.g., a cluster of cases among food service workers), it may be possible to narrow down the exposure source and take more specific actions that do not necessarily require a change in the learning model used for the school or school system as a whole. Finding common themes among cases may also aid a school's efforts to modify practices to help prevent similar future exposures.
- **How many close contacts does each case have?** Cases that have limited numbers of close contacts in the school setting (e.g., few classrooms or activities are impacted) are less likely to result in a needed shift between learning models for the whole school. Cases that have many close contacts across multiple classrooms and activities, or potential exposures in common areas or at larger school-based gatherings/events where close contacts are not readily identifiable, may complicate the ability to identify all or most close contacts, and may have a larger impact on the school community as a whole.
- **Are students, parents, and staff forthcoming about close contacts?** When people are unwilling or unable to disclose their close contacts, it may be difficult to ensure that contact tracing can be effectively completed. When contact tracing cannot be fully completed, it is possible that exposed persons may not exclude for the recommended quarantine period of 14 days and could go on to develop symptoms of illness while in the school setting, thereby resulting in additional exposures.
- **Is there other significant COVID-19 transmission in the surrounding community (e.g., a cluster of cases at a large local employer) that will likely impact families and staff?** For example, in communities that are currently experiencing or have very recently (within the last 14 days) experienced an outbreak in a large local employer or other setting where the families of many students and/or spouses of many staff work or visit, the nature of the community outbreak may increase the potential for community transmission in the school setting.
- **Are you able to maintain your current learning model based on staffing?** Staffing is a critical component of school operations. When adequate staffing to support an in-person or hybrid learning model cannot be achieved, it may be necessary for schools to transition to an alternative learning model.

While school communities execute significant strategies to prevent transmission of COVID-19, and as long as the virus continues to circulate in our communities, we must be diligent in monitoring and testing. This section is intended to provide an overview for pre-K and K-12 educational institutions to prepare for and execute needed COVID-19 testing for student, staff and other populations associated with their school.

Any school that may need to implement a COVID-19 testing strategy will work directly with their Regional Support Teams, following the process outlined in the [Team Structure](#) section above. This testing strategy provides a framework for schools and the state, but can vary based on the setting, number of close contacts, and circumstances. Each situation may look slightly different, and the Regional Support Team will guide school and district leaders through the necessary processes.

Routine universal testing is not recommended in schools. Testing should not be used as an entry or enrollment tool for programs for staff, students or families.

State Partnership and Strategy

Access to testing and a community's ability to mitigate transmission and respond to COVID-19 exposure is a critical factor in a school or district's ability to provide in-person instruction. As such, the state has outlined a series of strategies that will support you.

- **Testing educators and school staff:** The state has a contract with a national saliva testing lab and will work with all insurers to ensure that all educators have access to a COVID-19 test from day one. This is a test that can be conducted at home and uses a courier for transport. This process ensures that in the case where an educator has close contact with a confirmed case and experiences any challenges getting tested in their community, there is a back-up option. This program will end on December 30, 2020.
- **Comprehensive testing strategies:** The Regional Support Teams have a framework and strategy for how to plan for and respond to a potential COVID-19 exposure in our school communities. In all cases, the state has a structure and partnership with districts and charter schools to ensure that there is regular communication and consultation with public health experts. The comprehensive testing strategy includes:
 - State ensures school and settings are prioritized for COVID-19 testing when close contacts have been identified.
 - Regional Support Teams work with schools to ensure close contacts of an exposure are tested by local providers.
 - Testing events are used when 50+ close contacts and when local communities cannot execute their own testing events, the State Testing Workgroup steps in to execute.
 - School staff and students are prioritized in other available community testing events.

[ADDED 12/16/20]: On-site Saliva Testing for All Minnesota School Staff In-Person or Hybrid Learning

Regular testing is one of many critical strategies for controlling the spread of COVID-19 in our communities and supporting our frontline workers in schools. As Governor Walz continues to prioritize in-person learning while protecting the health and safety of students, staff and families, we know that increasing our capacity to test school staff is important.

Governor Walz has asked the Minnesota Department of Education and Minnesota Department of Health to update the Safe Learning Plan, directing all Minnesota public schools who are providing in-person learning (whether as part of an in-person or hybrid learning model) to offer testing for all on-site staff every two weeks beginning January 4, 2021, or whenever they return to in-person learning after that date.

The State of Minnesota will supply schools with the training and test kits they need to conduct testing every other week. Minnesota’s nonpublic and tribal schools will also have access to testing supplies if they choose to offer tests to their³⁷ staff. The length of this program is contingent on funding.

In order to manage capacity of testing labs, each school will be assigned a designated day to conduct testing. School COVID-19 coordinators will be trained to oversee staffs’ use of self-administered saliva tests for their school communities.

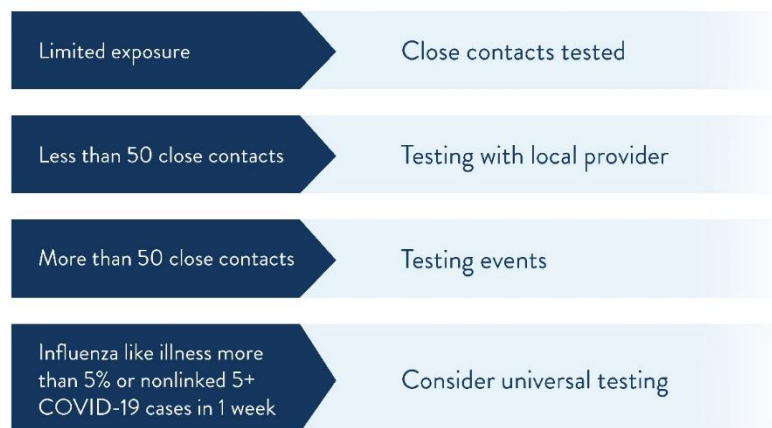
These tests will be conducted in-person and will not use the same online format as the at-home saliva tests that schools were provided at the beginning of the 2020-21 school year.

For more information, see [Questions and Answers: On-site COVID-19 Saliva Testing for All Minnesota School Staff](#).

Testing Scenarios and Thresholds

If a known exposure occurs in a classroom (from staff or students), close contacts will be quarantined at home for 14 days. **Close contacts** are defined as someone who was within 6 feet of an infected person for at least 15 minutes starting from 48 hours before illness onset until the time the patient is isolated testing is recommended for all close contacts of confirmed COVID-19 cases.

Potential scenarios include:



- **Testing is recommended for close contacts** (by Regional Support Team):
 - Symptomatic students, children and staff
 - Asymptomatic close contacts—children and staff who are asymptomatic no sooner than 5 to 7 days after known exposure to confirmed case.
- **Testing with local providers:** In classrooms or programs with **less than 50 close contacts** (including children, students and staff) identified, the school community will notify families and they will seek out testing individually through an appointment with their clinic or access a testing site. Educators, school staff and asymptomatic individuals who have been identified as close contacts of a positive case in schools are a prioritized group in state testing guidance to health care providers. The liaison with MDE and MDH will remain partners with you and want to be notified if these close contacts are not being tested.
 - Here is draft language to use in communication with families: *Please contact your health care provider to see about getting them tested or visit the [Find Testing Locations](#) webpage to find a testing site near you. MDH recommends waiting to be tested until 5 to 7 days after known exposure, which is the optimal time period for the virus to be detected by a test.*

- **Testing event:** Based on the number of close contacts identified, a testing event should be considered if **more than 50 close contacts** (including staff, children and family community) are identified. Partnering with their 38 Regional Support Team, districts will work with local health providers to execute these events first and bring in other state partners as needed. If local resources are limited and/or state-coordinated response is necessary, the State Testing Workgroup and school testing teams will plan with local communities to execute. If a testing event is indicated, it will not occur until at least 5 to 7 days after a known exposure.
- **Universal testing:** A universal testing event could be recommended when substantial or ongoing transmission among students and staff is suspected to be occurring. Substantial transmission is defined as a threshold of 5% of total attendees (students and staff) have influenza-like illness or there are five or more non-linked laboratory confirmed cases in a single week. Non-linked cases are those that cannot be linked to another case at the school and do not have a clear link to a confirmed case outside of the school. Linked cases include people who are present in the same setting during the same time period (e.g., same classroom, school event, school-based extracurricular activity, or school transportation). As with testing events, if local communities are not able to execute such an event, the state will support the execution.

Staff Accommodations

The Governor’s Work from Home Order (Executive Order 20-99) states that all employees who can work from home must work from home. This is a broad mandate that applies across industries. For school districts and charter schools, this means if a staff member can perform their essential job functions from home, they must work from home. The purpose of this order is to limit unnecessary travel and intermingling of people to limit transmission of the coronavirus and spread of COVID-19. The analysis about whether the essential duties of a job can be done at home should be done on a case-by-case basis and will be dependent on the circumstances of a position. School districts and charter schools should not issue blanket orders that require all staff to work in person. If a staff member cannot perform all their essential job duties from home, they can be required to come into the school building to perform those duties that cannot be performed remotely.

Under the Governor’s Safe Learning Order (Executive Order 20-82), if a staff member is medically at-risk for complications as a result of COVID-19 or has members of their household who are at-risk, the school district or charter school must allow them to work from home to the extent possible. This obligation extends beyond the more general work from home mandate in Executive Order 20-99 and applies to those employees who may not typically be able to work from home but who may be able to as an accommodation for being in the at-risk category or having a member of their household in the at-risk category. School districts and charter schools should use the same HR processes and ADA analysis that they normally use when an employee with a disability requests accommodations in order to perform their essential job duties.

If a staff member feels they are being forced to come to work in violation of the Work from Home Order, they can contact the Work From Home Violation Helpline at 651-539-1132 or toll free at 833-454-0152, or by email: WFHviolations@state.mn.us. If a staff member is at risk and feels they have been denied a reasonable accommodation, they can call the Minnesota Department of Human Rights’ Discrimination Helpline at 833-454-0148.

Meeting the Needs of Students and Families

Communicating Plans with Students and Families

School districts and charter schools must electronically post and communicate their contingency in-person learning, hybrid learning, and distance learning plans to students and their families no later than one week before the beginning

of their respective 2020-21 school year. School districts and charter schools must make all attempts to provide such communications orally and written in languages spoken in their respective school district or charter school. The 39 contingency plans must address, but not be limited to, communication pathways with students and families, community input on student and family needs, and other outreach opportunities. These elements are in addition to addressing core instruction, supports for all student groups, nutrition, school-age care, technology needs, and effective delivery of educational models to students in a distance learning or hybrid model setting.

The education commissioner may review whether a school district or charter school’s plan adequately addresses technological disparities in access and learning. The commissioner may recommend changes and provide technical assistance to school district and charter school programming to address any such disparities, to assist in meeting the needs of their students, staff and communities.

For more information, see the “Communication with Students, Families and Staff” section of [MDE’s 2020-21 School Year Planning Guidance](#).

School-age Care

Equitable and affordable school-age child care programs are essential to support working families and provide enrichment and care for students. Over 100,000 students across the state rely on a school-based child care program as their trusted child care provider.

Care for school-aged children, especially those children of workers in critical sectors, will continue to be crucial for frontline workers to continue to confront the pandemic. The state will continue to work with child care providers, school-age programs, schools and all other child care settings to prioritize this need.

[Executive Order 20-82](#) indicates that a school district or charter school that operates a hybrid or distance learning model “must provide school-aged care for Eligible Children at no cost during the time those children are not receiving instruction in the school building during regular school hours.”

The school-age care for children of critical workers is intended for extreme circumstances in which no parent or guardian is at home, as all of the parents or legal guardians in the child’s household are Tier I critical workers. If it is a two-parent household and one is not a critical worker, a school is not required to provide free school-age care to the family, but the school could choose to provide the care, if they have the capacity to do so while ensuring health and safety requirements can still be met. School districts and charter schools may also encourage parents or legal guardians of Eligible Children to not utilize the school-age care program if they have the ability to work from home.

This school-age care must be provided for school-age children age 12 and under who are children of critical workers in Tier I of the critical worker list (See [Appendix B](#) for definitions). Children of Tier I workers only will be cared for at no cost during the typical school hours. As was required in the spring, school districts and charter schools must provide transportation for students participating in school-age care for children of critical workers, in accordance with their local student transportation requirements.

For more information about providing school-age care, see the “School-age Care & Child Care Programs in Schools” section of [MDE’s 2020-21 School Year Planning Guidance](#).

Equitable Distance Learning Option

[Executive Order 20-82](#) states that all school districts and charter schools must offer an equitable distance learning model to all families who choose not to attend in-person learning (whether as part of an in-person learning model or hybrid

learning model) due to medical risks or other safety concerns. Families are not required to provide documentation of risks.

Pursuant to Executive Order 20-82, paragraph 4 all school districts and charter schools must offer a distance learning model that meets the educational needs of all students of families who choose not to receive in-person instruction. School districts and charter schools have reported staff and space capacity issues that result from the free movement of students to and from distance learning at any time.

Students or families choosing to move from in-person or hybrid instruction to distance learning due to a health issue must be allowed to move to distance learning at any time. A student who enrolls in a district or charter school during the school year must be given the opportunity to enroll in the district or charter school's distance learning model.

A school district or charter school may limit movement to distance learning for families requesting to move to distance learning from in-person or hybrid for reasons other than a health issue. A school district or charter school that chooses to limit movement to distance learning must provide periodic opportunities for all students and families to choose to move to distance learning for any reason. For example, a district or charter school could limit non-health related movement to distance learning to a window at the end of a quarter or trimester.

