

DRAFT AIA® Document C103® – 2015

Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services

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 Consultant:
(Name, legal status, address, and other information)

« »
« »
« »
« »

Consultant's discipline:

«Environmental Consultant.»

for the following Project:
(Name, location and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

« Grand Rapids Public School District – 2023 Bond Program

District Wide Abatement Related Services for the Grand Rapids Public School District's 2023 Bond Program, in accordance with the relevant Application for Preliminary Qualification of Bonds, 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 Owner and Consultant 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.

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSULTANT'S RESPONSIBILITIES
3	ADDITIONAL SERVICES
4	OWNER'S RESPONSIBILITIES
5	COPYRIGHTS AND LICENSES
6	CLAIMS AND DISPUTES
7	TERMINATION OR SUSPENSION
8	COMPENSATION
9	MISCELLANEOUS PROVISIONS
10	SPECIAL TERMS AND CONDITIONS
11	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)

«The Scope of Work, as further detailed in Article 2, covers Environmental Consulting Services for Asbestos Abatement related Services for the 2023 Bond Project sites as defined in Exhibit A.»

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document [A201™-2007](#), [A201™-2017](#), General Conditions of the Contract for [Construction-Construction, as modified](#).

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

- .1 Design phase milestones, if any:

«To be determined »

- .2 Date for commencement of construction:

«To be determined »

- .3 Substantial Completion date:

«To be determined »

- .4 Other milestone dates:

«To be determined »

[Asbestos Abatement and Lead Based Paint Related Services Completion Dates:](#)

The Pre-Construction Phase Services (as defined at Section 2.1 below) must be completed no later than August 31, 2022.

The Construction Phase Services (as defined at Section 2.1 below) must be completed within 60 days of programming start as defined in Exhibit A.

All final reports, to be prepared by Consultant for each phase of construction work detailed in Section 2.1 below, must be received by the Owner within 10 days of completion of Work.

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Consultant shall appropriately adjust the schedule, the Consultant's services, and the Consultant's compensation may mutually agree to a written adjustment in the Consultant's schedule, the Consultant's services, or the Consultant's compensation, as applicable.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)

«Consultant's scope of services at the buildings will correspond to the construction work being performed. Those elements of Consultant's scope of services set forth at subparagraphs (i), (ii) and (iii) below, as applicable to each phase of construction (e.g., the Series 1 Projects being the first phase), are referred to, collectively, as the "Pre-Construction Phase Services", and those elements of Consultant's scope of services set forth at subparagraph (iv) below, as applicable to each phase of construction, are referred to as the "Construction Phase Services". The Environmental Consultant will be responsible for the following Scope of Services:

- i. Review final Construction Documents to determine changes in scope and determine if additional testing is required.
- ii. Perform additional testing if necessary, and issue reports to Owner and Owner's Representative Consultant.
- iii. At minimum provide updated NESHAP reports for each building
- iv. Consultant's project designer shall develop specification and bid documents, and provide the following:
 1. Assist the Owner in coordinating all pre-bid meetings, requirements, advertisements, etc.
 2. Attend bid openings, review bids and interview firms.
 3. Provide award recommendation(s) to Owner and Owner's Representative Consultant.
- iv. Project Management, Air Monitoring and Sampling
 1. Provide project management services including advising Owner on contract terms/arrangements, overseeing application and procurements for all applicable permits/licenses, scheduling and coordinating all abatement work, reviewing payment applications and invoices and all other management services required to ensure a completed project.
 2. Air monitoring, PCM, PLM and TEM sampling and analysis.
 3. Provide final reports, approvals, clearances, etc. to Owner at appropriate intervals and at completion of Project.

