

DRAFT AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

«Grand Rapids Public School District
1331 Martin Luther King Jr. Street SE
«Grand Rapids, Michigan 49506»

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

To be determined

« »
« »
« »

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

«Grand Rapids Public School District – 2023 Bond Program
Ottawa Hills High School located at 2055 Rosewood Ave SE, Grand Rapids, MI 49506;
Ken-O-Sha Elementary School located at 1353 Van Auken St SE, Grand Rapids, MI 49508;
Alger Middle School located at 921 Alger St SE, Grand Rapids, MI 49507;
Dickinson Elementary School located at 448 Dickinson St SE, Grand Rapids, MI 49507;
and
Cesar Chavez Elementary School located at 2055 Rosewood Ave SE, Grand Rapids, MI 49506
, in accordance with the applicable ballot language, the Owner's fixed Project budget, the approved plans and specifications, all applicable laws, and as otherwise approved by the Owner. »

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

To be determined

The Owner and Construction Manager agree as follows.

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

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

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



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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

«To be determined by the Owner after advice and recommendations from the Architect and any other consultant, individual or entity deemed appropriate by the Owner, in accordance with the applicable ballot language and the Owner's RFP. »

§ 1.1.2 The Project's physical characteristics:

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

«To be determined by the Owner after advice and recommendations from the Architect and any other consultant, individual or entity deemed appropriate by the Owner, in accordance with the applicable ballot language and the Owner's RFP. »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

«The Owner's fixed budget for all aspects of the Projects ("fixed Project budget") is as follows:
Ottawa Hills High School = Eleven Million Seven Hundred Thousand Dollars (\$11,700,000);
Ken-O-Sha Elementary School = Twenty One Million One Hundred Thousand Dollars (\$21,100,000);
Alger Middle School = Six Million Four Hundred Thousand Dollars (\$6,400,000);
Dickinson Elementary School = One Million Five Hundred Thousand Dollars (\$1,500,000);
Cesar Chavez Elementary School = One Million One Hundred Thousand Dollars (\$1,100,000).»

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

.1 Design phase milestone dates, if any:

« To be determined, but in accordance with the RFP »

.2 Construction commencement date:

« To be determined, but in accordance with the RFP »

.3 Substantial Completion date or dates: ~~dates~~, if not established in this Agreement under Section 3.3.1.3:

« To be determined, but in accordance with the RFP »

.4 Other milestone dates:

« To be determined, but in accordance with the RFP »

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

«Not applicable. »

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

«Not applicable. »

§ 1.1.6.1 ~~If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234 2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~ **NOT USED**

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

«To be determined by the Owner after advice and recommendations from the Architect and any other consultant, individual or entity deemed appropriate by the Owner, in accordance with applicable ballot language and the Owner's the RFP. »

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

« Alex Smart, Executive Director of Facilities and Operations »
«Grand Rapids Public School District
1331 Martin Luther King Jr. Street SE
«Grand Rapids, Michigan 49506»

« »

« The Owner may change the representative and the representative's authority in its sole discretion. The Owner will notify the Architect of any such changes. »

§ 1.1.8.1 Owner's Representative Consultant

The Owner has engaged Plante Moran Realpoint, LLC ("PMR") as an independent Owner's Representative Consultant ("Owner's Representative Consultant"). PMR shall have not authority, express or implied, to enter into agreements on behalf of the Owner, to modify or amend this Agreement, or to otherwise bind the Owner. The Architect shall work cooperatively with PMR and shall keep PMR informed of matters concerning the Project. The following individual shall be the primary contact for the Owner's Representative Consultant, subject to change in the Owner's discretion:

Doug Phillips
Plante Moran Realpoint, LLC
750 Trade Centre Way, Suite 300
Kalamazoo, Michigan 49002
doug.phillips@plantemoran.com; (269) 567-4625

The Owner, Architect, and PMR acknowledge and agree that the Owner's representative identified in Section 1.1.8 and the Owner's Representative Consultant identified in Section 1.1.8.1 are separate and distinct individuals with separate and distinct rights and responsibilities.

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

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

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

- .1 Geotechnical Engineer:
« To be determined, if any »« »
« »
« »
« »
« »

- .2 Civil Engineer:
« To be determined, if any »« »
« »
« »
« »
« »

- .3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)
« To be determined if any »

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

[Redacted area]

»

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

« To be determined »

« »

« »

« »

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

« To be determined »

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

«N/A »

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

« »

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

§ 1.3 Neither Except as set forth in Section 1.1.8, neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

economical manner consistent ~~with the Owner's interests. The~~ with, and for the benefit of, the Owner's interests. Using reasonable efforts, the Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: as modified, shall apply including with respect to~~ Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as modified by the Owner, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager. If anything is inconsistent between this Agreement and AIA Document A201–2017, this Agreement shall govern. Otherwise, both shall govern.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Agreement and other Contract Documents with competence and the highest standard of care, using the skill and diligence consistent with honesty, integrity, candor and the interests of the Owner (not the interests of the subcontractors) without conflict. The Construction Manager shall assign staff to the Project in accordance with their qualifications, competency, and commensurate with the services to be provided.