A school district may limit movement from distance learning to in-person or hybrid instruction. School districts and charter schools providing in-person instruction or services should prioritize in-person services for students with disabilities, English learners, student experiencing homelessness, and students in foster care.

For more information about ensuring this model is available to families, see the "Meeting the Distance Learning Needs of Students" section of [MDE's 2020-21 School Year Planning Guidance](#).

Prioritizing In-Person Instruction

If your school district or charter school is moving some or all grades to distance learning, the school district or charter school may continue to prioritize in-person instruction for students with disabilities, English learners, students experiencing homelessness, students in foster care, and students who are struggling academically as long as there is not evidence of widespread COVID-19 transmission in the school building. This may be done without prior approval from MDE or MDH as long as the expected health and safety protocols set forth in guidance and Executive Order 20-82 continue to be met. If a school district or charter school utilizes this option, Safe Learning Plans need to be updated to include when and how decisions will be communicated to families, expectations for staff providing instruction and services, and which students will continue to receive in-person learning when the school shifts to distance learning.

Ensuring Access to Services and Resources

[Executive Orders 20-82 and 20-94](#) outline several areas that must consistently be addressed, even as schools transition through learning models:

- Regardless of learning model, the school district or charter school must continue to provide meals to students during the school day to the extent possible, using all waivers and flexibilities provided by the U.S. Department of Agriculture.
- School districts and charter schools that dial back in-person instruction, in cooperation with state agencies, are directed to support communities disproportionately impacted by distance learning and hybrid learning, including but not limited to, historically under-represented families and families experiencing homelessness. Where appropriate, school districts and charter schools should prioritize providing in-person instruction and services to students from the aforementioned groups. MDE will continue to provide additional guidance to school districts and charter schools about this.

- School districts and charter schools operating in a distance or hybrid learning model that are providing in-person services in accordance with public health guidelines must prioritize providing in-person instruction and services⁴¹ to students with disabilities whose individualized education program calls for intensive services that cannot be provided in a distance learning model. Whether it is appropriate to provide in-person services to a student with a disability and the location where services will be delivered should be an individualized, IEP team decision, and included in the IEP. MDE has developed a [Q and A outlining considerations for school districts and charter schools](#) to determine how to provide in-person support for students, which may include in-home support. MDH has developed [health guidelines for school staff providing in-home support for students](#).
- When providing in-person learning, a school district or charter school will continue to run its early childhood programs pursuant to [MDH public health guidelines](#), including community education programs, and may charge fees on its normal sliding fee scale. A school district and charter school may also continue to provide before and after-school care and may charge fees on its normal sliding fee scale. Schools are not required to provide this care during previously scheduled breaks reflected on a school board-approved calendar.
- A school district or charter school that dials back in-person instruction must allow 2020-21 graduating seniors to complete any testing required to attain a state bilingual or multilingual seal under [Minnesota Statutes, section 120.022\(b\), subdivision 1b](#).
- If a school district or charter school is providing instruction through a distance learning model, the education commissioner has the authority to expand in-school provision of necessary activities and programming that can be operationalized, in compliance with requirements and recommendations outlined in [MDH's 2020-2021 Planning Guide for Schools](#). This expansion of in-school activities must be where those services cannot be provided through a distance learning model and those services are needed to access that student's distance learning instruction, provide supports or services schools can safely offer, and create opportunities for meaningful connections between students and teachers.
- MDE, in consultation with MDH, has established a protocol to allow for home visits by school staff to build and preserve relationships with students and their families for when a school district or charter school is providing instruction through a distance learning model. This should not be interpreted as a requirement or be used to replace services provided by counties or social services. For more information, see the "Home Visits" section of the [2020-21 Planning Guidance for Minnesota Public Schools](#).
- School districts and charter schools that dial back in-person instruction are encouraged to allow students to retain any technology provided to them through the remainder of the 2020-21 school year. School districts and charter schools should also continue to provide maintenance for this technology.

Tribal Consultation

Consistent with Tribal considerations, guidance from MDE, and the federal Every Student Succeeds Act (ESSA), all consultations, collaborations, and partnerships with Tribal Nations, American Indian Parent Committees, and Indigenous Education staff must continue. American Indian Education Aid Program Plans should be considered when creating contingency distance learning and hybrid learning plans.

For more information about Tribal Consultation and serving American Indian students, see [MDE's 2020-21 School Year Planning Guidance](#).

Funding Supports

Education is a fundamental determinant of health because it cultivates life skills, knowledge and reasoning, social-emotional awareness and control, and community engagement, which serve people well over the course of a lifetime. Schools themselves function as tools and resources for public health intervention by addressing core needs of the safety, health and wellness of students, families and communities.

Coronavirus Relief Fund (CRF)

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The Coronavirus Aid, Relief and Economic Security (CARES) Act requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that:

1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or government; and,
3. were incurred during the period that begins on July 1, 2020, and ends on December 30, 2020.

Funding would be allocated to public schools as follows:

- 60% allocated to schools by ADM (average daily membership)
- 40% allocated to schools by:
 - 40% by ADM
 - 60% by the number of historically underserved students each school supports

MDE will be requesting CRF funding to be allocated to school districts and charter schools to:

- Address the **necessary operating costs** associated with bringing children back into the classroom this fall, including, but not limited to:
 - Daily cleaning supplies and disinfectant sprayers.
 - Screening supplies, including no-touch thermometers.
 - Personal protective equipment (PPE), including face coverings.
 - Increased costs for transporting students at limited capacity.
 - Mental health supports.
- Support-related **student, family, and educator needs**, including, but not limited to:
 - Digital navigators: training for educators, students, or families on use of technology/digital literacy.
 - Technology devices and internet access.
 - Tutors or mentors to address learning loss: supporting whole school, small group, and individual needs.
 - Translation services.
 - School-age care.
 - Professional development focused on: Academic Response to Intervention (RtI); social emotional learning; competency-based learning; diversity, equity, and inclusion; and anti-bias practices.

Funding under this request will be available for eligible expenditures from July 1, 2020 to December 30, 2020.

Governor's Emergency Education Relief (GEER) Fund

GEER provides emergency support through grants to K-12 schools significantly impacted by COVID-19. These grants support the ability of schools to continue to meet the needs of students.

Minnesota received a \$43 million award, and dedicated \$38 million to K-12 support. Based on feedback from the range of communities across the state, we identified two key priorities for which these funds can be used:

- Expanding **technology capacity** to meet student learning needs, with particular attention to increasing broadband access, establishing wireless hotspots and purchasing devices, such as laptops or tablets, for students.
- Improving student-to-teacher ratios for **summer school programming** to at most six students per teacher.
- Grants to education-related entities providing **wrap-around services for children ages 0-8**.

The core purpose of ESSER is to provide direct money to school districts to support areas impacted by the disruption from COVID-19, which includes both: 1) Continuing to provide educational services while schools are closed, such as remote learning; and, 2) Developing and implementing plans for the return-to-normal operations.

- ESSER funds are divided into two streams: a formula-based allocation and state-directed grants. Districts and charter schools were notified of their eligibility for one or both funding streams.
- The formula-based allocation to districts and charter schools is based on their allocations under Title I, Part A of the Elementary and Secondary Education Act (ESEA). These funds can be used for a wide range of expenses to meet local needs.
- The state-directed grants are used for summer school programming and to support schools, such as cooperatives, that did not receive funding under the Title I allocation model, such as cooperatives.

- [CDC: Interim Guidance for Administrators of US K-12 Schools and Child Care Programs \(www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html\)](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html)
- [CDC: Interim Considerations for K-12 School Administrators for SARS-CoV-2 Testing \(www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-testing.html\)](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-testing.html)
- [Resolve to Save Lives Weekly Science Report: Reopening schools during the COVID-19 pandemic \(preventepidemics.org/covid19/science/weekly-science-review/june-20-26-2020/\)](https://preventepidemics.org/covid19/science/weekly-science-review/june-20-26-2020/)
- [American Academy of Pediatrics COVID-19 Planning Considerations: Guidance for School Reopening \(services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/\)](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)

Close contact/close contact exposure: Close contact means someone you were within 6 feet of for more than 15 minutes. In the context of COVID-19, a close contact exposure means that an individual either lives with or was within 6 feet or more of a person with lab-confirmed COVID-19 for 15 minutes or longer while the ill person was infectious.

Community spread: Community spread means people have been infected with the virus within a local community, including some people who are not sure how or where they became infected.

Incubation period: The time from close contact exposure to development of symptoms. For COVID-19, the incubation period ranges 2-14 days.

Isolation: When someone who is infected (tested positive) with COVID-19 stays away from others, even in their own home. For COVID-19, the minimum isolation period is 10 days.

Outbreak: Two or more people with COVID-19 infection are discovered to be linked (e.g., they work in the same office space or attend the same classroom).

Quarantine: When someone who was in close contact with someone who has or is suspected to have COVID-19 stays away from others during the viral incubation period.

Transmission: When an illness spreads between people.

No to minimal community transmission: Individual cases or limited community spread; no evidence of exposure in large communal settings (e.g., schools, workplaces).

Minimal to moderate community transmission: Sustained transmission in the community with likelihood of exposure within communal settings (e.g., schools, workplaces) and potential for rapid increase in cases.

Substantial, controlled community transmission: High rate of cases that are associated with ongoing community transmission, including communal settings (e.g., schools, workplaces).

Substantial, uncontrolled community transmission: Large scale, uncontrolled transmission in the community, including communal settings (e.g., schools, workplaces).

Employees in the sectors below are eligible to enroll their school-age child(ren) under age of 12 in school-age care if their school is implementing a distance or hybrid learning model.

This school-age care must be provided for district or school-enrolled school-age children age 12 and under who are children of critical workers in Tier I of the state critical worker list. Children of Tier I workers only will be cared for at no cost during the typical school hours.

HEALTHCARE / PUBLIC HEALTH

- Workers, including laboratory personnel, that perform critical clinical, biomedical and other research, development, and testing needed for COVID-19 or other diseases.
- Healthcare providers including, but not limited to, physicians; dentists; psychologists; mid-level practitioners; nurses; assistants and aids; infection control and quality assurance personnel; phlebotomists; pharmacists; physical, respiratory, speech and occupational therapists and assistants; social workers; optometrists; speech pathologists; chiropractors; diagnostic and therapeutic technicians; and radiology technologists.
- Workers required for effective clinical, command, infrastructure, support service, administrative, security, and intelligence operations across the direct patient care and full healthcare and public health spectrum. Personnel examples may include, but are not limited, to accounting, administrative, admitting and discharge, engineering, accrediting, certification, licensing, credentialing, epidemiological, source plasma and blood donation, food service, environmental services, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, etc.
 - Emergency medical services workers.
 - Prehospital workers included but not limited to urgent care workers.
 - Inpatient & hospital workers (e.g. hospitals, critical access hospitals, long-term acute care hospitals, long-term care facilities including skilled nursing facilities, inpatient hospice, ambulatory surgical centers, etc.).
 - Outpatient care workers (e.g. end-stage-renal disease practitioners and staff, Federally Qualified Health Centers, Rural Health Clinics, community mental health clinics, organ transplant/procurement centers, and other ambulatory care settings/providers, comprehensive outpatient rehabilitation facilities, etc.).
 - Home care workers (e.g. home health care, at-home hospice, home dialysis, home infusion, etc.).
 - Workers at Long-term care facilities, residential and community-based providers (e.g. Programs of All-Inclusive Care for the Elderly (PACE), Intermediate Care Facilities for Individuals with Intellectual Disabilities, Psychiatric Residential Treatment Facilities, Religious Nonmedical Health Care Institutions, etc.).
 - Workplace safety workers (i.e., workers who anticipate, recognize, evaluate, and control workplace conditions that may cause workers' illness or injury).
- Workers needed to support transportation to and from healthcare facility and provider appointments.
- Workers needed to provide laundry services, food services, reprocessing of medical equipment, and waste management.
- Workers that manage health plans, billing, and health information and who cannot work remotely.
- Workers performing cybersecurity functions at healthcare and public health facilities and who cannot work remotely.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Vendors and suppliers (e.g. imaging, pharmacy, oxygen services, durable medical equipment, etc.).
- Workers at manufacturers (including biotechnology companies and those companies that have shifted production to medical supplies), materials and parts suppliers, technicians, logistics and warehouse operators, printers, packagers, distributors of medical products and equipment (including third party logistics providers, and those who test and repair), personal protective equipment (PPE), isolation barriers, medical gases, pharmaceuticals (including materials used in radioactive drugs), dietary supplements, commercial health

products, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies (including dispensers), sanitary goods, personal care products, pest control products, and tissue and paper towel products.

- Donors of blood, bone marrow, blood stem cell, or plasma, and the workers of the organizations that operate and manage related activities.
- Pharmacy staff, including workers necessary to maintain uninterrupted prescription, and other workers for pharmacy operations.
- Workers in retail facilities specializing in medical good and supplies.
- Public health and environmental health workers, such as:
 - Workers specializing in environmental health that focus on implementing environmental controls, sanitary and infection control interventions, healthcare facility safety and emergency preparedness planning, engineered work practices, and developing guidance and protocols for appropriate PPE to prevent COVID-19 disease transmission.
 - Public health/ community health workers (including call center workers) who conduct community-based public health functions, conducting epidemiologic surveillance and compiling, analyzing, and communicating public health information, who cannot work remotely.
- Human services providers, especially for at risk populations such as:
 - Home delivered meal providers for older adults, people with disabilities, and others with chronic health conditions.
 - Home-maker services for frail, homebound, older adults.
 - Personal assistance services providers to support activities of daily living for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services.
 - Home health providers who deliver health care services for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services.
 - Workers who provide human services, including but not limited to social workers, nutritionists, case managers or case workers, crisis counselors, foster care case managers, adult protective services personnel, child protective personnel, domestic violence counselors, human trafficking prevention and recovery personnel, behavior specialists, substance abuse-related counselors, and peer support counselors.
- Government entities, and contractors that work in support of local, state, federal, tribal, and territorial public health and medical mission sets, including but not limited to supporting access to healthcare and associated payment functions, conducting public health functions, providing medical care, supporting emergency management, or other services necessary for supporting the COVID-19 response.
- Workers for providers and services supporting effective telehealth.
- Mortuary service providers, such as:
 - Workers performing mortuary funeral, cremation, burial, cemetery, and related services, including funeral homes, crematoriums, cemetery workers, and coffin makers.
 - Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental and behavioral health services to the family members, responders, and survivors of an incident.