As part of the Consultant's Services under this Agreement, the Environmental Consultant shall:

- i. be responsible for coordinating and procuring (or managing the procurement of) all licenses, permits, approvals, etc. of all governmental and/or regulatory agencies as required by all Federal, State and Local Laws.
- ii. Attend meetings with Owner, the Construction Manager, and their subcontractors as necessary to plan and coordinate all work. For bidding purposes, Consultant shall attend bi-weekly meetings with the Project Team.
- iii. Develop budgets and schedules for scope of abatement work to facilitate planning by Owner.
- iv. All Work is to be scheduled, phased and coordinated with Owner, the Construction Manager, and all subcontractors in order to meet the overall Bond Project Schedule.
- v. Coordinate the removal and legal disposal of receptacles for light bulbs/tubes and ballasts, as required by the Owner, the Construction Manager, and their subcontractors.
- vi. All final reports, approvals, clearances, etc. are to be submitted to the Owner at the appropriate intervals and at the completion of the Project.

vii. All testing and monitoring are to meet current ASTM and other relevant industry standards, in addition to those required by all Federal, State and Local Laws. » »

§ 2.2 The Consultant shall perform its services consistent with the professional ~~skill and care~~ skill, care, standards, and in compliance with all Federal and local laws, including OSHA, MIOSHA, the Asbestos Abatement Contractors Licensing Act, the Asbestos Workers Accreditation Act, AHERA, NESHAP, etc., ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar ~~circumstances.~~ circumstances and familiar with school construction in Michigan. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.
(List name, address, and other information.)

<<
<< >>
<< >>
<< >>
<< >>>

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other ~~consultants.~~ consultants, Owner's Project Representative, Architect(s), Contractor(s), Construction Manager(s) (collectively referred to herein as the "Owner's other consultants"). The Consultant shall communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Subject to the Consultant's professional judgment, experience, and expertise, and upon careful examination of such information, the Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 **Insurance.** The Consultant shall maintain ~~the following~~ insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.~~ Agreement in the types and amounts set forth below, in any provided certificate of insurance, or as required by law, whichever is greater.

§ 2.7.1 Commercial General Liability with policy limits of not less than ~~(\$)~~ «One Million Dollars» («\$1,000,000») for each occurrence and ~~(\$)~~ «Three Million Dollars» (\$3,000,000) in the aggregate for bodily injury and property damage.

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than ~~(\$)~~ per claim and (\$) «One Million Dollars» (\$1,000,000) per claim and «One Million Dollars» (\$1,000,000) in the aggregate for bodily injury and «One Million Dollars» (\$1,000,000) property damage along with any other statutorily required automobile ~~coverage.~~ coverage; or a combined bodily injury and property damage with policy limits of not less than Three Million Dollars (\$3,000,000).

§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2. True Commercial Umbrella coverages shall have policy limits of One Million Dollars (\$1,000,000) each occurrence and Three Million Dollars (\$3,000,000) in the aggregate.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than ~~(~~Two Million Dollars) (\$2,000,000) each accident, Two Million Dollars (\$2,000,000) each employee, and Two Million Dollars (\$2,000,000) policy limit.

§ 2.7.5 Professional Liability covering the negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ~~(~~One Million Dollars) (\$1,000,000) per claim and ~~(~~Two Million Dollars) (\$2,000,000) in the aggregate. In addition, Consultant shall provide Contractor Environmental Pollution with a policy limit Five Million Dollars (\$5,000,000).

§ 2.7.6 The ~~Owner shall be an~~ Owner, Architect, Construction Manager, and its Owner's Representative Consultant shall be named additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

The following language shall be indicated on all certificates of insurance: "The Grand Rapids Public School District, its elected or appointed officials, employees and agents assigned under the contract; including, but not limited to products, completed operations and broad form contractual liability coverage, not excluding sexual harassment and molestation; of at least \$1,000,000 per occurrence and/or \$3,000,000 aggregate combined single limit for personal injury bodily injury, and property damage".

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the ~~Owner as an additional insured~~ Owner, Architect, Construction Manager, and its Owner's Representative Consultant as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies. The certificates shall state that any coverages will not be terminated, non-renewed, or reduced without at least thirty (30) days' prior written notice to the Owner.

§ 2.7.8 If the Consultant neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, at its option, either terminate this Agreement or procure such insurance and adjust the Consultants compensation downward by the premiums paid, or to be paid, by Owner.

§ 2.7.9 All required insurance shall be provided by insurance company(s) with an A.M. Best rating of A- or better. Without waiving Consultant's insurance obligations or responsibility for the service of its sub-consultants, Consultant shall require all its sub-consultants to maintain the same insurance coverage as stated above. Consultant shall deliver, within twenty (20) days of issuance and of each renewal or replacement, to Owner certificates evidencing that the foregoing insurance is in full force and effect.