The Construction Manager's Preconstruction Phase responsibilities are primarily set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are primarily set forth in Section 3.3. ~~The-if applicable, the~~ Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase on one project to commence prior to completion of the Preconstruction ~~Phase, Phase on another project,~~ in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

All services of the Construction Manager, described in this Agreement or the other Contract Documents, shall be deemed Basic Services, unless and to the extent expressly identified as an Additional Service.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager ~~shall~~ may assist the Owner and Architect in establishing written building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and ~~periodically update~~ update monthly, or at such other intervals as the Owner and Construction Manager may agree in writing, a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated ~~or fast-track~~ scheduling, procurement, and sequencing for phased ~~construction~~ construction, acknowledging the limits imposed by Michigan law. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and ~~update, at appropriate intervals agreed to update progress reports in writing, monthly or at other intervals agreed to in writing~~ by the Owner, Construction Manager and Architect, an estimate which progress reports shall include estimates of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to and, if applicable, an analysis of cost estimate revisions. The progress reports and cost estimate information shall be of increasing detail and refinement and allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The As a Basic Service, the Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action to bring the Project back within the Owner's fixed budget.

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

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

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

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 ~~If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~ **NOT USED**

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the ~~Project~~ Project and shall furnish to the Owner and the Architect for their information a list of possible subcontractors, including suppliers, from whom proposals will be requested for each portion of the Work. The receipt of that list shall not impose a duty on the Owner to investigate its qualifications of those proposed and shall not waive the right of the Owner or Architect to later object to or reject any proposed subcontractor or supplier.

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

«As set forth in Exhibit B - Scope of Preconstruction Services. »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Project (or a distinct portion of the Project) for the Owner's and Architect's review, and the Owner's ~~acceptance~~ acceptance using current information to update any preliminary cost estimates. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Guaranteed Maximum Price shall not exceed the Owner's fixed budget, which fixed budget shall be established as a condition precedent to this Agreement.

§ 3.2.2 ~~To If and to~~ the extent ~~that~~ the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price ~~includes the costs attributable to such~~ must expressly state any reserved right of modification associated with further development consistent with the Contract Documents and reasonably inferable therefrom. Such further

development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Manager's contingency shall equal no more than five percent (5.0%) of the Cost of the Work, as defined in Article 6, before any of the Work has been bid and awarded by the Owner. The amount of the Construction Manager's contingency shall commensurately be reduced with the amount of the Work being awarded by the Owner. When the Guaranteed Maximum Price (GMP) is established, with 90% of the Work being bought out by the Construction Manager, the Construction Manager's contingency shall be reduced as set forth in Section 3.2.4.2 below.

§ 3.2.4.1 The Construction Manager's contingency may only be used for the following purposes: (i) the Cost of Work required by the Owner for the Project that was not included within an awarded subcontract, (ii) additional costs incurred by the Construction Manager (and not reimbursed pursuant to a bid bond claim or otherwise) as a result of a bidder's failure to enter into a subcontract with the Construction Manager after having been awarded the work; (iii) additional costs incurred by the Construction Manager, outside of awarded subcontracts, due to unanticipated market conditions and labor and material conditions, (iv) uninsured casualty losses and related expenses incurred by the Construction Manager in connection with the Work, except and to the extent of the Construction Manager's improper conduct, errors, or omissions; (v) costs arising from the default of an uncollectable Subcontractor (outside of any applicable bond); and (vi) costs related to errors in subcontractor bids, discovered after the award of bid, and for which additional sums may be legally allocated.

§ 3.2.4.1.1 Notwithstanding anything in Section 3.2.4 to the contrary, the Construction Manager's contingency shall not be used: (i) to cover any cost or expense caused or allowed by the Construction Manager's negligence, intentionally wrongful conduct, or breach of Agreement, (ii) to pay for any of the Construction Manager's responsibilities related to general conditions/construction support items, or (iii) in a manner that is contrary to law.

§ 3.2.4.1.2 The Construction Manager's contingency shall be the maximum amount available to pay for any costs and expenses identified as an appropriate use of such contingency. Any sums in excess of the contingency shall be the sole responsibility of the Construction Manager.

§ 3.2.4.1.3 The Construction Manager's contingency may only be used if (i) the Construction Manager submits to the Owner a written request for the use of the Construction Manager's contingency, including the specific amount requested and a justifiable basis for the use; and (ii) the Owner approves the request in writing, prior to the use of any such contingency. Use of contingency shall be reported on the Construction Manager's monthly reports, including a clear description of the cost(s) and item(s) on one of the next two Applications for Payment. The Construction Manager shall forfeit any contingency amount committed or used if it fails to timely report the use and/or to timely submit an Applications for Payment identifying the contingency amount committed or used.