LAW ENFORCEMENT, PUBLIC SAFETY, AND OTHER FIRST RESPONDERS

- Public, private, and voluntary personnel (front-line and management, civilian and sworn) in emergency management, law enforcement, fire and rescue services, emergency medical services (EMS), and security, public and private hazardous material responders, air medical service providers (pilots and supporting technicians), corrections, and search and rescue personnel.
- Personnel involved in provisioning of access to emergency services, including the provisioning of real-time text, text-to-911, and dialing 911 via relay.

- Personnel that are involved in the emergency alert system (EAS) ((broadcasters, satellite radio and television, cable, and wireline video) and wireless emergency alerts (WEA).
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and technicians to manage the network or operate facilities.
- Workers at emergency communication center, public safety answering points, public safety communications centers, emergency operation centers, and 911 call centers.
- Fusion Center workers
- Workers, including contracted vendors, who maintain, manufacture, or supply equipment and services supporting law enforcement, fire, EMS, and response operations (to include electronic security and life safety security personnel).
- Workers and contracted vendors who maintain and provide services and supplies to public safety facilities, including emergency communication center, public safety answering points, public safety communications centers, emergency operation centers, fire and emergency medical services stations, police and law enforcement stations and facilities.
- Workers supporting the manufacturing, distribution, and maintenance of necessary safety equipment and uniforms for law enforcement and all public safety personnel.
- Workers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.
- Public agency workers responding to abuse and neglect of children, spouses, elders, and dependent adults.
- Workers who support weather disaster and natural hazard mitigation and prevention activities.
- Security staff to maintain building access control and physical security measures.

FOOD AND AGRICULTURE

- Workers enabling the sale of human food, animal food (includes pet food, animal feed, and raw materials and ingredients), pet supply, and beverage products at groceries, pharmacies, convenience stores, and other retail (including unattended and vending), including staff in retail customer support and information technology support necessary for on-line orders, pickup, and delivery.
- Restaurant and quick serve food operations, including dark kitchen and food prep centers, carryout, and delivery food workers.
- Food manufacturer workers and their supplier workers including those employed at food ingredient production and processing facilities; aquaculture and seafood harvesting facilities; slaughter and processing facilities for livestock, poultry, and seafood; animal food manufacturing and processing facilities; human food facilities producing by- products for animal food; industrial facilities producing coproducts for animal food; beverage production facilities; and the production of food packaging.
- Farmers, farm and ranch workers, and agribusiness support services, including workers involved in auction and sales; in food operations, including animal food, grain and oilseed storage, handling, processing, and distribution; in ingredient production, packaging, and distribution; in manufacturing, packaging, and distribution of veterinary drugs and biologics (e.g., vaccines); and in distribution and transport.
- Farmers, farm and ranch workers, and support service and supplier workers producing food supplies and other agricultural inputs for domestic consumption and export, to include those engaged in raising, cultivating, phytosanitation, harvesting, packing, storing, or distributing to storage or to market or to a transportation mode to market any agricultural or horticultural commodity for human or animal consumption.
- Workers at fuel ethanol facilities, biodiesel and renewable diesel facilities, and storage facilities.
- Workers and firms supporting the distribution of all human and animal food and beverage and ingredients used in these products, including warehouse workers, vendor-managed inventory controllers, and block chain managers.
- Workers supporting the sanitation and pest control of all human and animal food manufacturing processes and operations from wholesale to retail.
- Workers supporting greenhouses as well as the growth and distribution of plants and associated products for home gardens.

- Workers in cafeterias used to feed workers, particularly worker populations sheltered against COVID-19 and those designated as essential critical infrastructure workers.
- Workers in animal diagnostic and food testing laboratories.
- Government, private, and non-governmental organizations' workers essential for food assistance programs (including school lunch programs) and government payments.
- Workers of companies engaged in the production, storage, transport, and distribution of chemicals, drugs, biologics (e.g. vaccines), and other substances used by the human and agricultural food and agriculture industry, including seeds, pesticides, herbicides, fertilizers, minerals, enrichments, equipment, and other agricultural production aids.
- Animal agriculture workers to include those employed in veterinary health (including those involved in supporting emergency veterinary or livestock services); raising, caring for and management of animals for food, as well as pets; animal production operations; livestock markets; slaughter and packing plants, manufacturers, renderers, and associated regulatory and government workforce.
- Transportation workers supporting animal agricultural industries, including movement of animal medical and reproductive supplies and materials, animal biologics (e.g., vaccines), animal drugs, animal food ingredients, animal food and bedding, live animals, and deceased animals for disposal.
- Workers who support sawmills and the manufacture and distribution of fiber and forestry products, including, but not limited to timber, paper, and other wood and fiber products, as well as manufacture and distribution of products using agricultural commodities.
- Workers engaged in the manufacture and maintenance of equipment and other infrastructure necessary for agricultural production and distribution.

JUDICIAL BRANCH (ESSENTIAL SERVICES)

- Workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance.

MINNESOTA NATIONAL GUARD

- Members of the Minnesota National Guard who have been activated under an Executive Order.

EDUCATORS AND SCHOOL STAFF

- Educators supporting public preK-12 schools.
- Paraprofessionals and other school staff.
- Any school staff supporting school-age care programs for children of essential workers, or supporting food service programs in schools.

CHILD CARE, SCHOOL-AGE CARE, HEAD START AND FOSTER CARE

- Child care providers and other workers in child care centers, family child care, schools, and other facilities open and providing child care
- **[UPDATED 12/01/20]:** Foster care guardians
- Teachers and other staff in Head Start programs.

MEMO

To: School Board Members
Superintendent Magas

From: Cathy Erickson

Date: December 18, 2020

Re: Professional Services Project Management Agreement - Facilities

On behalf of David Spooner and myself, we want to thank you for your thoughtful questions at the Board Meeting on Tuesday, December 15. My goal is to summarize those points and make sure you feel as well informed as possible to confidently consider next steps in moving forward with the professional services project management agreement shared via the December consent agenda. After reading this memo and looking through the attached documents, if you still have some questions or would like further clarification, please do not hesitate to reach out to me or Supt. Magas over the weekend.

In addition, we have invited the team that worked to create the attached recommendation and the successful legislation to the Committee of the Whole on Monday.

Approval of this agreement is of utmost importance so that we are able to officially establish our team. We look forward to the closed session and subsequent informational meeting so that you (and the public) are well informed for a vote on December 30th.

I am hopeful that this process will further clarify next steps and options available for both the relocation and transition from Historic Old Central High School (HOCHS), and what steps will be needed for a possible sale of part of Central on the hill. Furthermore, the establishment and work of this team will allow for the robust, inclusive, and transparent processes that we, and the board, desire in the coming months

Background:

The Board authorized District administration to finalize a purchase agreement for the sale of HOCHS at the October 13, 2020 Special School Board meeting. Duluth Public Schools must now prepare for the relocation of programs and services which will be required by mid-October 2021. In addition, we are now in active negotiations for the possible sale of Central on the hill and many requirements are needed to fulfill a potential offer for the board to consider. There is a lot going on!

The agreement before you now has been in the works for several weeks, led by David Spooner, manager of District Facilities, and Mark Knutson, our attorney specializing in contracts. The agreement was created by the District using industry standard templates and then modified to make sure District interests were incorporated. Mr. Spooner has drafted dozens of these agreements over the years and that experience gave us a great advantage in drafting documents to support work and projects needed by the District.

Once our draft was completed, Mr. Knutson and ICS, Inc. attorneys negotiated the final agreement terms and all are well within industry standards. The documents you are considering represent the work of the District to be thoughtful of budget, capacity, and needs as we move forward with the HOCHS sale and relocation.

What is this agreement?

This is a project management agreement to coordinate and develop a relocation plan for HOCHS, the relocation of our transportation services, and the possible sale of part of Central on the hill. It will also include infrastructure and coordination of this entire site, and best reuse of the District Facilities building to be retained at the site.

These complex efforts are on-going, time-sensitive, and are very inter-connected. Subsequently, we have intentionally structured this agreement to ensure that all aspects can be appropriately coordinated and integrated. The contract outlines roles, responsibilities, and pay structures based on agreed upon plans and contracts.

What does this agreement not do?

The professional services agreement does not spell out the details of what any building construction or renovation will look like, which services will be included, where departments will be located, how large the rooms will be, etc. Those decisions will be the next steps to be facilitated by this team and brought to the Board for consideration.

How does this agreement work?

- Fully integrated services structure and agreement with a competitive compensation structure based on the actual work successfully implemented as negotiated by District's attorney and administration.
- All construction work will be competitively bid at the appropriate time in the process and will be separate contracts and agreements.

Why this team?

In June 2019, the District received the HOCHS feasibility study, which revealed substantial costs to remain in the building. District leadership realized in order to be good stewards of taxpayer investments, other options needed to be researched and considered.

Former Superintendent Gronseth, David Spooner, and myself researched and brought together a team of experts to begin discussions on what should be considered and how the team should be structured to ensure that there were no gaps or overlaps. This team possessed the necessary experience to address our unique situation, and was instrumental in creating the recommendations used to get recent legislation passed. The focus now is on next steps, which includes this agreement. Many of the team members have in-depth District knowledge and have active relationships with the District. This agreement will enable us to take important steps to keep our projects moving. This agreement includes engineers, planners, architects and specialists that will support the District with its decisions.

Who is this team?

Former Superintendent Bill Gronseth, current Superintendent John Magas

David Spooner, Manager of District Facilities

Cathy Erickson, CFO

Mike Hoheisel, District Financial Advisor, RW Baird

Pat Overom, Engineer, ICS, Inc.

John Erickson, Architect, DSGW

Greg Follmer, Real Estate Agent

Jeff Anderson, Costin Group

Gary Cerkvenik, Costin Group

Why is this agreement important?

Current parallel paths with work in progress:

- HOCHS sale and program relocations – clock is ticking due to purchase agreement
- HOCHS department and program space planning and visioning work
- Hill site city process - re-platting, regulatory plan, and re-zoning – critical timelines must be met
- Hill site “out lot” development negotiations – time sensitive due to city and developer needs
- Hill site infrastructure and development master plan process – time sensitive in order to continue purchase negotiations
- Permanent lease space evaluations – time sensitive due to relocation timelines
- Temporary lease space evaluations – time sensitive due to relocation timelines

Why the urgency?

- The reality is that these consultants have been working, and are continuing to work, on all aspects of this effort to meet the timelines associated with all of the various parallel paths as outlined above. Many of these parallel paths have now reached a point where they are intersecting with each other. Specific consultants found in this agreement need to be approved to focus on these elements. We have specialized consultants and engineers on standby ready to proceed with more in-depth site analysis and investigations.
- One of the more critical and exciting next steps is to enable the consultant team to initiate the space planning and visioning work for the ALC and other programs currently operating out of HOCHS. This process will involve engaging department

and program leadership and other stakeholders to begin identifying program goals and initiatives, and quantifying space and facility needs to best meet the program specifications. Timing of these efforts are critical so that the team is able to continue to utilize this information for other aspects of the process.

- We are currently at a point where extensive effort is necessary to continue work associated with several aspects of the intersecting projects. In order to do this, we need to secure the team with this agreement.

What does our timeline look like?

Timing and major milestones:

- | | |
|---|--------------------------|
| - City planning and approvals process | Nov 2020 thru May 2021 |
| - HOCHS space planning process | Jan 2021 thru Mar 2021 |
| - HOCHS program relocations options visioning | Jan 2021 thru Mar 2021 |
| - Hill site "out lot" development negotiations | Dec 2020 thru Feb 2021 |
| - Hill site infra-structure and master planning | Dec 2020 thru April 2021 |
| - Legislative authority public hearing | Feb 2021 |
| - MDE review and comment submission | Mar 2021 thru May 2021 |
| - Identification of lease space(s) | Spring 2021 |
| - Relocation of HOCHS programs and departments | Summer 2021 |
| - Solution project design work | Mar 2021 thru Aug 2021 |
| - Project procurement activities | Sept 2021 |
| - Project construction | Sept 2021 thru TBD |
| - | |

Next steps after approved agreement:

Formalize the team

Schedule Board planning meeting

Collaborate with HOCHS departments

Continue to communicate with the City and developer on possible sale

Also included with this memo are the legislative documents that outline the board approved District recommendation for relocation in the event of the sale of HOCHS.

What is currently housed in Historic Central HS?

The 162,000 sq. ft. building houses the District Area Learning Center (ALC), Adult Basic Education (ABE), District administration and program staff, District print shop, and school board and general meeting space. Space is also utilized by St. Louis County Soil & Water, Companies to Classrooms, and a Central HS memorabilia classroom.

What is the cost of repairing Historic Central HS?