§ 2.7.10 Copies of Consultant's insurance policies, including all exceptions and exclusions, shall be provided to Owner upon Owner's written request.

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.
(Check one or both selections below.)

[] Consultant's Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's Services. If relevant to the Consultant's Services, the schedule initially shall include anticipated dates for design phase milestones, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall ~~not, except for reasonable cause, not~~ be exceeded by the ~~Consultant or Owner~~ Consultant.

[] Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the

time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

Deliverable(s) <i>(Describe the deliverable(s))</i>	Time Limits <i>(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)</i>
Final Reports	Within 30 days of expected Project completion.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement. ~~Agreement in accordance with Section 3.2.~~

§ 3.2 ~~The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Additional Services may be provided by the Consultant and compensated as an Additional Services if:~~ (a) required for the Project, (b) the Owner authorizes the performance of the same in writing prior to the Consultant's provision of any such service, and (c) the Consultant provides a good faith estimate of the cost of the same prior to the Owner's authorization. ~~The Owner shall not be obligated to pay for any Additional Services in the absence of the foregoing.~~ Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 ~~Unless otherwise provided for under this Agreement, the Owner shall provide~~ The Owner will provide information that is specifically requested by the Consultant in writing. The Consultant will assist the Owner in providing this information in a timely manner regarding requirements for and limitations on the Project. ~~Within 15 days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.~~ Project, acknowledging the Owner's status as a public body subject to the Open Meetings Act and acknowledging that the Owner is not a construction professional. Further, the Consultant will coordinate with the Architect to avoid duplicate requests for information from the Owner.

§ 4.2 **Owner's Designated Representative.**

The Owner identifies the following individual as its Owner's Designated Representative. The Owner may change the Designated Representative upon written notice to the Consultant; and the Owner may modify the scope of authority of the Designated Representative in like manner. The Consultant acknowledges that the Owner is a public body and that certain requests or authorizations may require approval of its governing body subject to timing requirements and notice as required by the Open Meetings Act. *(List name, address, and other information.)*

«Alex Smart, Executive Director of Facilities and Operations »
 «Grand Rapids Public School District »
 «900 Union Avenue »
 «Grand Rapids, MI 49503 »

§ 4.2.1 **Owner's Representative Consultant**

The Owner has engaged Plante Moran Realpoint, LLC ("PMR") as an Owner's Representative Consultant on the Project ("Owner's Representative Consultant"). Notwithstanding the foregoing, PMR shall have not authority, express or implied, to enter into agreements on behalf of the Owner, modify or amend this agreement, or otherwise bind the Owner. Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project to the Project, subject to the parameters established by the Owner's Board of Education. It is

acknowledged and understood that the Owner's Project Representative is separate and distinct from the individual(s) named below.

(List name, address, and other information.)

Jenae Kuipers
Plante Moran Realpoint, LLC
634 Front Ave NW, Unit 400
Grand Rapids, MI 49505

Jenae.Kuipers@plantemoran.com; (616) 643-4351

~~§ 4.3 The Owner shall render decisions and approve~~ Acknowledging the Owner's status as a public body, subject to the Open Meetings Act, the Owner shall render decisions and review the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services. The Consultant shall provide the Owner reasonable advance notice of any decisions or approvals. The Consultant acknowledges that the Owner is not a construction professional and that any review of the Consultant's submittals or other work product is solely for conceptual purposes and not for the purpose of reviewing or approving technical or design details or for reviewing or approving means, methods, techniques, or sequences. Further, the Consultant shall provide all submittals, if any, to the Architect for the Architect's review.

~~§ 4.4 The Owner shall coordinate the services of its other consultants with those services provided by the Consultant. The Upon request, the~~ Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. ~~The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.~~

~~§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably~~ Any subconsultants required for the Consultant to be able to perform its ~~services.~~ services shall be furnished by the Consultant as part of its Basic Services.

~~§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's~~ Services, but the Owner's failure to do so does not relieve the Consultant of its responsibilities, and the Owner assumes no duty to observe, review, investigate, inspect, or in any other way provide any quality control or assurance of the Consultant's services. Consultant shall remain responsible to the Owner for the quality, accuracy, and completeness of its services provided under this Agreement. The Consultant shall give the Owner prompt written notice if it becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services.