§ 3.2.4.2 The purpose of Construction Manager's contingency is to cover unanticipated costs described in Section 3.2.4.1. Because incidents of unanticipated costs should reduce as the Project progresses towards completion, the Construction Manager shall return to the Owner portions of such contingency according to the following schedule (unless contingency actually used exceeds the percentages identified below for each milestone):

At 50% of Payment Request:	Fifty Percent (50%)
At 75% of Payment Request:	Seventy-Five Percent (75%)
At Substantial Completion:	One Hundred Percent (100%)

§ 3.2.4.3 The Construction Manager shall return all unused contingency to the Owner upon a mutually agreeable time, but, in the absence of written consent by the Owner, return shall not be later than Substantial Completion of the Project.

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

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

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

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

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

§ 3.2.10 The Construction Manager's personnel costs, reimbursable costs (see Article 6), and general conditions/construction support costs shall be fixed as not-to-exceed amounts within the Guaranteed Maximum Price.

§ 3.3.1.3 Substantial Completion

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

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

Not later than () calendar days from the date of commencement of the Work.

By the following date: as set forth in the Owner's Request for Proposal dated . »

As set forth in the Preliminary Project Milestone Schedule, attached hereto as Exhibit D.

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

Portion of Work

Substantial Completion Date

--	--

§ 3.3.1.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section 3.3.1.3, liquidated damages, if any, may be assessed.

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price ~~Amendment~~ Amendment, the Owner’s first award of a competitively bid subcontract, or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the ~~parties~~ parties, whichever occurs earlier. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment. Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 3.3.2 Administration

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

See Section 14.5 through 14.16.

§ 3.3.2.2 ~~Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017. Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement. The Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.~~

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 ~~The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth~~ If requested by the Construction Manager, the Owner shall provide information with specifically and reasonably requested by the Construction Manager regarding the Project, which may include information regarding its written program, the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements. The parties acknowledge that the Owner is not a construction professional and that the Owner may not know what type or amount of information is required to be provided by this provision.

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality. Nothing herein shall be interpreted to limit the applicability and enforceability of the Owner's fixed Project budget.

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

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

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

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

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

§ 4.1.6 ~~If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~ **NOT USED**

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the ~~Project~~ Project subject to the Owner's parameters of authority set by the Owner's Board of Education. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction ~~Manager~~ Manager, subject to the Owner's status as a public body, including being subject to the Open Meetings Act. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized ~~representative~~ representative to the extent authorized by the Owner's Board of Education. See Section 1.1.8.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Such a duty shall not include services necessary to respond to allegations challenging the performance of the Construction Manager,

whether by breach of contract, negligence, intentional misconduct or otherwise, which services shall be provided by the Construction Manager.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The the Agreement Between Owner and Architect. Upon request, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's timely and proper performance of Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows: See Section 6.1.2 and 7.7.6. *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«Based on the Construction Manager's Hourly Rates, a Not-to-Exceed amount of _____ Dollars (\$ _____).»

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

- 5.1.3 NOT USED

<u>Individual or Position</u>	<u>Rate</u>
_____	_____

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within _____ months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid _____ days after the invoice Undisputed payments are due and payable within thirty (30) days of the Owner's receipt of the Construction Manager's invoice unless and to the extent reasonably disputed in good faith. Undisputed amounts unpaid Amounts unpaid «thirty» («30») days after the due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

_____ % «Five percent (5%) « MCL 438.31. »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES & POST-CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

«Based on a percentage of the Cost of the Work, which shall be converted to a Lump Sum amount in a future GMP Amendment.»

§ 6.1.2.1 The Construction Manager's total compensation package, inclusive of bond costs, insurance, on-site and off-site staffing, general conditions/construction support items, reimbursable expenses, and fee shall be set in a future Guaranteed Maximum Price Amendment.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«In the event the Scope of Work materially or substantially changes, the percentage fee for increases and/or reductions in the Project Scope shall be the same percentage rate as in Section 6.1.2 above and as mutually agreed to by the Parties.»

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«As set forth in the awarded bid and/or the relevant trade contract. If increased payment amounts are not addressed therein, a Subcontractor's overhead and profit shall not exceed ten percent (10%) on the changed work, labor, equipment and material of a primary tier subcontractor or five percent (5%) on the changed work, labor, equipment and material of a lower tier subcontractor. In no event shall the total cost of any change in the work exceed the amount of the required Change Order or Construction Change Directive related to same. »

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

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«See Section 8.4.2 of the AIA Document A201-2017, General Conditions of the Contract for Construction. »

§ 6.1.7 Other:

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

«Not applicable. »

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Owner and Construction Manager may ~~be entitled negotiate and agree~~ to an equitable adjustment in the Contract Time as a result of changes in the ~~Work~~ Work, as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

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

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

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

~~§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. See Section 14.22.~~

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through ~~7.7.7~~ and shall not exceed the amount provided in the Guaranteed Maximum Price Amendment. Reimbursable expenses provided pursuant to this Agreement shall be included in the periodic cost estimates provided by the Construction Manager.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's written prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. Failure to do so shall excuse the Owner from responsibility for that cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.1.4 The parties acknowledge that those aspects of the Project provided by the Owner, (e.g., buses, technology, unused contingency) shall not be considered a Cost of the Work for reimbursement purposes or for calculating the Construction Manager's fee.