In June 2019, a feasibility report was shared with the school board that outlined **\$48.5 million** in deferred maintenance repairs and health & safety requirements. Estimated construction and soft costs at the time included: \$24 million for the building exterior/enclosure, \$13.5 million for systems repair/replacement, and \$11 million for interior repairs/accessibility. NOTE: this only includes those items that qualify for Long-Term Facilities Maintenance (LTFM) funding and would not include other needed renovations or building improvements.

What is the impact of Historic Central being on the National Register of Historic Places?

The following information was received from Michael Koop, from the MN Dept. of Administration State Historic Preservation Office (SHPO):

"...[statute] requires non-federal public agencies in the state to consult with the SHPO before carrying out or approving any undertaking that has the potential to affect National or State Registered historic properties. From our office's perspective, the proposed sale of a National Register-listed property is an undertaking which has the potential to cause adverse effects to the historic property. Currently, because it is owned by a public entity in the state, the historic property has certain protections under state statute. If the transfer is made to a private entity and the terms of the transfer do not include adequate and legally enforceable restrictions or conditions to ensure continued long-term preservation of the historic significance of the property, then this would be considered an adverse effect."

The District has already done an initial connection to learn more about what would be needed to complete a transfer of the property should the board entertain an offer. It is our belief that the longevity of the building has a greater chance of success with others who have the resources and experience to repair and maintain historic buildings.

Is there interest in Historic Old Central?

Yes. The district has seen interest in the building prior to listing and expects more interest now.

What is currently housed at the Central High School site?

The almost 77 acre parcel has 3 building structures including the main high school along with the former Secondary Technical Center (STC) and Secondary Technical Annex, which now houses District facilities. There are also parking areas and fields.

Contacts: Bill Gronseth, Superintendent – 218-336-8752 Cathy Erickson, CFO – 218-336-8700 x1012

Lobbyists: Gary Cerkvenik – 218-749-0520 Jeff Anderson – 218-590-5970

Is Central High School on the hill move-in ready?

No. The 228K sq. ft. building has been maintained only to keep basic heating functions available. Much of the internal facilities equipment and systems are past their useful life and would need to be repaired or replaced before the building could be reused. In addition, the size of the building is much too large for the current district relocation needs.

What is the Secondary Technical Center (STC)?

The Central High School site includes a 52,000 square foot building that formerly housed Career & Technical programming. This building has garnered interested from buyers in the past, but often it was the rest of the site that caused potential purchasers to step away from any development deal. This building sits on the most attractive part of the campus and while it is a possible relocation site for District programming from Historic Central, that may limit interest in the rest of the site.

Does the District currently have any other properties for sale?

No. Right now the district is gauging interest in Historic Central and has an active listing for the Central High School site.

What about the District Transportation facilities?

The current transportation building requires a great deal of repair, including a new roof. In addition, with the limitation of site, to provide any bus shelter would be difficult. A relocation from the current location would be best and coordination with other relocation makes sense.

What does the current District planning scenario look like?

Should the district opt to transfer ownership of Historic Central, relocation of programs and staff would be required. The district sees the value in using part of the Central High School (CHS) site (approx. 20-25 acres) and space would be needed to house District administration services along with some district programming. The District would lease space for both the Area Learning Center (ALC) and Adult Basic Education (ABE). Transportation would also be addressed by moving up to the CHS site. Site work and improvements would be needed at the CHS site in order to parcel and sell the remainder of the property (approx. 50-55 acres).

Why are we seeking legislation?

Legislation will allow us to relocate from Historic Central and spend \$17 million LESS in taxpayer dollars than the cost to stay in Historic Central and address the deferred maintenance projects that have current levy authority. If the district stays in Historic Central, over \$48.5 million in repairs will need to be addressed, but if legislation is supported the district will only spend up to \$31.5 million on relocation plans.

Long-Term Facilities Funding

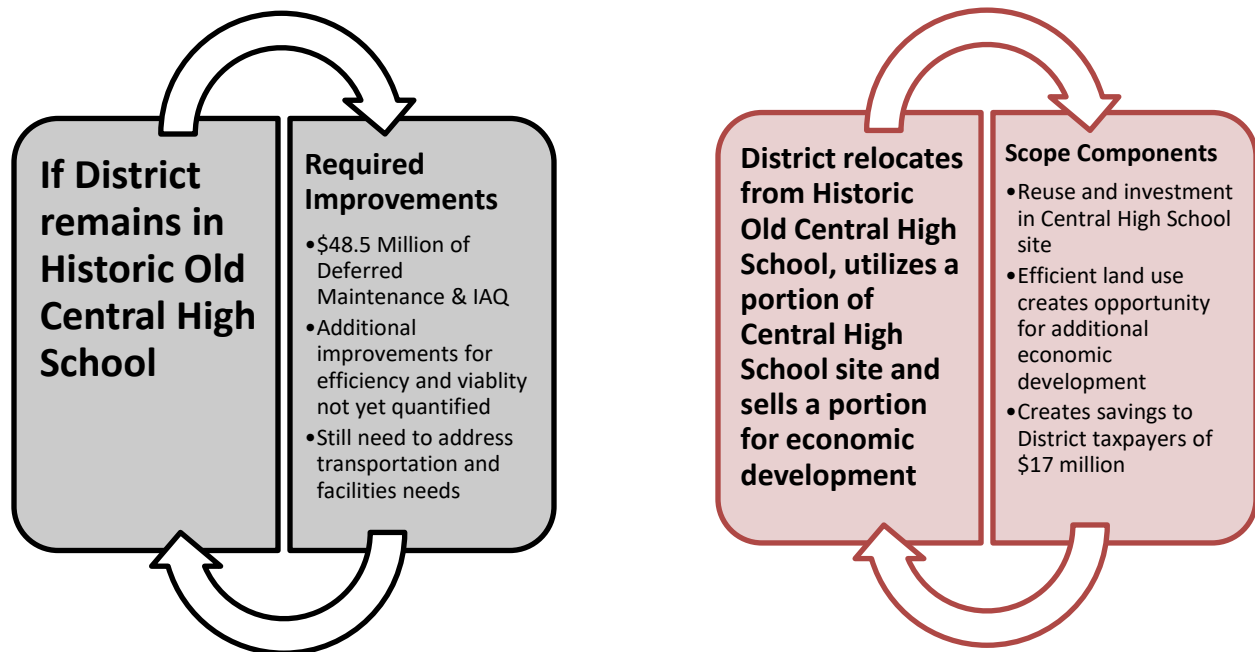
Duluth Public Schools is seeking a funding change in the Long-Term Facilities Maintenance (LTFM) program for relocation and improvement levy authority.

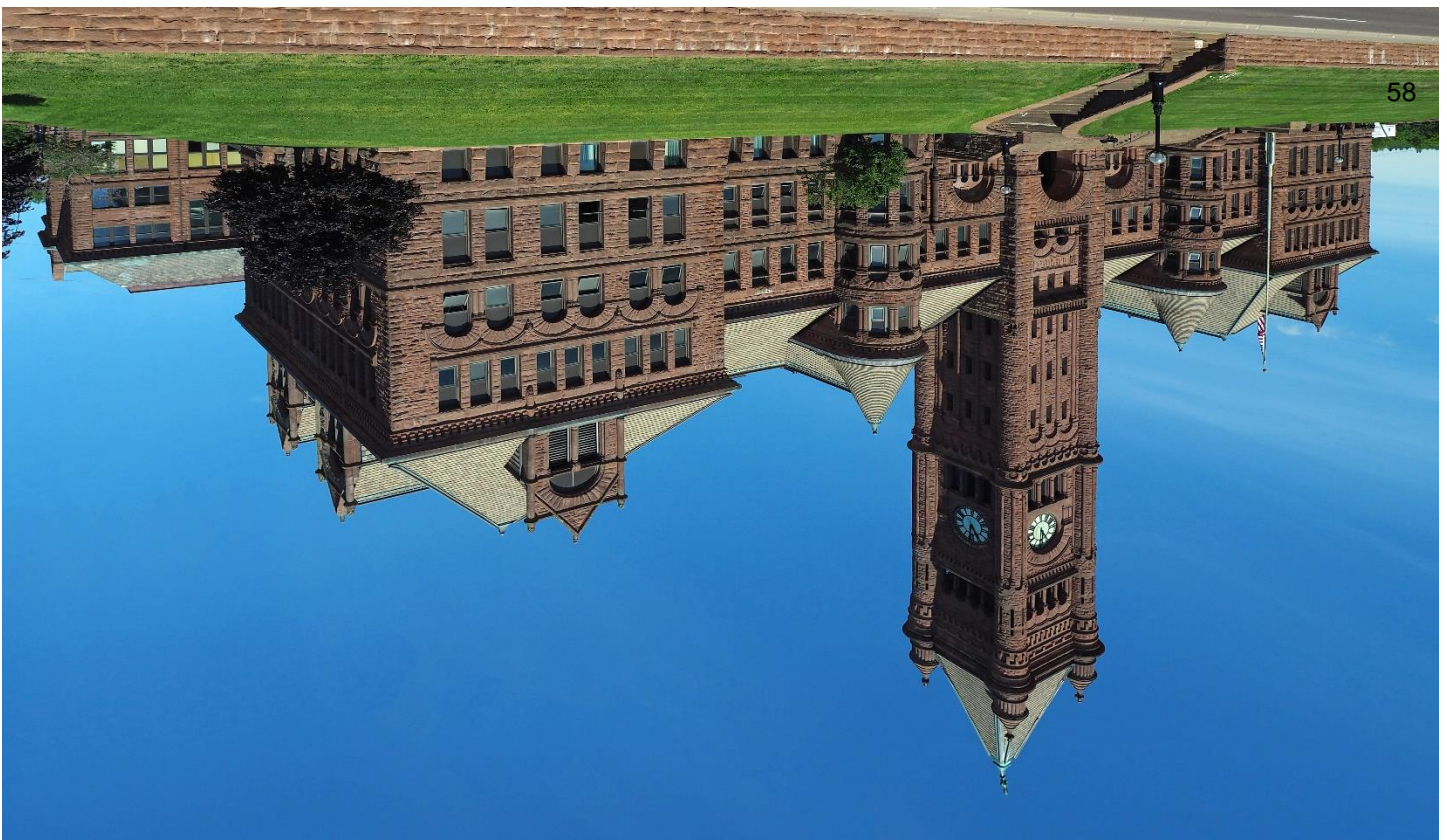
Objectives include:

- More effective use of square footage
- Avoid investing taxpayer contributions in an inefficient building through current LTFM
- Allow for reuse of a National Historic School Building
- Create community partnerships and economic development

Historic Old Central High School, which currently houses the District Area Learning Center (ALC), Adult Basic Education (ABE), and District program and administrative staff, has been identified as needing \$48.5 million in LTFM qualifying repairs.

A District work group identified a district improvement and relocation plan that could save District taxpayers \$17 million vs. repairing Historic Old Central High School.





Historic Old Central High School ~ Duluth, MN

Original construction of Historic Central High School was in 1890 (134,114 sq. ft) with 3 later additions in 1926 (20,787 sq. ft), 1938 (2,079 sq. ft.), and 1973 (5,334 sq. ft.).

The building, which sits on an entire city block in the heart of downtown Duluth, was listed on the National Register of Historic Places in 1972.

District Contact: Bill Gronseth, Superintendent 218-336-8752

~ The District was presented a Historic Central deferred maintenance feasibility study in June of 2019 which outlined over \$48.5 million of interior and exterior building repairs. These repairs would qualify through Long-Term Facilities Maintenance (LTFM) funding which is an equalized levy. LTFM projects, under current law, cannot include upgrades, new construction, or remodeling.

~ Further building analysis concluded that the building has over three times the space actually needed to support the staff and programs currently in Historic Central.

~ Interest in Historic Central by outside developers prompted the District to consider what a transfer of ownership would entail.

~ A facilities work group was created in the fall of 2019 to analyze current facilities and funding options with the goal to create a recommendation to the school board.

~ Work group recommendations were presented to the school board in January 2020 and the school board unanimously voted to direct District staff to find funding options that would include a relocation from Historic Central.

~ The relocation recommendation includes moving some building staff and programs into new & remodeled facilities on the Central High School site. This recommendation includes the option for additional outside development on the Central High School site with the District utilizing property already owned by the District that is less desirable to developers and has been a barrier to economic development.

~ An estimated cost savings of over \$17 million can be realized in site costs vs. investing LTFM funding into Historic Central.

~ The transfer of ownership of Historic Central can put it in the hands of those with better resources and experiences to caretake and preserve this iconic building.

~ A legislative request also includes addressing the required transportation facility improvements that have been deferred.

~ The District continues to gauge interest in both properties and work will progress on finding the right facility and funding options for the school board to consider, with the goal to have effective use of space with funding options that are responsible and sustainable.





AIA Document A201® – 2017

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining

provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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.

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" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the

site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold 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.

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.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by 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.

§ 3.2.3 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.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes

remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 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; and

- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design 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.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, 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, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under

Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or 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 matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the

Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate

Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate 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 alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. 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 Agreement.

§ 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 for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable

by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from 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.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The

foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 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.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers

to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the

endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The

Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, 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.

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.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 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.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. 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.

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

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly

consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Sample

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

AGREEMENT made as of the Twenty-Sixth day of October in the year Two-Thousand Twenty
(*In words, indicate day, month and year.*)

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

Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

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

ICS Consulting Inc.
1331 Tyler Street N.E., Suite 101
Minneapolis, MN 55413

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

Over the course of the past several months, the District, ICS, and other project team members have been working to develop scopes and gain funding approval of a project designed to relocate existing District programs and services from the existing HOCHS facility. The current intent is for the bulk of these programs to be relocated to a new facility located on the District-owned Central High School site up on the hill. The ability for the District to fund this project has recently been approved as part of the State of Minnesota Bonding Bill.

