

## REGULAR BOARD OF EDUCATION MEETING – WORK SESSION

July 16, 2018

7:00 p.m.

### ADMINISTRATION BUILDING/MEETING ROOM

This meeting is a meeting of the Board of Education in public for the purpose of conducting the School District's business and is not to be considered a public community meeting. There is a time for public participation during the meeting as indicated in the agenda. Public comment is your opportunity to make a comment to the Board. The Board will listen and if necessary, someone from the administration will get back to you with an answer.

### Fund Definitions

---

**001 – General Fund** – The general fund is used to account for all financial resources, except those required to be accounted for in another fund. The general fund is available to the School District for any purpose provided it is expended or transferred according to the general laws of Ohio.

**002 – Bond Retirement** – The bond retirement fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal, interest, and related costs.

**003 – Permanent Improvement** – The permanent improvement fund is used to account for all transactions related to the acquiring, construction, or improving facilities and/or capital assets.

**004 – Building Fund** – The building fund is used to account for monies received and expended in connection with the construction of the middle school and renovation of the high school.

**009 – Uniform School Supplies** – The uniform school supplies fund is used to account for class fees for the purchase of school supplies.

**014 – Internal Service Rotary Fund** – The internal service rotary fund is used to account for operations that provide goods and services on a cost reimbursement basis.

**018 – Public School Support** – The public school support, otherwise known as the Principal's building fund, is used to account for specific local revenue sources, other than taxes, that are restricted to expenditures for specified purposes.

---

**Fund Definitions (continued)**

---

- 019 – Other Grants** – The other grants fund is used to account for proceeds of specific revenue sources, except for State and Federal grants that are legally restricted to expenditures for specified purposes.
- 022 – OHSAA Tournaments** – The OHSAA Tournament fund is used to account for the revenues and expenditures of an OHSAA tournament game hosted at the District. After the event takes place, this fund should equal zero.
- 024 – Employee Benefits Self-Insurance** – The employee benefits self-insurance fund is used to account for monies received from other funds as payment for providing employee healthcare.
- 035 – Termination Benefits** – The termination benefits fund is used to pay employee termination benefits upon separation as prescribed within the District’s negotiated contracts.
- 200 – Student Managed Activities** – The student managed activities fund is used to account for student activity programs which have student participation in the activity and have students involved in the management of the program.
- 300 – District Managed Student Activity** – The District managed student activity fund is used to account for those student activity programs which have student participation but do not have student management of the programs. (Usually athletic and band programs but could be other clubs that are District managed.)
- 401 – Auxiliary Service (NPSS)** – The auxiliary service fund is used to account for monies which provide services and materials to pupils attending non-public school within the School District. (Sts. Joseph and John, Creative Playrooms, and Le Chaperon Rouge).
- 451 – Data Communications** – The data communications fund is used to account for money appropriated for Ohio Educational Computer Network Connections.
- 463 – Alternative Schools** – The alternative schools fund is used to account for alternative educational programs for existing and new at-risk and delinquent youth.
- 499 – Miscellaneous State Grants** – The miscellaneous state grant fund is used to account for various monies received from state agencies which are not classified elsewhere.
- 516 – IDEA, Part B Special Education** – Grants to assist states in providing an appropriate public education to all children with disabilities.
- 551 – Title III, Limited English Proficiency** – Grants to develop and carry out elementary and secondary school programs, including activities at the pre-school level, to meet the educational needs of children with limited English proficiency.
- 572 – Title I-Disadvantaged Youth** – Federal Monies used to assist the School District in meeting the special needs of economically and educationally deprived children.
- 587 – IDEA Preschool Grant for the Handicapped** – Grants the improvement and expansion of services for handicapped children ages three to five years.
- 590 – Improving Teacher Quality** – Grants for professional development and other programs to ensure teachers meet high quality standards.

**AGENDA**

1. **CALL TO ORDER**

2. **ROLL CALL**

**Present**

**Not Present**

*Duke Evans  
George A. Grozan  
Jane L. Ludwig  
Richard O. Micko  
Carl W. Naso*

3. **PLEDGE OF ALLEGIANCE**

4. **DISTRICT GOALS**

5. **PUBLIC COMMENT**

6. **TREASURER’S REPORT**

7. **SUPERINTENDENT’S REPORT**

A. **TIMELY INFORMATION**

1. **Presentation – Community Advisory Council**

7. SUPERINTENDENT’S REPORT

B. BUSINESS SERVICES

1. Secure Entryway (004-Construction Fund)

Be it resolved upon the recommendation of the Superintendent that the Board of Education approves the awarded as Design-Builder contract for secure entryway (Chapman, Muraski, Surrarrer and Whitney Elementary Schools, and athletic entryway at Strongsville High School) with RFC Contracting, LLC, not to exceed \$600,000.00, as stated in exhibit. Funding to be from the Construction Fund.