§ 7.2 Labor Costs

~~§ 7.2.1 Wages With the Owner's prior written approval, and in accordance with applicable laws and this Agreement, wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, incidental work at the site outside of the scope of the awarded subcontracts. The parties acknowledge that the Construction Manager shall not be entitled to any of its own labor costs under this section for construction of the Work performed by the Construction Manager's own personnel, except in accordance with a "related party" transaction authorized by the Owner in accordance with this Agreement and/or in accordance with, and as permitted by, Section 14.5.~~

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior ~~approval~~ written approval, subject to limitations described in Section 3.2.10. See also Section 14.22. The Construction Manager shall provide an hourly rates chart for all approved supervisory and administrative personnel.

~~§ 7.2.2.1 Wages With the Owner's prior written approval, wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below: (Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)~~
directly related to the Project.

§ 7.2.3 ~~Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. All other labor costs are only as provided for in the subcontracts approved by the Owner.~~

~~§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. **NOT USED**~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. **NOT USED**~~

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the ~~requirements of the subcontracts~~ subcontracts approved by the Owner, including any applicable change orders, and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction and Not Otherwise Included in Section 7.3

~~§ 7.4.1 Costs, With the Owner's prior written approval, costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, incorporated in the completed construction. Said material procurement shall be subject to competitive bidding requirements of Michigan law and the Owner's written purchasing policies, shall be approved by the Owner in writing prior to procurement, and shall be only for materials not already included within other subcontracts for the Work.~~

~~§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work. The costs and expenses described in Section 7.4 (that are not included within the costs of Section 7.3) shall be billed to the Owner by the Construction Manager, at the Construction Manager's cost and without markup.~~

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items and Not Otherwise Included in Section 7.3.

~~§ 7.5.1 Costs of pre-authorized transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value. At final completion, the Owner shall have the option of retaining any items purchased for the Project under this Agreement.~~

~~§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~

~~§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies. To the extent related to field office activities, costs of document reproductions, postage and parcel delivery charges, and telephone service at the site.~~

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

~~§ 7.5.6 Any costs within Section 7.5 (that are not included within Section 7.3) shall be billed to the Owner by the Construction Manager at the Construction Manager's cost and without markup.~~

§ 7.6 Miscellaneous Costs Not Otherwise Included in Section 7.3.

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

~~**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents because of Owner's negligent action or omission.~~

~~**§ 7.6.9** Legal, With the Owner's prior written permission, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, Manager or those at which the Construction Manager's services are at issue, that are reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Work.~~

~~**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval. With the Owner's prior and express written permission, items purchased by the Construction Manager on the Owner's behalf for the Project.~~

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

§ 7.6.12 Any costs within Section 7.6 (that are not included within Section 7.3) shall be billed to the Owner by the Construction Manager at the Construction Manager's cost and without markup, and shall be included in the definition of the "Cost of the Work" to which the Construction Manager's professional fee applies.

§ 7.7 Other Costs and Emergencies and Not Otherwise Included in Section 7.3

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

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

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

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

§ 7.7.5 The costs and expenses described in Section 7.7 (that are not included within the costs of Section 7.3) shall be billed to the Owner by the Construction Manager at the Construction Manager's cost and without markup.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

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

- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9 Costs for services incurred during the Preconstruction ~~Phase~~Phase;
- .9 All taxes, except for sales or use taxes described in Section 7.6.2, including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes. (All such taxes are the sole responsibility of the Construction Manager); and
- .10 Consultants to the Construction Manager not previously approved in writing by the Owner.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. See Sections 14.5 through 14.16.~~

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

month.

§ 11.1.3 Provided that an Architect-certified Application for Payment is received by the Architect-Owner not later than the ~~«10th»~~ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the ~~day of the month, «10th» day of the «following» month, unless and to the extent the application or the work performed is reasonably disputed by the Owner in good faith.~~ If an Application for Payment is received by the Architect-Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~() days after the Architect receives the Application for Payment, «thirty» («30») days after the Owner receives the Architect-certified Application for Payment, unless and to the extent the application or the work performed is reasonably disputed by the Owner in good faith. The parties acknowledge that the invoice process will be mutually tailored to consider Board of Education meetings and schedules.~~

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus ~~payrolls-labor costs~~ for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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

§ 11.1.7 In accordance with AIA Document ~~A201-2017~~ A201-2017, as modified, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

« Ten percent (10%), except that after the Work of a particular Subcontractor is at least fifty percent (50%) complete, the Subcontractor may request the Construction Manager and Owner to reduce retainage to five percent (5%), »

§ 11.1.8.1.1 The following items are not subject to retainage:

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

«Not applicable.»

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

«Not applicable.»

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. ~~The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

«Not applicable.»