Based on the overall scopes of work of the Project, it is critical to be strategic in the development, design, procurement, and implementation of the projects to optimize use of available funding, minimizing disruption to on-going operations, and to ensure that overall quality control and coordination are maintained. In order to accomplish these critical goals, the District has deemed it prudent to structure the process as an Integrated Project Delivery (IPD). ICS will serve as the lead consultant for this IPD effort. A preliminary outline of the proposed project has been included in Exhibit C.

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

ICS Consulting Inc.
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

The Owner and ICS agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is entered into between Owner and ICS, a professional Owner's Representative and Construction Management firm, and is based on the Initial Information set forth in this Section 1.1, entitled, Initial Information, and Exhibit A to this Agreement, entitled AIA Document C132™ - 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser whereby ICS will provide Construction Manager services as an advisor to Owner. Exhibit A is expressly incorporated into this Agreement as if fully set forth herein.

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

Preliminary project proposal Exhibit C

(Paragraphs deleted)

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

N/A

§ 1.1.3 The Owner's Total Project Budget:
(Provide total and, if known, a line item breakdown.)

Total Project Budget = \$31,500,000.00

§ 1.1.4 The Owner's anticipated design and construction schedule:

Conceptual Phasing Overview:

- .1 Design Phase: Spring /Summer 2021
- .2 Bidding: TBD
(Paragraphs deleted)
- .3 Construction Phase: Fall 2021 – Summer 2022
(Paragraph deleted)
- .4 Occupancy: TBD

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:

(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

- One Contractor
- Multiple Prime Contractors
- Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

N/A

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director
Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review ICS's submittals to the Owner are as follows:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director

§ 1.1.10 The Owner will retain the following consultants:

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

- .1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

ICS has been retained as Construction Manager pursuant to this Agreement.

- .2 Cost Consultant (if in addition to the Construction Manager):

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(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

TBD

.3 Land Surveyor:

TBD

.4 Geotechnical Engineer:

Braun Intertec Mark Flynn
1826 Buerkle Road
St. Paul, MN 55110

.5 Civil Engineer:

Obernel Engineering Chip Jacobs
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.6 Other consultants:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

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

Pat Overom, Principal In Charge
ICS
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

(Paragraphs deleted)

§ 1.1.12 ICS will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Northland Consulting Engineers
102 South 21st Avenue West
Duluth, MN 55806

.2 Mechanical Engineer:

Obernel Engineering
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.3 Electrical Engineer:

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Obernel Engineering
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.4 Construction Management Services:

ICS
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

.5 Architect:

DSGW Architects John Erickson
2 West First Street, Suite 201
Duluth, MN 55802

.6 Civil Engineer:

TBD

§ 1.1.12.2 Consultants retained under Additional Services:

TBD

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

N/A

§ 1.2 The Owner and ICS may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change, and, in that event, the Owner and ICS shall, by appropriate written agreement, appropriately adjust ICS's services, schedule for ICS's services, and ICS'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.

(Paragraph deleted)

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

§ 1.2.2 ICS and Owner understand and agree that AIA documents shall be used for Owner's contracts with its contractors. ICS shall prepare the construction agreement forms for all appropriate contractors, and the Owner shall execute and procure construction agreements with all appropriate contractors.

§ 1.2.3 The parties understand and agree that ICS does not represent or warrant the quality or acceptability of any previous work performed at the Project site and that ICS shall be entitled to additional compensation arising from unforeseen and/or concealed conditions arising from the previous work.

ARTICLE 2 ICS'S RESPONSIBILITIES

§ 2.1 ICS shall provide professional services as set forth in this Agreement and in Exhibit A. The parties understand and agree that ICS and its sub consultants will provide design, engineering and construction management services for the Project.

§ 2.2 The parties understand and agree that the architect and engineers of record for the Project are sub consultants to ICS and that ICS shall not perform architectural or engineering services for which it is not appropriately licensed.

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§ 2.3 ICS shall perform its services consistent with the professional skill and care ordinarily provided by professional engineers practicing in the same or similar locality under the same or similar circumstances. ICS shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. ICS shall, by appropriate written agreement, require all of its sub consultants to assume towards ICS all the obligations and responsibilities which ICS assumes towards Owner under this Agreement with regard to the scope of the Services of the sub consultant.

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

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

§ 2.6 ICS shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits ICS normally maintains, the Owner shall reimburse ICS for any additional cost. Prior to commencing the work under this Agreement, ICS shall provide a certificate of insurance to the Owner showing its insurance coverages, and ICS's certificates for comprehensive general liability coverage and comprehensive automobile coverage will name the Owner as an additional insured.

COVERAGES	LIMITS OF LIABILITY
Workers' Compensation, including Employer's Liability Insurance	Statutory
Comprehensive General Bodily Injury Liability Insurance, including Contractual	\$1,000,000
Comprehensive General Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Claim \$2,000,000 Aggregate
Comprehensive Automobile Injury Liability Insurance	\$500,000 Per Claim \$500,000 Aggregate
Comprehensive Automobile Property Damage Liability Insurance	\$500,000
Professional Liability Insurance	\$5,000,000 Per Claim \$5,000,000 Aggregate

(Paragraphs deleted)

ARTICLE 3 SCOPE OF ICS'S BASIC SERVICES

§ 3.1 ICS's Basic Services consist of those described in Article 3 or expressly identified elsewhere in this Agreement as being part of ICS's Basic Services. Services not expressly identified as part of ICS's Basic Services are Additional Services. ICS shall provide architectural and engineering services through licensed sub consultants, including usual and customary architectural, structural, mechanical, civil and electrical engineering services, food service consulting, and any other services necessary to produce a complete set of Construction Documents. The parties agree and understand that architectural and engineering services shall be provided by the architect or engineers of record as sub consultants to ICS. It is understood by the Owner and ICS that contracts for such professional sub consulting services are not subject to competitive bidding requirements. All professionals providing such services whether directly by ICS or under a sub consultant contract with ICS shall be qualified, and where required, properly licensed and/or certified to perform these services. Upon the Owner's request, ICS shall furnish copies of the scope of sub consulting services in the contract between ICS and ICS's sub consultants.

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

§ 3.1.2 ICS shall coordinate its services with those services provided by the Owner and the Owner's other consultants. ICS 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 other consultants. ICS shall provide prompt written notice to the Owner if ICS 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, ICS shall submit for the Owner's approval a schedule for the performance of ICS's services. The schedule initially shall include anticipated dates for the commencement of

construction and for Owner's occupancy 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 ICS or Owner. With the Owner's approval, ICS shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 ICS 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 ICS's written approval.

(Paragraphs deleted)

§ 3.1.5 ICS 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.

§ 3.2 Schematic Design Phase Services

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

§ 3.2.2 ICS 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. ICS 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 Based on the Project requirements, ICS through its sub consultants shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.4 Based on the Owner's approval of the preliminary design, ICS through its sub consultants shall prepare Schematic Design Documents for the Owner's approval consisting 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.

(Paragraphs deleted)

§ 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, ICS shall prepare Design Development Documents for the Owner's approval illustrating and describing the development of the approved Schematic Design Documents and consisting 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 ICS shall update the estimate of the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work.

(Paragraph deleted)

§ 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, ICS shall prepare Construction Documents for the Owner's approval. The Construction Documents shall set forth in detail the materials, systems and other requirements for the construction of the Work. The Owner and ICS acknowledge that, in order to properly construct the Work the contractors performing the Work shall provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals pursuant to their AIA construction agreements with the Owner.

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

§ 3.4.3 During the development of the Construction Documents, ICS and the architect or engineer of record shall, after consultation with the Owner, be primarily responsible for the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).

§ 3.4.4 ICS shall update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate for the Cost of the Work.

§ 3.4.5 ICS shall submit the Construction Documents to the Owner for the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

ICS, after consultation with the Owner, shall develop bidders' interest and assist the Owner in establishing a list of prospective bidders or contractors in addition to performing the services provided under this Agreement. Following the Owner's approval of the Construction Documents, ICS 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 ICS 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, ICS shall 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 ICS shall, if requested by the Owner, assist the Owner in obtaining proposals, where permitted by applicable law, 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, ICS 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 ICS shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, as amended for the Project. ICS shall revise and issue the General Conditions of the Contract for Construction (AIA Document A232™–2009) for the Project in accordance with this Agreement and consistent with ICS's duties as set forth in this Agreement and in the AIA Document A232™–2009 as amended for the Project.

§ 3.6.1.2 ICS shall advise and consult with the Owner during the Construction Phase Services. ICS shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. ICS 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 ICS be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ICS shall be responsible for ICS'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, ICS's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date ICS issues the final Certificate for Payment.

§ 3.6.2 Observations of the Work

§ 3.6.2.1 ICS or its sub consultants shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in this Agreement, 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, ICS 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, ICS 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 ICS has the authority to reject Work that does not conform to the Contract Documents. Whenever ICS considers it necessary or advisable, ICS 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 ICS 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 ICS to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 ICS shall interpret and decide matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. ICS's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of ICS 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, ICS shall endeavor to secure faithful performance by both Owner and Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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 A232™–2009, as amended for the Project. ICS 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

(Paragraphs deleted)

of record, as a sub consultant to ICS, shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Certifications for payment shall constitute a representation to the Owner, based on observation of the Work as provided in this Agreement and on the data comprising the Contractor's Application for

Payment, that, to the best of the Architect of Record'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 observation 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 of Record.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect of Record 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 ICS shall maintain a record of the Applications and Certificates for Payment.

(Paragraph deleted)

§ 3.6.4 Submittals

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

§ 3.6.4.2 ICS 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. ICS's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. ICS's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(Paragraph deleted)

§ 3.6.4.4 Subject to Section 4.2, ICS shall review and respond to requests for information about the Contract Documents and 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. ICS's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, ICS shall prepare, or cause to be prepared by ICS's sub consultants, and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 ICS 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 ICS shall review and prepare, or take other appropriate action, on Change Orders and Construction Change Directives for Owner's approval and execution in accordance with this Section 3.6.5 and the Contract Documents, and shall maintain records relative to changes in the Work.

§ 3.6.5.2 ICS shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit ICS to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If ICS determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, ICS may issue an order for a minor change in the Work or recommend to the Owner that the change be denied.

§ 3.6.5.3 If ICS determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, ICS shall make a recommendation to the

Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, ICS shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of ICS. With the Owner's approval, ICS shall incorporate those estimates into a Change Order, Construction Change Directive or other appropriate documentation for the Owner's execution or negotiation with the Contractor. ICS shall be compensated as an Additional Service for 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.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect of Record, as a sub consultant to ICS 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 of Record's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect of Record'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, ICS 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 ICS shall 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, ICS shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services

§ 4.1 The Additional Services listed in the table below are included in ICS's Basic Services if identified as ICS's responsibility. Other additional services may be required for the Project that are not being provided as part of ICS's Basic Services. ICS shall provide the other listed Additional Services (listed as Not Provided) in the table below as ICS's responsibility, if mutually agreed upon in writing, and the Owner shall compensate ICS for such Additional Services as provided in this Agreement. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor ICS is designated, the parties agree that the listed Additional Service is not being provided for the Project.

(Paragraph deleted)

Additional Services	Responsibility <i>(ICS, Owner, or not provided)</i>
§ 4.1.1.1 Programming	ICS
§ 4.1.1.2 Multiple preliminary designs (up to 3)	ICS
§ 4.1.1.3 Measured drawings	ICS
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	ICS
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided

Additional Services	Responsibility <i>(ICS, Owner, or not provided)</i>
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	ICS
§ 4.1.1.9 Landscape design	ICS
§ 4.1.1.10 Interior design	ICS
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	ICS
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	ICS
§ 4.1.1.16 As-constructed record drawings	Contractor
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	ICS
§ 4.1.1.21 Telecommunications/data design	ICS
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	ICS
§ 4.1.1.24 Sustainable Project Services pursuant to Section	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	ICS
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	ICS
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.2 Additional Services may be provided after execution of this Agreement, if mutually agreed upon in writing, without invalidating the Agreement. ICS shall notify the Owner in writing of the need for the Additional Services prior to providing such services, or as otherwise set forth in subsections 4.2.1 and 4.2.2. If the Owner deems that all or a part of such Additional Services are not required, the Owner shall give prompt written notice to ICS, and ICS shall have no obligation to provide those services. Except for services required due to the sole fault of ICS, any Additional Services provided in accordance with this Section 4.2 shall entitle ICS to compensation pursuant to this Agreement and an appropriate adjustment in the Architect's schedule. If ICS fails to obtain prior written approval for Additional Services (except as set forth in subsection 4.2.2), it is not entitled to compensation for said services.

(Paragraphs deleted)

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, ICS shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. ICS shall not proceed to provide the following Additional Services until ICS receives the Owner's written authorization, and shall not be entitled to compensation for said services if prior written authorization is not received:

- .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;

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- .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;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where ICS is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than ICS.

§ 4.2.2 To avoid delay in the Construction Phase, ICS 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 ICS's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to ICS of the Owner's determination. The Owner shall compensate ICS for the services provided prior to ICS's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by ICS;
- .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 ICS shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, ICS shall notify the Owner:

- .1 Thirty (30) visits to the site by the design team over the duration of the Project during construction
- .2 Two (2) observations 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
- .3 Two (2) observations 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 ICS incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of ICS, extension of ICS'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 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 ICS. The Owner and ICS shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project:

Cathy Erickson, CFO/Executive Director
Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

The Owner shall render decisions and approve ICS's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of ICS's services.