ARTICLE 5 COPYRIGHTS AND LICENSES

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

§ 5.2 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they ~~shall~~ may endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

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

§ 5.4 Upon execution of this Agreement, the Consultant grants to the Owner a ~~nonexclusive license to use the Consultant's Instruments of Service solely and exclusively~~ nonexclusive, irrevocable license to access, use, and reproduce the Consultant's Instruments of Service in whatever form the Instruments of Service then exist and regardless of their stage of completion, for purposes of designing, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. ~~altering, adding to the Project, and completing the Project if the Consultant does not provide services through completion.~~ The Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The ~~license granted~~ licenses granted or referenced under this section permits the Owner to authorize the Owner's consultants and contractors and design professionals to reproduce applicable portions of the Instruments of Service ~~solely and exclusively~~ for the purposes of designing, constructing, using, maintaining, altering and adding to the Project. ~~If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.~~ altering, adding to the Project, and completing the Project. Any termination of this Agreement for any reason or under any condition shall in no way terminate or otherwise diminish the licenses described herein.

§ 5.4.1 ~~In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant and its subconsultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 5.4.1. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.~~

§ 5.5 Except for the licenses granted or referenced in this Article 5, no other license or right shall be deemed granted or implied under this Agreement. ~~The~~ Except as provided herein, the Owner shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. ~~Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and the Consultant's subconsultants.~~

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date the Project is sufficiently complete so that the Owner can utilize it for its intended use. ~~Michigan law, but in no event shall a claim or cause of action by the Owner be deemed untimely if filed within six (6) years after the date the Project's Final Completion.~~ The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

§ 6.1.2 ~~To the extent damages are covered by property insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.~~

§ 6.1.3 ~~The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 7.7.~~

§ 6.2 Mediation

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

§ 6.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the

American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the ~~Agreement~~. Agreement, except that either party may, if in good faith, declare a mediation impasse and proceed with litigation after one full day of mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ During the pendency of mediation, the parties agree that all limitations periods applicable to all claims that are the subject of this process or that are related to claims subject to this process shall be tolled.

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

§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Consultant do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

Other: (Specify)

§ 6.3 Arbitration

~~§ 6.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question, arising out of or related to this Agreement, subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 6.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.~~

~~§ 6.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 6.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 6.3.4 Consolidation or Joinder

~~§ 6.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 6.3.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 6.3.4.3~~ The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make undisputed payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending ~~services.~~ services for this reason. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be ~~equitably adjusted.~~ subject to negotiation.

§ 7.2 If the Owner ~~suspends the Project or the Consultant's services,~~ voluntarily chooses to suspend the Project or the Consultant's services for more than thirty (30) consecutive days, other than for a scheduled suspension, the Consultant shall be compensated for services performed prior to notice of such suspension. ~~When the Project or the Consultant's services are resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services.~~ For a suspension of services that is not due to an emergency or circumstances outside of the Owner's reasonable control, the Consultant's fees for the remaining services and the time schedules ~~shall be equitably adjusted.~~ may be modified subject to negotiation.

§ 7.3 If the Owner ~~suspends~~ voluntarily chooses to suspend the Project or the Consultant's services for more than 90 ~~cumulative days for reasons other than consecutive~~ days for reasons other than (i) an emergency, (ii) circumstances outside of the Owner's reasonable control, or (iii) the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ 7.4 ~~Either party may terminate this Agreement upon not less than seven days' written notice should the other party~~ Consultant may terminate this Agreement should the Owner fail substantially to perform in accordance with the terms of this Agreement through no fault ~~of the party initiating the termination of the Consultant, so long as: (i) the~~ Consultant has notified the Owner in writing, stating with specificity the alleged non-performance and further stating that the proposed termination shall be effective if the substantial non-performance remains uncorrected for a period of not less than 15 days following the Owner's receipt of said notice, and (ii) within 15 days following the Owner's receipt of said notice, the Owner fails to correct a substantial non-performance or to commence steps to correct a substantial non-performance and diligently pursue correction to completion.

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

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then ~~due and all Termination Expenses as defined in Section 7.7.~~ due.