~~§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~ **NOT USED**

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

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

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

§ 11.2 Final Payment

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

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

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

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

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting; however, the Construction Manager is responsible for any inaccuracies in its own final accounting.

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

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

unless reasonably disputed by the Owner in good faith.

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

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

~~%~~ **«Five percent (5%)» « See MCL 438.31 »**

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

During the pendency of any mediation per this Agreement, all applicable limitations provisions shall be tolled.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

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

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- ~~Other: (Specify)~~

~~If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction: « »] Other: (Specify) « »~~

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 13.1.6 ~~The~~ In the event the Owner terminates the Agreement pursuant to Section 13.1, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses to terminate the Agreement and elects not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental ~~agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.~~ agreement. In the event the Construction Manager elects to terminate the Agreement the Owner shall not assume any of the costs identified in Sections 13.1.6 and 13.1.6.1.

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 ~~Termination by the Owner for Convenience~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)~~

NOT USED

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with ~~policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage, separate limits of not less than \$1,000,000 per accident coverage against bodily injury and \$1,000,000 per accident coverage against property damage, or with a combined single limit against both bodily injury and property damage of not less than \$5,000,000 per occurrence. This coverage shall include a contractual liability endorsement.~~

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

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. **The Construction Manager shall provide umbrella coverage with a policy limit of not less than Four Million Dollars (\$ 4,000,000).**

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

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

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
<u>Automobile Liability</u>	
(a) <u>Bodily Injury</u>	<u>\$1,000,000 Each Person</u> <u>\$1,000,000 Each Occurrence</u> <u>\$2,000,000 Aggregate</u>
(b) <u>Personal Injury</u>	<u>\$1,000,000 Each Occurrence</u> <u>\$2,000,000 Aggregate</u>
<u>Independent Contractors</u>	<u>\$1,000,000 Each Occurrence</u>
<u>Products and Complete Operations</u>	<u>\$1,000,000 for one (1) year, Commencing with issuance of Final Certificate for Payment</u>
<u>Contractual Liability</u>	<u>\$2,000,000 Each Occurrence</u>
<u>Pollution</u>	<u>\$2,000,000</u>

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella ~~polices-polices~~ for Commercial General Liability and Automobile Liability to include the ~~Owner as an additional insured-Owner, Owner's Representative Consultant, Architect, and Architect's consultants as additional insureds~~ for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed ~~operations-operations~~, using the 2013 version of ISO forms CG 2010 07 04 or its equivalent.

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

§ 14.3.1.9 ~~Prior to the commencement of any Project, the Construction Manager shall notify the Owner in writing of its proposed insurance coverages and amounts, even if they are the same as identified in this Section 14.3.1.9, which coverages and amounts shall be subject to the Owner's reasonable approval, and such coverages will not be terminated, non-renewed, or reduced without at least 30 days' prior written notice to the Owner.~~

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Section 14.3 of this AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, ~~Exhibit B, Insurance and Bonds~~, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall ~~provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.~~ obtain and maintain a performance bond and payment bond with the amount of each bond equal to one hundred percent (100%) of the Contract Sum. The Construction Manager shall provide proof of same to the Owner upon execution of this Agreement. The Construction Manager may determine, in its discretion, whether any subcontractor should provide supplemental performance and payment bonds. If any such supplemental bonds are required or otherwise obtained: (i) they shall be at the sole cost of the Construction Manager (or the subcontractor providing such bond) and without any cost whatsoever to the Owner and without an increase in the Contract Sum or Guaranteed Maximum Price, and (ii) they shall be dual obligee bonds, naming the Owner as an obligee. Notwithstanding the general rule stated above, the Owner may, in its reasonable discretion and after receiving a recommendation from the Construction Manager, determine to require a subcontractor to supply performance and payment bonds in addition to the Construction Manager's bond in one of two scenarios: (1) when (i) the subcontractor's bid including the added cost of the bond is significantly below the next bona fide bid, and (ii) the Construction Manager has no previous experience or work experience with the subcontractor, and (iii) it is necessary to accept the subcontractor's bid in order to meet the established Guaranteed Maximum Price; and/or (2) in any other compelling circumstance, but only upon the Owner's prior written consent, which may be provided or withheld in its sole discretion. In either of the described scenarios, the Owner will reimburse the Construction Manager for the cost of the bonds.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with ~~a building information modeling exhibit, AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit~~, if completed, or as otherwise set forth below:

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

« »

§ 14.5 Other provisions:

§ 14.5 Bids for the Project work to be done by the various Subcontractors shall be taken by the Owner in accordance with applicable statutes; the Owner shall award contracts or reject bids. Contracts executed pursuant to the Owner's award shall be drafted as required in Section 14.6 and Section 14.7. The awarded contracts shall be assigned to the Construction Manager and executed between the Construction Manager and each subcontractor and shall be in a form approved by the Owner. The parties agree that the Construction Manager (and any related entities) shall not be permitted to submit bids for the Project. It is understood that the Construction Manager, as applicable, will recommend the lowest responsible bidders to the Owner to be awarded any subcontract.