(Exhibit A)

Motion:	Second:	Roll Call:	Yes	No
		<u>Duke Evans</u>		
		<u>George A. Grozan</u>		
		<u>Jane Ludwig</u>		
		<u>Richard O. Micko</u>		
		<u>Carl W. Naso</u>		

2. Copier/Printer Lease Agreement (003-Permanent Improvement Fund)

Be it resolved upon the recommendation of the Superintendent that the Board of Education approves the awarded five-year lease agreement for copier/printers with Ace, with monthly payments of \$2,967.96, not to exceed the amount of \$178,077.60 over five years. Funding to be from the Permanent Improvement Fund.

(Exhibit B)

Motion:	Second:	Roll Call:	Yes	No
		<u>Duke Evans</u>		
		<u>George A. Grozan</u>		
		<u>Jane Ludwig</u>		
		<u>Richard O. Micko</u>		
		<u>Carl W. Naso</u>		

3. Papercut (003-Permanent Improvement Fund)

Be it resolved upon the recommendation of the Superintendent that the Board of Education approves the awarded contract for Papercut with Ace in the amount of \$34,303.00. Funding to be from the Permanent Improvement Fund.

(Exhibit C)

Motion:	Second:	Roll Call:	Yes	No
		<u>Duke Evans</u>		
		<u>George A. Grozan</u>		
		<u>Jane Ludwig</u>		
		<u>Richard O. Micko</u>		
		<u>Carl W. Naso</u>		

7. **SUPERINTENDENT’S REPORT**

**B. BUSINESS SERVICES**

4. **Purchase of Two F-350 Ford Trucks (003-Permanent Improvement Fund)**

Be it resolved upon the recommendation of the Superintendent that the Board of Education approves the purchase of two 2019 Ford F-350 trucks from Harrison Ford Wellington at the quoted total price of \$80,762.44. Funding to be from the Permanent Improvement Fund.

(Exhibit D)

Motion:	Second:	Roll Call:	Yes	No
		<u><i>Duke Evans</i></u>		
		<u><i>George A. Grozan</i></u>		
		<u><i>Jane Ludwig</i></u>		
		<u><i>Richard O. Micko</i></u>		
		<u><i>Carl W. Naso</i></u>		

**C. CURRICULUM**

\* 1. **Lexia Learning (599-Literacy Grant)**

Be it resolved upon the recommendation of the Superintendent that Strongsville City School District pays to purchase five unlimited site licenses to Lexia Reading Core5 at a cost of \$49,500.00 to be utilized as an elementary reading intervention program for the 2018-2019 school year.

\* 2. **Overnight Trip – Strongsville High School Boys’ and Girls’ Cross Country Team Camp**

Be it resolved upon the recommendation of the Superintendent that permission be granted to the Strongsville High School Boys’ and Girls’ Cross Country Teams to attend an overnight camp. The camp will take place August 5-9, 2018 at Lakeside Historic Village in Lakeside, Ohio. Transportation will be provided by parents and costs associated with the trip will be paid by participating students and fundraising.

**D. STUDENT SERVICES**

\* 1. **McKeon Education Group, Inc. (MEG, Inc.)  
(516-Part B IDEA Grant Fund)**

Be it resolved upon the recommendation of the Superintendent that the Board of Education enters into an agreement with McKeon Education Group, Inc. (MEG, Inc.) in the amount of \$35,101.08 for one part-time Intervention Specialist to service students with disabilities attending Sts. Joseph and John Interparochial School.

(Exhibit E)

## AGENDA

JULY 16, 2018

7. SUPERINTENDENT'S REPORTD. STUDENT SERVICES\* 2. KidsLink Neurobehavioral Center (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into a contract with KidsLink Neurobehavioral Center (KidsLink School, LLC) for placement of a student with disabilities for the 2018-2019 school year at a cost of \$78,000.00.

Be it further resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into another contract with KidsLink Neurobehavioral Center (KidsLink School, LLC) for placement of a student with disabilities for the 2018-2019 school year at a cost of \$78,000.00.

Be it further resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into a contract with KidsLink Neurobehavioral Center (KidsLink School, LLC) for placement of a student with disabilities for the 2018-2019 school year at a cost of \$81,000.00.