§ 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.

(Paragraph deleted)

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

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by ICS. Upon ICS'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 ICS in this Agreement, or authorize ICS to furnish them as an Additional Service, when ICS 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.

§ 5.7 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.

§ 5.8 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. The Owner's obligation to furnish legal services does not require the Owner to defend or indemnify ICS from ICS's alleged negligent or wrongful acts.

§ 5.9 The Owner shall provide prompt written notice to ICS if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in ICS's Instruments of Service or any information provided by the Owner. However, failure to provide such notice does not relieve ICS from its obligations under this Agreement.

§ 5.10 The Owner shall include ICS in all communications with the Contractor that relate to or affect ICS's services or professional responsibilities. The Owner shall promptly notify ICS of the substance of any direct communications

between the Owner and the Contractor otherwise relating to the Project. Communications by and with ICS's sub consultants shall be through ICS.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate ICS's duties and responsibilities set forth in the Contract for Construction with ICS's services set forth in this Agreement. The Owner shall provide ICS a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction and all supplementary general conditions and amendments applicable to the Project.

§ 5.12 The Owner shall provide ICS with right-of-access to the Project site prior to commencement of the Work and accurate information necessary to perform its services under this Agreement, and shall obligate the Contractor to provide ICS access to the Work wherever it is in preparation or progress.

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

§ 5.14 The Owner warrants that it is financially solvent and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. ICS may reasonably demand assurance in writing of the Owner's ability to satisfy its obligations under this Agreement, and the Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by ICS.

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 ICS 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 ICS; 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 by this Agreement. 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 ICS, represent ICS's judgment as a professional engineer. It is recognized, however, that neither ICS 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, ICS 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 ICS.

§ 6.3 In preparing estimates of the Cost of Work, ICS 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. ICS'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, ICS shall provide and be compensated for such an estimate as an Additional Service under this Agreement.

(Paragraph deleted)

§ 6.4 If, through no fault of ICS, the Procurement Phase has not commenced within 90 days after ICS 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 ICS's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, ICS shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the

(Paragraphs deleted)

Work, and the Owner shall cooperate with ICS 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 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 this Agreement;
- .4 in consultation with ICS, 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 6.5.4, and if the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services was exceeded by the lowest bona fide bid or negotiated proposal by two percent (2%) or more, then ICS, without additional compensation, shall incorporate the required modifications in the Construction Documents. ICS's modification of the Construction Documents, pursuant to this Section 6.7, shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 ICS 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 ICS and ICS'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 ICS and ICS's consultants.

§ 7.3 ICS grants to the Owner a nonexclusive license to use ICS'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. ICS shall obtain similar nonexclusive licenses from ICS's sub 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, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If ICS rightfully terminates this Agreement for cause as provided in this Agreement, 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 ICS and ICS's sub 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 ICS and its sub 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.

§ 7.4 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

To the extent permitted by law, ICS shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of ICS, its employees and its consultants in the performance of professional services under this Agreement.

To the extent permitted by law, Owner shall indemnify and hold ICS and the ICS's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or

omissions of Owner, or its employees, representatives or consultants, in the performance of its obligations under this Agreement.

§ 8.1.1 The Owner and ICS 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. The Owner and ICS waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent that insurance is not compromised, and to the extent damages are covered by property insurance, the Owner and ICS waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232™–2009, General Conditions of the Contract for Construction as amended for the Project. The Owner or ICS, 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.

(Paragraphs deleted)

§ 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 ICS's services, ICS 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 ICS shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise in writing, 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.

§ 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:

(Paragraphs deleted)

Litigation in a court of competent jurisdiction in the state of Minnesota. ICS shall also designate litigation in the state of Minnesota as the dispute resolution mechanism for all contracts with subconsultants and no contracts with subconsultants shall contain restrictions on joinder.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to ICS in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at ICS's option, cause for suspension of performance of services under this Agreement. If ICS elects to suspend services, ICS shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, ICS 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 ICS all sums due prior to suspension and any expenses incurred in the interruption and resumption of ICS's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, ICS shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, ICS shall be compensated for expenses incurred in the interruption and resumption of ICS's services. ICS'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 sole fault of ICS, ICS 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 ICS 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 terminates this Agreement through no fault of ICS, or if ICS terminates this Agreement pursuant to Section 9.1, 9.3 or 9.4, the Owner shall compensate ICS for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to ICS's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement pursuant to Section 9.4 or 9.5, or ICS terminates this Agreement pursuant to Section 9.1, 9.3 or 9.4, the Owner shall pay to ICS 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: 25% of total unbilled fees

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the state of Minnesota.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232™–2009, General Conditions of the Contract for Construction as amended for the Project.

§ 10.3 The Owner and ICS, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor ICS 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 ICS by the Owner prior to the assignment.

§ 10.4 If the Owner requests ICS to execute certificates, the proposed language of such certificates shall be submitted to ICS for review at least 14 days prior to the requested dates of execution. If the Owner requests ICS to execute consents reasonably required to facilitate assignment to a lender, ICS shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to ICS for review at least 14 days prior to execution. ICS 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 ICS.

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

§ 10.7 ICS shall have the right to include photographic or artistic representations of the design of the Project among ICS's promotional and professional materials. ICS shall be given reasonable access to the completed Project to make such representations. However, ICS's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised ICS in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for ICS 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 To the extent permitted by law, if ICS 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.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. 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.

§ 10.10 ICS and the Owner each acknowledge that they have reviewed and familiarized themselves with this Agreement, including Exhibit A and all attachments, and agree to be bound by the terms and conditions contained therein.

§ 10.11 ICS and the Owner specifically understand and agree that at all times pertinent to this Agreement ICS and ICS's sub consultants shall be independent professionals and shall not be considered employees of the Owner.

§ 10.12 Where ICS is prevented from completing any part of its services under this Agreement due to delay beyond the control of ICS, the time to allow ICS to perform its services will be extended in an amount equal to the time lost due to such delay. Delays beyond the control of ICS shall include, but are not limited to, acts or neglect by the Contractor, subcontractors, the Owner, utility owners or other contractors performing other work on the Project, strikes, labor disputes, fires, unavoidable delay in deliveries, unavoidable casualties, floods, epidemics, pandemics, disease, abnormal weather conditions, acts of God, or other causes beyond the control of ICS. ICS's fees for the affected services and the time schedules impacted by the delay shall be equitably adjusted.

ARTICLE 11 COMPENSATION

§ 11.1 The Owner shall compensate ICS on a percentage basis for all design services included in ICS's Basic Services (Architectural, Mechanical/Electrical/Plumbing/Civil/Structural Engineering and Food Service Consultant) and Construction Management Services (including Commissioning per Exhibit A) in relation to the execution of the HOCHS.

ICS's fee percentage for all project-related services from development through post-construction is summarized below:

IPD Coordination and Representation – 1.5%
 Project Oversight and Management – 3.5%
 Project Design Services (A/E) – 8.25%
 MDE Required Project Commissioning – 0.8%

§ 11.2 Reimbursable Expenses are in addition to the compensation for ICS professional services under Article 3 and Section 11.1 and include expenses incurred by ICS and ICS's sub consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

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- .3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .4 ICS Consultant’s expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by ICS consultants;
- .5 All taxes levied on professional services and on reimbursable expenses;
- .6 Professional services of consultants other than architecture, mechanical/electrical/plumbing/civil and structural engineering and food service consulting;
- .7 All site related services including site superintendent, general superintendent, trailer, office supplies and equipment, phones, internet, technology; superintendent truck, lodging and meals (only if out of town), safety and equipment, etc.
- .8 Transportation and authorized out-of-town travel and subsistence;
- .9 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .10 Printing, reproductions, plots, standard form documents;
- .11 Postage, handling and delivery;

The detailed Reimbursable Budget will be finalized after Schematic Design is completed.

§ 11.2.1 For Reimbursable Expenses, the compensation shall be the out of pocket expenses incurred by ICS and ICS’s consultants plus an administrative fee of five percent (5%) of the expenses incurred.

§ 11.3 General Conditions are in addition to the compensation for ICS professional services under Article 3 and Section 11.1 and include expenses incurred by ICS and ICS’s sub consultants and service providers directly related to the Project, as follows:

- .1 All site related contracted services including temporary sanitation, temporary utilities, construction cleaning/waste management, testing, fencing/security, temporary enclosures, snow plowing, temporary roads, winter conditions.

§ 11.3.1 For General Conditions, the compensation shall be out of pocket expenses incurred by ICS and ICS’s consultants plus an administrative fee of five percent (5%) of the expenses incurred.

§ 11.4 For Additional Services that may arise during the Course of the Project, including those under Section 4.2, the Owner shall compensate ICS at the rates set forth in Section 11.7. Compensation for Additional Services of ICS’s sub consultants when not included in Section 11.2 shall be the amount invoiced to ICS.

§ 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:

Contract Execution	Ten	percent (10	%)
Schematic Design and Design Development Phase	Twenty	percent (25	%)
Construction Documents Phase	Forty	percent (35	%)
Bidding/Procurement Phase	Five	percent (5	%)
Construction Phase	Twenty-Five	percent (25	%)
<hr/>				
Total Basic Compensation	One Hundred	percent (100	%)

(Paragraph deleted)

§ 11.6 ICS shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.6.1 Intentionally Omitted.

§ 11.7 The hourly fixed billing rates for services of ICS and ICS's consultants are set forth below. The rates shall be adjusted in accordance with ICS and ICS's consultants' normal review practices.

Personnel Description	Rate/Hour
Construction Executive	\$260.00
Project Director	\$180.00
Project Manager (PM1,2,3 – Blended Rate)	\$150.00
General Superintendent	\$150.00
Site Superintendent	\$130.00
Project Engineer	\$90.00
Clerical/Accounting	\$85.00
Design Team – Architects, engineers, consultants	Based on firm's current rate structure

Flat Rates for Reimbursable Items	Rate/Monthly or Weekly
Site Trailer	\$600.00 per month
Office Supplies & Equipment	\$300.00 per month
Phones/Internet/Technology	\$550.00 per month
Superintendent Truck	\$500.00 per week
Superintendent Lodging/Meals	Expenses actually incurred in an amount not to exceed \$1000.00 per week

If the Site Superintendent is local, the lodging/meals will not be billed.

(Paragraphs deleted)

§ 11.9 **ICS's Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types and limits ICS normally maintains, the Owner shall pay ICS for the additional costs incurred by ICS for the additional coverages as set forth below:

(Insert the additional coverages ICS is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse ICS.)

NA

§ 11.10 Payments to ICS

§ 11.10.1 **Initial Payments** An initial payment of 10% of the fees will 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.

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§ 11.10.2

(Paragraphs deleted)

Progress Payments

(Paragraphs deleted)

§ 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 ICS’s invoice. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the legal rate prevailing from time to time in the State of Minnesota.

§ 11.10.2.2 The Owner shall not withhold amounts from ICS’s compensation to impose a penalty or liquidated damages on ICS, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless ICS 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 General Conditions and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. Reimbursable Expenses and General Conditions expenses will be estimated during schematic design, design development and construction document phase.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and ICS including Exhibit A, AIA Document C132™-2009, Standard Form of Agreement Between Owner and ICS where ICS Provides Construction Manager Services as an Adviser to the Owner.
- .2 Exhibit B – COVID-19 Addendum.
- .3 Exhibit C – Preliminary Project Proposal

§ 13.2 This Agreement represents the entire and integrated agreement between the Owner and ICS 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 ICS.

OWNER (Signature)

Jill Lofald, School Board Chair

(Printed name and title)



ICS (Signature)

Mr. Pat Overom, Principal In Charge

(Printed name and title)

(Table deleted)(Paragraphs deleted)

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the Twenty-Sixth day of October in the year Two Thousand Twenty
(In words, indicate day, month and year.)

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

Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

and ICS Consulting, Inc. identified as ICS:
(Name, legal status, address and other information)

ICS Consulting, Inc.
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

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

Over the course of the past several months, the District, ICS, and other project team members have been working to develop scopes and gain funding approval of a project designed to relocate existing District programs and services from the existing HOCHS facility. The current intent is for the bulk of these programs to be relocated to a new facility located on the District-owned Central High School site up on the hill. The ability for the District to fund this project has recently been approved as part of the State of Minnesota Bonding Bill.

Based on the overall scopes of work of the Project, it is critical to be strategic in the development, design, procurement, and implementation of the projects to optimize use of available funding, minimizing disruption to on-going operations, and to ensure that overall quality control and coordination are maintained. In order to accomplish these critical goals, the District has deemed it prudent to structure the process as an Integrated Project Delivery (IPD). ICS will serve as the lead consultant for this IPD effort. A preliminary outline of the proposed project has been included in Exhibit C.

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

ICS Consulting, Inc.
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. ^AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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| The Owner and ICS agree as follows.

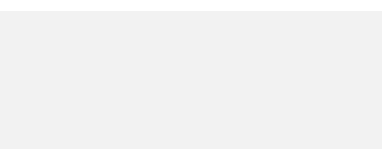
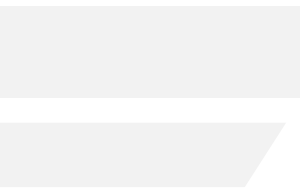


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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is Exhibit A to that certain AIA B132™ -2009 Standard form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition between Owner and ICS dated of even date herewith (the "Owner/ICS Agreement"), and is incorporated therein by reference as if set forth at length therein. This Agreement and the Owner/ICS Agreement are integrated agreements and are co-terminous. Owner acknowledges that ICS, as Construction Manager, would not have entered into this Agreement as a stand-alone agreement, and that ICS's services under this Agreement are contingent upon the Owner's engagement of ICS under the Owner/ICS Agreement. This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Preliminary Project Proposal – Exhibit C

§ 1.1.2 The Project's physical characteristics:

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

N/A

§ 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.)