§ 14.6 All construction shall be performed under subcontracts awarded by the Owner, and the form of subcontracts to be entered into by the Construction Manager and Subcontractor(s), including the general and supplementary conditions to the Construction Contract, shall be in compliance with statutory requirements established by the State of Michigan and contracting policies of Owner, and satisfactory to both the Owner and the Construction Manager. The Construction Manager shall ensure that the subcontracts described herein to conform with the requirements of this Agreement and the agreement between the Owner and Architect, including but not limited to modification concerning dispute resolution procedures.

§ 14.7 The subcontracts shall identify the Owner as a third party beneficiary. The Construction Manager shall obtain appropriate guarantees and warranties from the Subcontractors running directly to the Owner. Further, such subcontracts shall specify that no Asbestos Containing Building Materials (ACBM) shall be used in the construction of the Project.

§ 14.8 Along with each Application for Payment, Construction Manager will submit proof of payments made to all current Subcontractors and Suppliers. The Owner, in its discretion, may issue checks payable jointly to Construction Manager and to Subcontractors to cover amounts payable to such Subcontractors.

§ 14.9 After the award to each subcontract, Construction Manager shall assume full responsibility to Owner for the timely completion of the subcontracts within the price set forth in the subcontracts, subject only to change orders approved by the Owner. Further, the Construction Manager will assume responsibility for payments to all of the Subcontractors' suppliers, sub-subcontractors, and materialmen.

Construction Manager shall be responsible for the workmanlike performance of all construction performed on the Project, and shall be responsible for completion of all work required under the subcontract. In this regard, in addition to the authority of the Architect, Construction Manager shall have the authority to reject non-compliant work and to require Subcontractors to remove and correct all non-compliant work.

§ 14.10 Construction Manager will (1) implement for the Project a safety program designed to encourage safe work habits and practices and reduce the occurrences of accidents and injuries, and (2) require all Subcontractors and employers on the Project to supplement the safety program supplied by the Construction Manager with a like program developed and put in place by each Subcontractor and employer on the Project. Construction Manager will oversee and supervise the implementation of all safety programs and policies applicable to those activities occurring on the Project. No requirement under this Agreement is intended to diminish or otherwise compromise the obligations for safety and indemnification for which the Subcontractor is responsible.

§ 14.11 The Construction Manager shall be responsible to the Owner for acts and omissions of its agents, employees, and subcontractors.

§ 14.12 The obligation of Construction Manager to correct defective workmanship and materials shall continue for at least one (1) year after Substantial Completion. In all bid documents, the Construction Manager shall require, as a mandatory alternate, bidders to provide pricing for a two-year correction warranty and, if accepted by the Owner, the Construction Manager's obligation to correct defective workmanship and materials shall continue for at least two (2) years after Substantial Completion. The designation of the period of one or two years as a warranty period does not relieve Construction Manager or any Subcontractor of obligations to perform the work as required by the Contract Documents. The Construction Manager's obligations under this section are in addition to the Construction Manager's responsibilities to fulfill contract obligations or with respect to other specific warranties.

§ 14.13 The Construction Manager shall indemnify and hold harmless the Owner, its Board of Education, its board members in their official and individual capacities, administration, its successors, assigns, employees and agents (the "Indemnitees"), from and against any and all claims, costs, expenses, damages, and liabilities, to the extent caused in whole or in part by (i) the negligent acts or omissions of the Construction Manager, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representation or warranty by the Construction Manager under this Agreement. The Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which the Owner or one or more of the Indemnitees may be entitled to indemnification under this Agreement. Further, the Owner shall be entitled to recover attorneys' fees and legal fees from the Construction Manager under the following circumstances: (1) the Owner has to defend a third-party claim or action for which the Construction Manager must indemnify the Owner as described above; and (2) the Owner successfully asserts a claim or action against

the Construction Manager for professional negligence, breach of contract, and/or defective Work. For purposes of the previous sentence "successfully" means the Owner recovers damages from the Construction Manager, regardless of amount. The Construction Manager shall not be responsible for indemnifying an Indemnitee for the Indemnitee's negligence, but shall remain responsible to the fullest degree of Construction Manager's fault, on a comparative basis.

§ 14.14 The Construction Manager shall inspect the work of the Subcontractors on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the work performed and the materials furnished are in accordance with the contract documents and that work on the project is progressing on schedule. In the event that the quality control testing should indicate that the work, as installed, does not meet the requirements of this Project, the Architect and/or Owner shall determine the extent of the work that does not meet the requirements and the Construction Manager shall direct the Subcontractor to take appropriate corrective action (or the Construction Manager may take such action itself, with the approval of the Owner, which shall not be unreasonably withheld), and advise the Owner of the corrective action.

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

§ 14.16 During the Construction Phase, the Construction Manager shall:

§ 14.16.1 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Owner and Subcontractors, adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in schedule.

§ 14.16.2 Determine the adequacy of the Subcontractor's personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the Owner when requirements of a subcontract are not being met.