(Exhibit F)

\* 3. Educational Service Center of Northeast Ohio (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into a contract with the Educational Service Center of Northeast Ohio for admission of students for visual, audiology and/or hearing impaired services for the 2018-2019 school year.

(Exhibit G)

\* 4. Education Alternatives Service Agreement (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into a tuition/excess cost agreement with Education Alternatives for placement of students with disabilities for the 2018-2019 school year.

(Exhibit H)

\* 5. Education Alternatives Student Transportation Agreement (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the Strongsville Board of Education enters into a Student Transportation Agreement with Education Alternatives. This agreement engages Education Alternatives to provide transportation services for the Districts' students enrolled at Education Alternatives' school locations during the 2018-2019 school year.

(Exhibit I)

## AGENDA

JULY 16, 2018

7. SUPERINTENDENT'S REPORTE. HUMAN RESOURCES\* 1. Resignation – Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the following certificated resignation be accepted:

Melissa Rubenstein, Intervention Specialist, assigned to Strongsville High School. Effective July 31, 2018.

\* 2. Appointments – Certificated (001-General Fund) (599-Literacy Grant)

Be it resolved upon the recommendation of the Superintendent that the following certificated personnel be hired:

Amanda Brewer-Burton, Speech Language Pathologist, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Chelsea Girgash.

Rachel Dlouhy, Kindergarten Teacher, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Courtney Smith-Timko.

Kathryn Gastaldo, Guidance Counselor, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year, plus 6 days extended time. Effective August 17, 2018. Replacement for William Bambrick.

Jeremy Jenkins, English/Drama Teacher, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Carol McKnight.

Steven Owens, Literacy Coach, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. This is a new position.

Stacy Pietrocini, Guidance Counselor, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Bethany Hussong.

Holli Ruman, Language Arts and Social Studies Teacher, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Lynne Lawson.

Stacy Shifley, Intervention Specialist – Moderate/Intensive, 184 day limited contract, salary to be BA/0 at \$40,315.00 per year. Effective August 17, 2018. Replacement for Emma Stroemple.

## AGENDA

JULY 16, 2018

7. SUPERINTENDENT'S REPORTE. HUMAN RESOURCES\* 2. Appointments – Non-Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the following non-certificated personnel be hired:

Alice Bou Rizk, Monitor, 3 hours per day, 189 days per year, salary to be Step A at \$15.51 per hour. Effective August 17, 2018. Replacement for Robin Gilliam.

Anthony Usberghi, Custodian, 6 hours per day, 260 days per year, salary to be Step A at \$21.15 per hour. Effective July 2, 2018. Replacement for Daniel Krihwan.

Appointment – Certificated – Summer School (014-Internal Service Rotary Fund)

Be it resolved upon the recommendation of the Superintendent that the following certificated personnel be appointed to the Summer School Program:

Bryan Bent	\$31.93 per hour	Substitute Summer School Teacher
------------	------------------	----------------------------------

Appointments – Non-Certificated - Extended School Year (516-Part B IDEA Grant)

Be it resolved upon the recommendation of the Superintendent that the following non-certificated personnel be appointed to the Summer Extended School Year (ESY) Program. Employment contingent upon enrollment. Funded through Part B IDEA Grant for school year 2017-2018.

Rhonda Ridzy	\$21.00 per hour	Licensed Practical Nurse
Judy Vanderwyst	\$18.82 per hour	Bus Aide

\* 3. Changes in Hours – Non-Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the following non-certificated changes in hours be approved. Effective August 16, 2018.

Paul Harris	From 5.15 hours per day to 5.83 hours per day
Penny Kurowski	From 5.25 hours per day to 5.10 hours per day
Robert Mahoney	From 4.92 hours per day to 5.32 hours per day
Julie McGivern	From 4.75 hours per day to 5.27 hours per day

\* 4. Change in Status – Certificated – Recall from Reduction in Force Status (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the following certificated personnel be recalled from reduction in force status effective August 17, 2018:

Emily Love-Weir	From .8 FTE to 1 FTE
-----------------	----------------------

## AGENDA

JULY 16, 2018

7. SUPERINTENDENT'S REPORTE. HUMAN RESOURCES\* 4. Changes in Status – Non-Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the following non-certificated changes in status be approved:

Nicholas Kelly, from Custodian to Assistant Head Custodian – Middle School, salary to be Step E at \$24.35 per hour. No change to hours per day or days per year. Effective July 2, 2018. Replacement for Martin Brickner.

Steven Vachon, from Mechanic to Head Mechanic, salary to be Step K at \$30.62 per hour. No change to hours per day or days per year. Effective August 1, 2018. Replacement for Charles Patton.