Total Project Budget = \$31,500,000.00

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§ 1.1.4 The Owner's anticipated design and construction schedule:

(Paragraph deleted)

- .1 Design Phase: Spring/Summer 2021

(Paragraphs deleted)

- .2 Bidding: TBD

- .3 Construction Phase: Fall 2021 – Summer 2022

(Paragraph deleted)

- .4 Occupancy: TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:

(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Multiple Prime Contractors

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

N/A

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director
Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:

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

- .1 Land Surveyor:

TBD

- .2 Geotechnical Engineer:

Braun Intertec Mark Flynn
1826 Buerkle Road
St. Paul, MN 55110

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.3 Civil Engineer:

Obernel Engineering Chip Jacobs
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.4 Other:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)

Program Manager: ICS (ICS)

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

Mr. Pat Overom, Principal In Charge
ICS (ICS)
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

In development

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:

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

ICS

Other consultants: N/A

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

TBD

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

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall, by appropriate written agreement, appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in the Owner/ICS Agreement.

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

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

§ 2.6 The Construction Manager shall maintain insurance as set forth in the Owner/ICS Agreement..

(Paragraphs deleted)

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

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

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

§ 3.2.3 The Construction Manager shall prepare the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the information over the course of the Project.

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

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

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

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

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

§ 3.2.11 The Construction Manager shall divide the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall coordinate the ordering and delivery of materials, including those that must be ordered in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall determine the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to assist in impacting the adverse effects of labor shortages.

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

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

§ 3.2.18 The Construction Manager shall assist the Owner in establishing a list of prospective bidders or contractors per Section 3.5.1 of the Owner/ICS Agreement.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules "in accordance with the State of Minnesota Statutes. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction

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Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall prepare Construction Contracts for Owner's review and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors. The Owner will review and approve contracts consistent with the Owner's approval process.

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

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the ICS issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

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

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

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

§ 3.3.8 The Construction Manager shall assist the Owner in scheduling all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

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

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

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

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

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

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

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. 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 Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material 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.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the

Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

§ 3.3.17 Requests for changes in the Work shall be governed by Section 3.6.5 and Article 4 of the Owner/ICS Agreement.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker (if other than ICS) in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect..

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

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

- .1 Work completed for the period;
- .2 Project schedule status;

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

TBD

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

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

TBD

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

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

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

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

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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

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§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor’s compliance with the requirements of the Contract Documents.

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

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager’s responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.4 of the Owner/ICS Agreement. ICS will be compensated for commissioning in a lump sum as provided in Section 11.1 of the Owner/ICS Agreement and not as an Additional Service.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility <i>(Construction Manager, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Measured drawings	ICS	HOCHS
§ 4.1.2 Architectural interior design	ICS	HOCHS
§ 4.1.3 Tenant-related services	Not provided	
§ 4.1.4 Commissioning	ICS	HOCHS
§ 4.1.5 LEED® certification (B214™–2012)	Not provided	
§ 4.1.6 Furniture, furnishings, and equipment design	ICS	HOCHS

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

N/A

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner’s written authorization, and if written authorization is not received prior to the provision of such services, the Construction Manager shall not be entitled to compensation for said services:

- .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, but not limited to, 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 or official interpretations after the date of this Agreement;

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- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at public presentations, meetings or hearings;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than ICS; or
- .8 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and (i) the Owner shall compensate the Construction Manager for those services performed prior to the Construction Manager's receipt of the Owner's written notice; and (ii) the Owner shall have no further obligation to compensate the Construction Manager for those services performed after the Construction Manager's receipt of the Owner's written notice and the Construction Manager shall have no further obligation to the Owner to perform those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when ICS is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 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.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager. The Owner and the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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

§ 5.4 Intentionally Omitted.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 Unless otherwise required by this Agreement to be provided by the Construction Manager, 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

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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 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.

§ 5.7 Unless otherwise required by this Agreement to be provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services 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. The Owner's obligation to furnish legal services does not require the Owner to defend or indemnify ICS from ICS's alleged negligent or wrongful acts.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. Failure of the Owner to provide said notice shall not relieve the Construction Manager of its obligations under this Agreement.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 Provisions regarding Cost of the Work are set forth in Article 6 of the Owner/ICS Agreement.

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(Paragraphs deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent that insurance is not compromised, and to the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 To the extent permitted by law, the Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement.

To the extent permitted by law, Owner shall indemnify and hold the Construction Manager and the Construction Manager's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of Owner, its employees or representatives in the performance of its obligations under this Agreement.

§ 8.1.4 The Construction Manager 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 Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the 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.

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§ 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. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction in the state of Minnesota. The Construction Manager shall also designate litigation in the state of Minnesota as the dispute resolution mechanism for all contracts with subconsultants and no contracts with subconsultants shall contain restrictions on joinder.
- Other: *(Specify)*

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Termination or suspension by either party will be governed by the standards outline in Article 9 of the Owner/ICS Agreement.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Minnesota.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2009, General Conditions of the Contract for Construction as amended for the Project.

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

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

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

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

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

§ 10.8 To the extent permitted by law, if Owner or the Construction Manager receive information specifically designated by the other party 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 of the Owner/ICS Agreement. This Section 10.8 shall survive termination of this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

The lump sum payment outlined in Section 11.1 of the Owner/ICS Agreement will provide compensation for the Basic Services outlined in Article 3 of this Agreement.

Construction Manager will be compensated for any Additional Services provided pursuant to this Agreement, including the Additional Services described in Section 4.1 above, pursuant to Section 11.4 of the Owner/ICS Agreement, except that commissioning provided by ICS will be paid as provided in Section 11.1 of the Owner/ICS Agreement and not as an Additional Service.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser – as modified.

- .2

(Paragraphs deleted)

Owner/ICS Agreement, including, all exhibits thereto

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

OWNER (Signature)

Jill Lofald, School Board Chair

(Printed name and title)

ICS (Signature)

Mr. Pat Overom, Principal In Charge

(Printed name and title)

Init.

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User Notes:

(1312901452)

**ISD 709 AMENDMENTS TO
B132-2009 OWNER ARCHITECT AGREEMENT**

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and ~~strikeout~~ is deletion of preexisting language.

§ 1.1.10.5 Delete the existing language and substitute the following: § 1.1.10.5 Civil Engineer. ~~Owner, Obernel Engineering Chip Jacobs~~ ICS will retain Obernel Engineering Chip Jacobs as its consultant and Obernel is not the Owner's consultant.

§ 2.1 Delete the existing language and substitute the following: § 2.1 ICS shall provide the professional services as set forth in this Agreement ~~and in Exhibit A~~. The parties understand and agree that ICS and its subconsultants will provide architecture, design, engineering and construction management services for the project

§ 2.3 Delete the existing language and substitute the following: § 2.3 ICS shall perform its services consistent with the professional skill and care ordinarily provided by architects and professional engineers practicing in the same or similar locality under the same or similar circumstances. ICS shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. ICS shall, by appropriate written agreement, require all of its sub consultants to assume towards ICS all of the obligations and responsibilities which ICS assumes towards the Owner under this Agreement with regard to the scope of the Services of the sub consultant.

Add the Following: § 2.7 ICS shall provide its services in conjunction with the services of ICS as a Construction Manager as described in AIA Document C132Tm-2009, Standard Form of Agreement Between Owner and Construction Manager. ICS is responsible for its actions both as Architect and for actions taken by ICS as the Construction Manager.

Add the Following: § 2.6.1 ICS shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will additionally show the Owner as an additional insured on the Comprehensive Bodily Liability, Comprehensive General Property Damage and any additional umbrella or excess policies.

Add the Following: § 3.1.3.1 As soon as practicable after the date of this Agreement, the ICS shall submit to the Owner a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of ICS's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for ICS as the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

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Add the Following: § 3.1.6 ICS shall, at appropriate times, in coordination with ICS as the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, ICS shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services

Add the Following: § 3.1.8 ICS is serving as both the Architect and the Construction Manager and shall coordinate those responsibilities so as to fulfill both sets of responsibilities in an efficient and comprehensive manner, regardless of whether those responsibilities are set forth in B132 2009 as modified or in C132 2009 as modified.

Add the Following: § 3.2.4.1 ICS shall evaluate environmentally responsible 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 other environmentally responsible desired services under other provisions in this Agreement.

Add the Following: § 3.2.4.2 ICS shall consider with the Owner 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 schedule and budget for the Cost of the Work.

Add the Following: § 3.2.6 ICS shall submit the Schematic Design Documents to the Owner. ICS shall meet with the Owner to review the Schematic Design Documents.

Add the Following: § 3.2.7 Upon receipt of the Owner's review comments and cost estimate at the conclusion of the Schematic Design Phase, ICS shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, ICS shall incorporate the required revisions in the Design Development Phase.

Add the Following: § 3.2.5 ICS shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. ICS shall reach an understanding with the Owner regarding the requirements of the Project.

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Add the Following: § 3.2.5.1 ICS shall consider environmentally responsible 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 other environmentally responsible design services.

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

Add the Following: § 3.2.6 ICS shall submit the Schematic Design Documents to the Owner. ICS shall meet with the Owner to review the Schematic Design Documents.

Add the Following: § 3.2.7 Upon receipt of ICS as the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, ICS shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

Add the Following: § 3.3.1.1 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner. The Architect shall meet with the Owner to review the Design Development Documents.

Add the Following: § 3.3.1.2 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, ICS shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

Add the Following at the end of 3.4.3: and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

§ 3.5.3.3 Delete the existing language and substitute the following: § 3.5.3.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, ICS shall, ~~as an~~

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~~Additional Service,~~ consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

Delete 3.6.1.1 and substitute the following: § 3.6.1.1 ICS shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201 2017 as amended by ISD 709, General Conditions of the Contract for Construction. If the Owner and Contractor further 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. All references in this Agreement to the General Conditions shall refer to A201 2017 as amended by ISD 709, General Conditions of the Contract for Construction, instead of any references which may remain to A132 2009

Add the Following at the end of § 3.6.1.2; However, if ICS knows or has been informed that the Contractor is not performing the Work in compliance with the Contract Documents then ICS shall notify the Owner and the Contractor of such noncompliance.

Delete the existing language and substitute the following: § 4.2.1.2. Services necessitated by the enactment or revision after the date of this Agreement of codes, laws or regulations, including changing or editing previously prepared Instruments of Service.

Delete the existing language: ~~§ 4.2.1.7 Preparation for, and attendance at, a public presentation, meeting or hearing.~~

Delete the existing language: ~~§ 4.2.5 If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of ICS, extension of ICS's services beyond that time shall be compensated as Additional Services.~~

Add the Following: § 5.3 1 Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

Delete the existing language and substitute the following: § 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 ICS and shall include the contractors' general conditions costs, overhead and profit. ~~The Cost of the Work also includes the reasonable value of the labor, materials and equipment, donated to, or otherwise furnished by, the Owner.~~ The Cost of the Work does not include the compensation of ICS, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, permits or fees or other costs that are the responsibility of the Owner.

Delete the existing language and substitute the following: § 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 ICS and ICS'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

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Delete the existing language and substitute the following: § 9.1 If the Owner fails to make payments to ICS 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 ICS elects to suspend services, ICS shall give ~~thirtyseven~~ thirtyseven days' written notice to the Owner before suspending services. In the event of a suspension of services, ICS shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, ICS shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

Delete the existing language and substitute the following: § 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the ~~sole~~ fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

Delete the existing language and substitute the following: § 9.7.1 Termination Fee: ~~25%~~ 15% of total unbilled fees

Delete the existing language and substitute the following: § 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. However, if ICS has knowledge of hazardous substances then ICS shall so inform the Owner.

Add the Following: § 10.8.1.1 The notice required shall be written notice to the other party

Delete the existing language and substitute the following: §11.1 The first paragraph of 11.1 is not modified. The following changes are made to the remainder of 11.1

ICS's fee percentage for all project-related services from development through post-construction is summarized below:

IPD Coordination and Representation – ~~1.5%~~ 1.3%
 Project Oversight and Management – ~~3.5%~~ 3.25%
 Project Design Services (A/E) – 8.25%
 MDS Required Project Commissioning – 0.8%
Total 13.60%

These fees are calculated on the total cost as defined in § 6.1 hereof and are not calculated on the Owner's contributions of labor, equipment or materials or other contributions of Owner to the project.

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Delete the existing language and substitute the following: **§11.10.1** An initial payment of 10% of the fees will shall be made upon the receipt of the bond proceeds for the financing of this Work 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.

Add the Following: **§ 13.1.4 AIA Document A201 2017 General Conditions as amended**

Add the Following: **§ 13.3** It is understood by the parties that this contract is subject to the approval of the School Board of Independent School District 709 ("ISD 709"), the Owner, and this Agreement is not valid until both that approval has been obtained and this Agreement is signed by the authorized representative of ISD 709.