§ 14.16.3 Provide all supervision, services, utilities, etc. which are necessary for the completion of the Project in accordance with the contract documents which are not provided through the subcontracts, or by the Owner, or as a reimbursable item.

§ 14.16.4 Develop and monitor an effective system of Project cost control. Revise and refine the initially approved Project Construction Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected cost exceed budgets or estimates. The parties acknowledge the Owner's fixed budget for this Project which shall not be exceeded under any circumstances without the Owner's prior written approval.

§ 14.16.5 Develop and implement a system for the preparation, review and processing of Change Orders. Recommend necessary or desirable change to the Owner and the Architect. Review requests for changes and submit recommendations to the Owner and the Architect. The Construction Manager bears the responsibility of preparing change orders. If requested by the Owner, the Construction Manager will provide an explanation of the nature, cause, source, and responsible parties for any such change order.

§ 14.16.6 Develop and implement a procedure for the review, processing and payment of applications by Subcontractors for progress and final payments.

§ 14.16.7 Obtain all building permits and special permits for permanent improvements, excluding permits for inspection of temporary facilities required to be obtained directly by the various Subcontractors. The cost of such permits shall be a reimbursable item, unless included within the responsibilities of the subcontractors, the Owner, or the Owner's consultants. Obtain approvals from all the authorities having jurisdiction.

§ 14.16.8 If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

§ 14.16.9 In collaboration with the Owner and Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples, that include the review and approval of such by the Construction Manager. Incomplete or inadequate drawings and samples shall be returned by the Construction Manager to the submitting subcontractor prior to submission to the Architect.

In collaboration with the Owner and Architect, establish and implement procedures for expediting the processing and approval of requests for information (RFIs).

§ 14.16.10 Maintain at the Property site, on a current basis: records of all necessary Contracts, Drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions and other construction related documents, including all revisions. Obtain data from Subcontractors and maintain a current set of record Drawings, Specifications and operating manuals. At the completion of the Project, deliver all such records organized in a reasonable manner and provided to the Owner.

§ 14.16.11 With the Owner's maintenance personnel, direct the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the Subcontractors.

§ 14.16.12 Secure and transmit to the Owner required guarantees, affidavits, releases, bonds and waivers. Turn over to the Owner all keys, manuals, and record drawings.

§ 14.16.13 Warranty: The Construction Manager shall warrant that all materials and equipment included in the Work will be new, unless otherwise specified, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the Work, the Construction Manager further agrees to correct all Work defective in material and workmanship for a period of one or two years from the Date of Substantial Completion (as described in Section 14.12 above) or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others.

§ 14.16.14 Conduct Project meetings with trade contractors as needed for the work to proceed on a timely basis. The Owner shall be allowed to attend same.

§ 14.17 The Owner reserves the right in its discretion to require consolidation or joinder of any mediation or other legal proceeding relating to this Agreement with another mediation or other legal proceeding involving an independent contractor or consultant engaged by the Owner in connection with the Project in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort.

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

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

§ 14.20 Prior to the commencement of the Work, Construction Manager shall file with the Owner valid Certificates of Insurance and amendatory riders or endorsements to Construction Manager's and subcontractor's insurance policies, all in form and substance satisfactory to the Owner, naming Owner and its officers and employees or other persons or entities with an insurable interest designated by Owner as additional insured thereunder. Said endorsements or amendatory riders shall indicate that as respects said additional insured, there shall be severability of interests under said insurance policies for all coverages provided under said insurance policies. The Certificates and amendatory riders or endorsements shall clearly indicate the specific coverage and shall contain a provision requiring the giving of written notice to Owner until at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies as evidenced by return receipt of United States Certified or Registered Mail. Construction Manager shall require all Subcontractors to provide the same insurance in amounts satisfactory to Construction Manager and Owner. Insurances provided on a "claims-made" basis shall be enforceable upon commencement of services and maintained for six years following substantial completion. Insurances provided on an "occurrence" basis shall be enforceable upon commencement of services and maintained for one year following substantial completion.

§ 14.21 There will be no fee adjustment for changes within original Project budget (including contingency) and Project Schedule. However, if there are significant Owner-directed changes to the Project scope, thereby exceeding the Project budget or affecting the Project schedule, any adjustment in the fee, reimbursables and General Conditions costs to compensate the Construction Manager for his increased expenses, will be as negotiated by the parties.

§ 14.21.1 The Construction Manager acknowledges and is bound by the Guaranteed Maximum Price and not-to-exceed amount established in this Agreement, and further recognizes that the Owner's total project cost cannot be exceeded. The Construction Manager and the Owner agree to work with the Architect to keep the Project's scope of the work within these fixed costs.

§ 14.22 In order to keep the Owner and Architect informed of the total project budget, the Construction Manager shall provide the Owner budget reports monthly, or at such other intervals agreed by the Owner and the Construction Manager, indicating the current status of each portion of the Project, showing both budgeted costs and committed costs after trade contractors' bids have been received and reviewed by the Construction Manager.