\* 5. Changes in Salary – Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that the salary of the following certificated personnel be upgraded due to submission of grades or verification of experience effective August 17, 2018:

Melissa Adamovicz	From MA 15/1 to MA 15/5
Kelly DuPlaga	From BA/0 to BA/1
Brian Edmonds	From BA/0 to MA 15/5
Meagan Fowler	From BA/0 to MA 30/1
Chelsea Rego-Koval	From BA/0 to MA/0

\* 6. Substitute Rates – Certificated (001-General Fund)

Be it resolved upon the recommendation of the Superintendent that effective August 1, 2018 the certificated substitute rate schedule be changed as follows:

Daily Rate		\$ 90.00 per diem
Consecutive Assignments	Day 1-10	\$ 90.00 per diem
	Day 11-60	\$110.00 per diem

\* 7. Medical Leave – Administrative

Be it resolved upon the recommendation of the Superintendent that the following administrative medical leave be approved:

Megan Surso	June 25, 2018 to August 6, 2018
-------------	---------------------------------



**AGENDA**

**JULY 16, 2018**

**8. CONSENT CALENDAR**

Action by the Board of Education in “Adoption of Consent Calendar” at this point of the agenda means that all items appearing in this agenda with asterisks (\*) (which items constitute the “consent calendar”) are adopted by one single motion, unless a member of the Board or the Superintendent requests that such items be removed from the “consent calendar” and voted upon separately.

Motion:	Second:	Roll Call:	Yes	No
		<i>Duke Evans</i>		
		<i>George A. Grozan</i>		
		<i>Jane L. Ludwig</i>		
		<i>Richard O. Micko</i>		
		<i>Carl W. Naso</i>		

**9. BOARD BYLAWS AND POLICIES**

**A. Third Reading**

- Revised Policy 2271 – College Credit Plus Program
- Revised Policy 4121 – Criminal History Record Check
- Revised Policy 4162 – Drug and Alcohol Testing of CDL License Holders and Other Employees Who Perform Safety Sensitive Functions
- Revised Policy 5111 – Eligibility of Resident/Nonresident Students
- Revised Policy 5112 – Entrance Requirements
- Revised Policy 6325 – Federal Grants/Funds
- Revised Policy 7530 – Lending of Board-Owned Equipment
- Revised Policy 7530.02 – Staff Use of Personal Communication Devices
- Revised Policy 7542 – Access to District Technology Resources and/or Information Resources from Personal Communication Devices
- Revised Policy 8400 – School Safety
- Revised Policy 8600.04 – Bus Driver Certification
- Revised Policy 9141 – Business Advisory Council
- Revised Policy 9160 – Public Attendance at School Events

Motion:	Second:	Roll Call:	Yes	No
		<i>Duke Evans</i>		
		<i>George A. Grozan</i>		
		<i>Jane L. Ludwig</i>		
		<i>Richard O. Micko</i>		
		<i>Carl W. Naso</i>		

**10. BOARD OF EDUCATION / OTHER**

**AGENDA**

**JULY 16, 2018**

**11. MEETING NOTIFICATIONS**

A Regular Board of Education Meeting – Work Session will be held Thursday, August 2, 2018, 7:00 p.m. in the Meeting Room of the Administration Building, 18199 Cook Avenue, Strongsville, Ohio.

A Regular Board of Education Meeting will be held Thursday, August 16, 2018, 7:00 p.m. in the Meeting Room of the Administration Building, 18199 Cook Avenue, Strongsville, Ohio.

**12. EXECUTIVE SESSION**

Motion:	Second:	Roll Call:	Yes	No
_____	_____	<i>Duke Evans</i>		
_____	_____	<i>George A. Grozan</i>		
_____	_____	<i>Jane L. Ludwig</i>		
_____	_____	<i>Richard O. Micko</i>		
_____	_____	<i>Carl W. Naso</i>		

Entered into Executive Session at \_\_\_\_\_ p.m.

Resumed Public Session at \_\_\_\_\_ p.m.

**13. ADJOURNMENT**

Motion:	Second:	Roll Call:	Yes	No
_____	_____	<i>Duke Evans</i>		
_____	_____	<i>George A. Grozan</i>		
_____	_____	<i>Jane L. Ludwig</i>		
_____	_____	<i>Richard O. Micko</i>		
_____	_____	<i>Carl W. Naso</i>		

Meeting adjourned at \_\_\_\_\_ p.m.