§ 7.7 ~~Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant.~~ NOT USED

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in ~~Article 5 and Section 8.7.~~ Article 5.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for ~~services described in Article 2-its timely and proper performance of services~~ as follows:

(Insert amount of, or basis for, compensation)

~~«A Not-to-Exceed amount of _____ Dollars (\$0.00), on a Time & Materials basis, in accordance with the Consultant’s Proposal, which includes its Hourly Rate Schedule, and is attached hereto as Exhibit B. Compensation for the Project Scope shall be based upon those Hourly Rates, which shall not be increased without prior written authorization, in the form of an Amendment to this Agreement, as issued by the Owner. »~~

~~Construction Phase Services shall be established at the time that Bids are received, and will be covered under a future Amendment to this Agreement.~~

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project as follows:

(Insert amount of, or basis for, compensation.)

~~«To be negotiated by the parties and agreed upon in writing before the performance of any such Additional Service(s).»~~

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant’s subconsultants, if any, are set forth below. ~~The rates shall be adjusted in accordance with the Consultant’s and Consultant’s subconsultants’ normal review practices in Exhibit B – Consultant’s Unit Prices and Hourly Rate Schedule.~~

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

Employee or Category	Rate
_____	_____

§ 8.4 ~~Unless otherwise agreed, payments~~ Payments for services shall be made monthly in proportion to services timely and properly performed. Payments are due and payable upon ~~presentation of the Consultant’s invoice. Amounts unpaid () days after the invoice~~ Owner’s receipt of the Consultant’s invoice, except and to the extent the invoice or related services are disputed by the Owner in good faith. Undisputed 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 Consultant below.~~

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

~~_____ percent (_____ %) «Five » percent (« 5 » %) « per annum. »~~

§ 8.5 The Owner shall ~~not be entitled to~~ withhold amounts from the Consultant’s compensation ~~to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding that it disputes in good faith until final resolution of such dispute. Owner shall notify Consultant in writing, with a reasonably detailed explanation as soon as practicable.~~

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant’s professional services and include expenses incurred by the Consultant directly related to the Project, as follows:

- .1 ~~Transportation and authorized out-of-town travel and subsistence; in connection with authorized out-of-town travel and subsistence (not including travel to and from the project site(s));~~
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; Not used;~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Not used;~~

- ~~.7 Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants; Not used;~~
- .8 All taxes levied on professional services and on ~~reimbursable expenses;~~ reimbursable expenses, but the parties shall discuss significant reimbursable expenses prior to the purchase of same in light of the Owner's tax-exempt status;
- .9 Other similar Project-related expenditures, if authorized in advance by the ~~Owner.~~ Owner in writing.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Consultant ~~plus an administrative fee of █ percent (█%) of the expenses incurred at cost and without markup.~~

§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, ~~the Owner shall reimburse the Consultant for such costs as set forth below; Consultant shall explicitly state such additional cost below. If there is no identified cost as of the time of execution, it shall be a representation by Consultant that no such additional cost shall be applicable.~~

~~Not Applicable.~~

§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be ~~available to the Owner at mutually convenient times; submitted with each invoice.~~

~~§ 8.7 Compensation for Use of Consultant's Instruments of Service~~

~~If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 6.3.State of Michigan.~~

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

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

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

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

§ 9.6 ~~Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the~~

transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1 allowed by law and consented to by the Owner in writing.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 10.1 The Consultant shall remain primarily responsible for the services performed by any hired consultants. Any agreement between the Consultant and a hired consultant shall identify the Owner as an intended third-party beneficiary.

§ 10.2 Duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and the Consultant.

§ 10.3 As part of Basic Services, the Consultant shall be prepared to serve, and shall serve when requested by the Owner, as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner or the Consultant is a party concerning the Project.

§ 10.4 The Consultant agrees to retain records relating to the services performed for a period of at least six (6) years following submission of the construction documents, during which period the records will be made available to the Owner upon request.

§ 10.5 Integration, Waiver and Severability

§ 10.5.1 This is the entire agreement between the Owner and Consultant with respect to the matters covered herein and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing signed by both parties. 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.

§ 10.5.2 A waiver of any term, condition, or covenant by a party shall not constitute a waiver of any other term, condition or covenant. 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.

§ 10.6 The Consultant shall perform its responsibilities and services in a manner consistent with the standards of its profession in the State of Michigan. Without limiting the breadth of the foregoing, the Consultant shall comply with all applicable federal, state, and local laws, rules, regulations and policies/procedures.