§ 14.23 The Construction Manager shall provide full-time on-site supervision of the Project when work is underway. The Owner reserves the right to approve the identity of the Construction Manager's field supervisor(s) and to require the replacement of the field supervisor(s) upon two weeks' notice. The Construction Manager shall propose, and Owner shall approve, the key individuals to provide the services described herein. In the event that an approved individual is discharged, dies, is disabled, is promoted to a substantially different responsibility or the Owner requests their replacement, the Construction Manager shall promptly propose an individual, including qualifications and experience, as a replacement for the Owner's approval.

§ 14.24 The date of substantial completion for any individual subcontractor's contract will be established jointly by the Construction Manager, the Architect and Owner.

§ 14.25 During fire marshal visits or Bureau of Construction Codes visits, the Construction Manager will take a pro-active role to make such visits productive and timely.

§ 14.26 The Construction Manager will provide a pre-punch list prior to the final punch list walkthrough.

§ 14.27 Costs identified in Article 7 shall not be reimbursed if caused or exacerbated by the Construction Manager's negligent or wrongful actions or inactions.

§ 14.28 If a hazardous substance is encountered on or below the surface of the Project, the Construction Manager shall promptly notify the Owner of such a discovery.

§ 14.29 The Construction Manager shall assist the Architect and Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor and shall review those documents to coordinate conformance of those documents with the Drawings and Specifications as approved by the Owner.

§ 14.30 Front-end work on the specifications will be developed and administered by the Construction Manager. The Construction Manager shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor and shall review those documents to coordinate conformance of those documents with the Drawings and Specifications as approved by the Owner.

§ 14.31 The Construction Manager shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 14.32 On the basis of its regular on-site observations, the Construction Manager will report to the Owner any construction means, methods, techniques, sequences or procedures that do not appear to conform with industry standards and also shall report to the Owner any work that appears not to be in conformance with the contract documents.

§ 14.33 As a part of Basic Services, the Construction Manager shall conduct a post-occupancy audit six (6) months and eleven (11) months following the Date of Substantial Completion and shall also provide call-back services for the duration of the applicable warranty period (but in no event less than one year following Substantial Completion).

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

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

§ 14.36 If at any time the Construction Manager's cost estimates exceed the Guaranteed Maximum Price and/or the Owner's fixed budget, the Construction Manager, in consultation with the Architect and at no additional cost to the Owner, shall make appropriate recommendations to the Owner and provide all related services required to appropriately adjust the Project's size, quality or budget, and the Owner shall reasonably cooperate with the Construction Manager and Architect in making such adjustments.

§ 14.37 Notwithstanding anything to the contrary herein, or in any other Contract Document, and regardless of applicable statutes of limitation, the parties agree that a claim or cause of action by the Owner is timely filed if filed within six (6) years of Substantial Completion.

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

§ 14.39 The Construction Manager agrees to retain permanent records relating to the services performed under this Agreement for a period of at least six (6) years following final completion of the Project, after which period such records will be offered to the Owner for the Owner's retention.

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

§ 14.41 If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

§ 14.42 As part of Basic Services, the Construction Manager shall work with the Owner's Technology Designer and technology contractors to incorporate the Owner's technology program into the Project.

§ 14.43 The parties agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in this Agreement or any other Contract Document is contrary to this provision, such term is void and unenforceable.

§ 14.44 The General Conditions of the Contract, AIA Document A201-2017, shall apply as modified by the parties, and all references to AIA Document A201-2017 or the "General Conditions" shall refer to the modified version of the General Conditions of the Contract.

§ 14.45 Without affecting the interpretation of any other heading in this Agreement, it is expressly acknowledged that the headings in Sections 7.4 through 7.7 are deemed part of the parties' substantive agreement.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified for the Project;
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed as modified for the Project;
- .3 AIA Document ~~A133™-2019, Exhibit B, Insurance and Bonds~~
- .4 ~~AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified for the Project;~~
- .5 ~~Building Information Modeling Exhibit, if completed:~~

~~.6~~ .4 Other Exhibits:

- ~~(Check all boxes that apply.)~~ Exhibit B – Not Used
- Exhibit C – Scope of Preconstruction Services
- Exhibit D – Preliminary Project Milestone Schedule
- ~~AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)~~
- Exhibit E – Construction Manager’s Certificate(s) of Insurance and Bonds

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

- Project Manual
- Owner’s Request for Proposal dated _____
- Portions of the Construction Manager’s Proposal that are accepted by the Owner and not in conflict with the terms of this Agreement

«In the event of any inconsistency or ambiguity between, within, or among any of the documents that constitute the Agreement, the terms most beneficial to the Owner, as determined in the Owner’s sole discretion, shall govern.»

[signatures on following page]

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

GRAND RAPIDS PUBLIC SCHOOL DISTRICT,

OWNER *(Signature)*

«Alex Smart,
Executive Director of Facilities and Operations »« »
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »
(Printed name and title)