ISD 709

Dated: _____

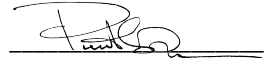
Signature

By: _____

Its: _____

ICS

Dated: December 15, 2020

 _____

Signature

By: Pat Overom, PE

Its: Principal

**ISD 709 AMENDMENTS TO
C132-2009 OWNER-CONSTRUCTION MANAGER AGREEMENT**

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

Add the Following: § 1.1.8.1 Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

Add the Following: § 1.1.9.1 Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

§ 1.1.10.3 Delete the existing language and substitute the following: § 1.1.10.3 Civil Engineer. ~~Owner, Obernel Engineering Chip Jacobs~~ ICS will retain Obernel Engineering Chip Jacobs as its consultant and Obernel is not the Owner's consultant.

§2.6 Delete the existing language and substitute the following: § 2.6 the Construction Manager shall maintain insurance as set forth in the Owner/ICS Agreement B132 2002 Owner Architect.

§3.2.13 Delete the existing language and substitute the following: § 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§3.2.15 Delete the existing language and substitute the following: § 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions ~~designed to assist in impacting the~~ to minimize the adverse effects of labor shortages.

§3.2.19 Delete the existing language and substitute the following: § 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules ~~in~~ accordance with the State of Minnesota Statutes. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda

§3.3.3 Delete the existing language and substitute the following: § 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document ~~A232M-2009~~ A201 2017, General Conditions of the Contract for Construction, ~~Construction Manager as Adviser Edition~~. If the Owner and Contractor modify AIA Document ~~A2322009~~ A201 2017, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this

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Agreement. Any references in this Agreement to A232 2009 shall instead refer to A201 2017 general Conditions.

§3.3.8 Delete the existing language and substitute the following: § 3.3.8 The Construction Manager shall ~~assist the Owner in scheduling~~ schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§3.3.13 Delete the existing language and substitute the following: § 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. However, the Construction Manager shall inform the Owner, Architect and Contractor if the Construction Manager believes that the Contractor is not performing its safety programs in accordance with the contract documents.

§3.3.15 Delete the existing language and substitute the following: § 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work. However, the Construction Manager shall inform the Owner, Architect and Contractor if the Construction Manager believes that the Contractor is not performing its Work in accordance with the contract documents.

§3.3.17 Delete the existing language and substitute the following: § 3.3.17 Request for changes in the Work shall be governed by Section 3.6.5 and Article 4 of the Owner/ICS Agreement B132 2009.

§3.3.20 Delete the existing language and substitute the following: § 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

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§3.3.20 Delete the existing language and substitute the following: § 3.3.20.1.7 Project daily logs

§3.3.26 Delete the existing language and substitute the following: § 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§4.1 Delete the existing language and substitute the following: § 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.4 of the Owner/ICS Agreement, B132 2009. ICS will be compensated for commissioning in a lump sum as provided in Section 11.1 of the Owner/ICS Agreement, B132 2009, and not as an Additional Service.

§4.3 Delete the existing language and substitute the following: § 4.3 Additional Services *may* be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section ~~11.3~~ 11.1, if any.

§4.3.1.4 Delete the existing language. § 4.3.1.4 ~~Preparation for, and attendance at, a public presentation, meeting or hearing.~~

4.3.3 Delete the existing language: § 4.3.3 ~~If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.~~

§8.1.2 Delete the existing language and substitute the following: § 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document ~~A232-2009, A201 2017~~ General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§8.1.4 Delete the existing language: § 8.1.4 ~~The Construction Manager 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.~~

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§9.1 Delete the existing language and substitute the following: § 9.1 Termination or suspension by either party will be governed by the standard outline in Article 9 of the Owner/ICS Agreement, B132 2009.

§10.2 Delete the existing language and substitute the following: § 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document ~~A232-2009~~ A201 2017, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§10.6 Delete the existing language and substitute the following: § 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, if Construction Manager becomes aware of such substances, then Construction Manager shall so inform the Owner and Architect.

§10.7 Delete the existing language and substitute the following: § 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4 of the Owner/ICS Agreement, B132 2009.

§10.7 Delete the existing language and substitute the following: §10.8 If the Construction Manager or Owner receives information specifically designated by the other party 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 of the Owner/ICS Agreement, B132 2009. This section 10.8 shall survive the termination of this Agreement.

Add the following language: §11.1.1 All references to "the Owner/ICS Agreement" refer to the Owner/ICS Agreement B132 2009.

Add the Following: § 11.1.2 It is understood by the parties that this contact is subject to the approval of the School Board of Independent School District 709 ("ISD 709"), the Owner, and this Agreement is not valid until both that approval has been obtained and this Agreement is signed by the authorized representative of ISD 709.

Add the Following: § 13.2.3 AIA Document A201 2017 General Conditions as amended

ISD 709

Dated: _____


Signature

By: _____

Its: _____

ICS

Dated: December 15, 2020



Signature

By: Pat Overom, PE

Its: Principal

ISD 709 Amendments to 2017 AIA documents

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

A201 – 2017 General Conditions

§ 3.7.3 Delete the existing language and substitute the following: 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, and shall promptly notify the Architect of such Work.

§ 3.18.1 Delete the existing language and substitute the following: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. If the indemnified party is entitled to separate counsel under the governing law, then Contractor shall pay for those attorney's fees and other costs and disbursements, and the indemnified party may choose its own attorneys subject to the consent of the Contractor, which consent shall not be unreasonably withheld.

§ 4.2.3 Delete the existing language and substitute the following: 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. However, if the Architect knows or has been informed that the Contractor is not performing the Work in compliance with the Contract Documents then the Architect shall notify the Owner and the Contractor of such noncompliance.

§ 4.2.12 Delete the existing language and substitute the following: 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. However, the Architect remains liable for its own proven negligence or breach of contract, if any.

9.6.1 Delete the existing language and substitute the following: After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the

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Contract Documents, and shall so notify the Architect. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.6.6 Delete the existing language and substitute the following: 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. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.6.7 Delete the existing language and substitute the following: 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.~~

9.8.5 Delete the existing language and substitute the following: 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. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding a Certificate of Substantial Completion, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses, except for any statute of limitation or repose predicated on the date of Substantial Completion or Certificate of Substantial Completion.

9.10.1 Delete the existing language and substitute the following: 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. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding a final Certificate for Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.10.4 Delete the existing language and substitute the following: The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

The Owner retains any claims for delay and any other consequential damages, breach of warranty whether special or other warranty to which it is entitled under governing law, and any other damages otherwise permitted under the Contract Documents, notwithstanding the making of final payment.

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§ 10.3.4 Delete the existing language and substitute the following: 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. The Owner also is not responsible for the acts of third parties relating to hazardous substances or materials over which it does not have the right of control, nor for such acts by third parties for which the Owner is not otherwise legally responsible.

11.3.1 Delete the existing language and substitute the following: The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. However, this waiver is not effective if the insurance prohibits such waiver notwithstanding this provision. If such insurance prohibits such waiver, then the party insured, before it begins performing under this Agreement, shall obtain insurance coverage which does not prohibit such waiver if such insurance is available with the exercise of due diligence and reasonable effort and after notification to the other parties to the contract.

11.4 Delete the existing language and substitute the following: 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 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~~ unless caused by the proven negligence or breach of contract of the Contractor or Architect.

12.2.2.3 Delete the existing language and substitute the following: The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

12.2.5 Delete the existing language and substitute the following: 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. If the Contractor does not perform its work in compliance with all of its obligations, the Owner's remedies are not limited to the Contractor's obligation to correct the work

13.1 Delete the existing language and substitute the following: 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 any arbitration claim ~~Section 15.5.~~

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13.4.3 Delete the existing language and substitute the following: 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 the costs of such testing, inspection or approval or those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

15.1.2 Time Limits on Claims. Delete the existing language and substitute the following: 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.

15.1.3.1 Delete the existing language and substitute the following: Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~7~~ 90 days after occurrence of the event giving rise to such Claim or within ~~21~~ 120 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

15.1.7 This provision is deleted. 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~~ MA
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

15.2.5 Delete the existing language and substitute the following: 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 unless one or more parties proceed to make the Claim ~~but~~ subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

15.2.6.1 Delete this provision: ~~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~~

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~~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.~~

~~§ 15.3.3 Delete this provision: Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

15.4.4.1 Delete the existing language and substitute the following: Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 does not prohibit ~~permits~~ consolidation or the other party agrees to 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).

15.4.4.2 Delete the existing language and substitute the following: Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 sought to be joined can be joined under governing law ~~or 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.

EXHIBIT B - COVID-19 Addendum

This COVID-19 Addendum ("Addendum") amends the October 26, 2020 Agreement ("Agreement") between Independent School District No. 709, Duluth Public Schools ("Owner") and ICS Consulting, Inc. ("ICS") for project(s) governed by the Agreement ("Project(s)"). The Agreement is entered at a time in which the State of Minnesota declared an emergency due to the novel coronavirus (COVID-19) pandemic ("COVID-19 Pandemic"). On March 25, 2020, the Governor of the State of Minnesota issued Emergency Executive Order 20-20 *Directing Minnesotans to Stay at Home* under which Construction is exempted as a Critical Sector, and engineering and architectural services are exempted "critical businesses." To assure that the Project(s) requirements and schedule are met, the following requirements will apply to the Project(s). These requirements supplement any requirements in the Contract Documents and, where in conflict, supersede them.

- 1.) Representations of Consultant. ICS represents that it is aware of the existence of the COVID-19 Pandemic and the various federal, state, and local orders that have been issued that may affect the Project(s) and prosecution of work required by the Contract Documents, and has taken them into account in entering the Agreement. ICS further represents that it has verified the availability of all personnel, materials, supplies, and equipment it will be utilizing for the Project(s), and reasonably believes that it has the ability to perform its services as required by the Agreement on the schedule contemplated by the Agreement
- 2.) Communications. If ICS obtains information that there may be a delay in the provision of any material, equipment, supply, or labor needed for the Project(s) due to COVID-19 Pandemic, ICS must take reasonable steps to promptly communicate the information it obtained with the Owner. ICS must also undertake all reasonable efforts to minimize the potential for delay.
- 3.) Substitutions. Upon determining the existence of a possible delay involving a contractor obtaining any material required for the Project(s) involving the COVID-19 Pandemic, ICS shall work with the contractor to identify and develop substitution information for that material. The substitution materials shall be provided to the Owner for the Owner's review and approval.
- 4.) Schedule Impacts. If an event(s) occurring during the course of the Project(s) involving the COVID-19 Pandemic are determined by ICS to have a potential effect on completion of the Project(s) by the date specified in the Contract Documents, ICS must take reasonable steps to promptly notify the Owner in writing. ICS and the Owner will then engage in an interactive consideration of alternatives available in responding to the identified event(s). The interactive discussion must include discussion of alternatives that will allow the timely completion of the Project(s).
- 5.) Contract Time and Sum Adjustments. If ICS believes the COVID-19 Pandemic has impacted its services under the Agreement, ICS may submit a claim to the Owner to extend the period for the performance of its services. The claim shall be accompanied by all material that supports the claim and any adverse impact on ICS services. If ICS demonstrates to the Owner's satisfaction that the COVID-19 Pandemic has adversely impacted ICS, to the extent permitted by law, the Owner shall not be responsible for any claim by ICS for any costs for additional services incurred by ICS because of the COVID-19 Pandemic, but the Owner shall extend the period for the performance of ICS's services to a date mutually agreed upon

between the Owner and ICS. If a date cannot be mutually agreed upon the claim shall be determined by the claim resolution protocol under the Agreement.

- 6.) Minnesota Statute § 15.411 (Public Works Contracts; No Damages for Delay Clauses). This Addendum shall not be negate or alter the application of Minnesota Statute § 15.411 to the Agreement, this COVID-19 Addendum and the Project(s).

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EXH "C" - Preliminary Project Budget			
Project:	Duluth Public Schools - Option "A"		
	HOCHS Replacement		
Prep by:	ISD 709		
12/2/2020			E=Estimated
			C=Calculated
1. Construction Costs per B132 2009 §6.1			From Estimated
District Administration			
Construct new space			
20,400 sf office space	\$	5,242,800	E
4,000 sf storage space	\$	860,000	E
6,500 sf print shop space	\$	1,470,000	E
Facilities Department			
Renovation/Remodel Space			
16,000 sf facilities department space	\$	2,560,000	E
District Transportation			
Construct new space			
8,000 sf transportation service/repair space	\$	1,968,000	E
36,000 sf of cold bus storage	\$	4,680,000	E
Other project related costs			
Furniture fixtures and equipment			
Administration	\$	320,000	E
Facilities	\$	300,000	E
Transportation	\$	270,000	E
Technology/Communications/Data			
Administration	\$	250,000	E
Facilities	\$	140,000	E
Transportation	\$	140,000	E
Site Development	\$	1,150,000	E
Off-Site Improvements	\$	2,700,000	E
Demolition of Existing Facilities	\$	2,000,000	E
Total Constr Costs	\$	24,050,800	C
2. Soft Costs/ICS - % of above Total Constr Costs B132 11.1			
Design/Management			
IPD Coord & Rep	1.30%	\$ 312,660	C
Proj Over/Mgt	3.25%	\$ 781,651	C
Proj Design (A/E)	8.25%	\$ 1,984,191	C
MDE Proj Commissioning, full commissioning services	0.80%	\$ 192,406	C
Total	13.60%	\$ 3,270,909	C
3. Owner's Costs			
Bldg Permit		\$ 100,000	E
Other Permits/Fees 1.6% of Constr Cost	1.6%	\$ 384,813	C
Property Acquisition			
Moving		\$ 90,000	E
Other Owner's Costs		\$ 2,100,000	
Total Owner Costs		\$ 2,674,813	C
Total Constr/Soft/Owner's Costs		\$ 29,996,522	C
4. Contingency on total costs	5%	\$ 1,499,826	C
5.Total Project Cost		\$ 31,496,348	C

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