§ 10.7 The Consultant shall not be entitled to additional compensation in the event it is necessary to extend the contract completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, declared emergencies, etc.

§ 10.8 The Owner reserves the right in its discretion to require consolidation or joinder of mediation or litigation arising out of or relating to this Agreement with another mediation or litigation involving a person or entity not a party to this Agreement, 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.

§ 10.9 In the event of mediation arising out of or relating to this Agreement, the Owner reserves the right to require that the mediation hearing be conducted in the general area where the Owner's principal place of business is located. In the event litigation arising out of or relating to this Agreement is related to litigation that is subject to the required jurisdiction/venue of another court, the Owner reserves the right to determine the applicable court in its sole discretion.

§ 10.10 The Consultant, without additional cost to the Owner, shall maintain in force professional liability insurance providing coverage for the Consultant for any negligent act in the Consultant's rendering of or failure to render professional services and protecting the Owner from damages arising from results of such errors and omissions. Any "claims made" insurance shall be maintained in force during the life of the Project and for a period of no less than seven (7) years following the date of substantial completion. Any "occurrence based" insurance shall be maintained in force during the life of the Project and for a period of no less than twelve (12) months after the date of substantial completion. The Consultant shall notify the Owner thirty (30) days in advance if this coverage becomes unavailable or if the coverage amount is substantially changed. The Consultant shall provide the Owner with certificates of insurance evidencing the insurance coverage of the Consultant, which certificates shall be attached to this Agreement. The Owner shall be listed as "additional insured" on all coverages to the extent reasonably permitted by the carrier. See attached Certificate of Insurance.

§ 10.11 The Owner reserves the right to approve the identity of the Consultant's Project's representative(s) and to require their replacement upon two (2) weeks' notice. The Consultant shall provide the services of _____ and all other individuals required for the Project. In the event that any of the individuals identified above is discharged, dies, is disabled, or is promoted to take on a substantially different responsibility, or at such time as the Owner requests a personnel change, the Consultant shall promptly submit to the Owner a qualification and experience resume of the person(s) proposed as replacement(s) and shall furnish replacement(s) upon agreement by the Owner.

§ 10.12 To the fullest extent permitted by law, the Consultant shall indemnify the Owner, its Board members, officers, and employees from and against any and losses, damages, including reasonable attorneys' fees and any additional expenses, and judgments arising from the Consultant's negligence, the Consultant's breach of this Agreement, or from claims by third parties that are attributable to the Consultant's failures. The Consultant's indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligence of the Owner, its Board members, officers, and employees, but shall be to the fullest extent of the Consultant's responsibility.

§ 10.13 The Consultant shall not utilize photographs of this Project for any advertising or promotional purpose that include the image of any student of the Owner without the express written permission of the parent or guardian of that student if that student is a minor. If the student is of the age of majority or is an emancipated minor, the Consultant must obtain express written permission from that student. Such express written permission shall acknowledge the Consultant's intent for use of those images. The Owner, in its discretion, may assist the Consultant in securing such permission.

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

§ 10.15 The Consultant 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, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this contract.

§ 10.16 The Consultant 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.

§ 10.17 The Consultant shall actively enforce all applicable policies of the Owner, including but not limited to those related to alcohol and tobacco. »

ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant 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 Consultant. ~~In the event of a conflict between the terms and conditions of this C103™ 2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103 2015, Standard Form Agreement between Owner and Consultant shall take precedence.~~

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

- .1 AIA Document ~~C103™ 2014, C103™ 2015~~, Standard Form of Agreement Between Owner and Consultant, as modified;
- .2 AIA Document ~~E202™ 2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~

- ~~.3 Scope of Services Exhibit(s) listed in section 2.1~~
- ~~.4 Other documents:~~
(List other documents hereby incorporated into the Agreement.)
«Exhibit A – List of 2023 Bond Projects & Projected Schedules
Exhibit B – Consultant’s Unit Prices and Hourly Rate Schedule;
Exhibit C – Consultant’s Insurance Certificate(s).

In the event of any inconsistency within, between, or among the various documents that make up this Agreement, the terms and conditions most beneficial to the Owner (as determined in the Owner’s sole discretion) shall govern.

This Agreement 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)

(date)

Modified:

CONSULTANT (Signature)

« »
(Printed name and title)

(date)