 **AIA® Document A141™ – 2014**

**Standard Form of Agreement Between Owner and Design-Builder**

**AGREEMENT** made as of the 4<sup>th</sup> day of April in the year 2018  
*(In words, indicate day, month and year.)*

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

Strongsville City School District  
18199 Cook Avenue  
Strongsville, Ohio 44136

and the Design-Builder:  
*(Name, legal status, address and other information)*

RFC Contracting, LLC  
13477 Prospect Road, Suite 105  
Strongsville, Ohio 44149

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

Strongsville City School District  
2018 Elementary School Entrance Alterations  
Strongsville, Ohio

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Int.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. **WARNING:** This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 17:16:04 on 06/28/2018 under Order No. 5948623845 which expires on 03/08/2019 and is not for resale.

User Notes:

(3B9ADA31)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

§ 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

Creating secure entryways at Chapman, Muraski, Surrarrer, and Whitney Elementary Schools and Strongsville High School Athletic Department.

Int.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

§ 1.1.3 The Project's physical characteristics:

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

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

TBD

.2 Submission of Design-Builder Proposal:

TBD

.3 Phased completion dates:

TBD

.4 Substantial Completion date:

TBD

.5 Other milestone dates:

Init.

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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

.1 Architect

Glen D. Ramage Architect, Inc.  
7980 Elmhurst Drive  
Broadview Heights, Ohio 44147  
Phone: 440.526.4271  
Fax: 440.526.9736

.2 Consultants

.3 Contractors

RFC Contracting, LLC  
13477 Prospect Road, Suite 105  
Strongsville, Ohio 44149

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements)*

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

*(List name, address and other information.)*

Strongsville City School District  
18199 Cook Avenue  
Strongsville, Ohio 44136  
Contact: Steve Breckner  
Phone: 440.572.7050  
Email: sbreckner@scsmustangs.org

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

*(List name, address and other information.)*

Init.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

RFC Contracting, LLC  
13477 Prospect Road, Suite 105  
Strongsville, Ohio 44149  
Contact: Roger Riachi  
Phone: 440.572.9444  
Email: rriachi@rfccontracting.com

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

**§ 1.3 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

**§ 1.4 Definitions**

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

Init.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A 1 of the Design-Build Amendment.

**ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

**§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

**§ 2.1.1** Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

Schematic Design: \$8,000 (eight thousand dollars and 00/100)  
Design Services: \$12,000.00 (twelve thousand dollars and 00/100)  
Compensation for Design-Build Agreement: Cost of Work plus 8% fee Not-To-Exceed \$600,000.00

Init.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
------------------------	------

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .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;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of \_\_\_\_\_ percent ( %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
(Insert rate of monthly or annual interest agreed upon.)

\_\_\_\_\_ %

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner

Init.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

#### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

#### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the

Init

Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.9.2** The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ 3.1.10 Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

Init.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification

Int.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 4.2 Evaluation of the Owner's Criteria**

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the Design-Builder's written report.)*

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

**§ 4.3 Preliminary Design**

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

**§ 4.4 Design-Builder's Proposal**

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

Int.

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement

#### ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

##### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

##### § 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

##### § 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

Init.

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

**§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

**§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

**§ 5.6 Allowances**

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

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

Int.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

**§ 5.7 Key Personnel, Contractors and Suppliers**

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

**§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

**§ 5.9 Use of Site**

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

**§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

**§ 5.11 Cleaning Up**

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

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

**§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

**§ 5.13 Construction by Owner or by Separate Contractors**

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

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

**§ 5.14 Mutual Responsibility**

**§ 5.14.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.2** If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**§ 5.14.3** The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 5.14.4** The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10 2.5.

**§ 5.14.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

Init

**§ 5.15 Owner's Right to Clean Up**

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

**§ 6.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

**§ 6.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

**§ 6.2 Change Orders**

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 6.3 Change Directives**

**§ 6.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

**§ 6.3.3** If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7

**§ 6.3.4** If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

**§ 6.3.5** Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

**§ 6.3.6** A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in

Int

the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

Int.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder 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 Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate

Init.

review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

**§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

**§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

**ARTICLE 8 TIME**

**§ 8.1 Progress and Completion**

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

Init.

**§ 8.1.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.2** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

**ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

**§ 9.1 Contract Sum**

The Contract Sum is stated in the Design-Build Amendment.

**§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

**§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-

Init

Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

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

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

**§ 9.6.5** Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

**§ 9.6.7** Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

**§ 9.7 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

**§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

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

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder

Init.

shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.6** The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

**§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

**§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of

init.

the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- 1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- 2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- 3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- 1 employees on the Work and other persons who may be affected thereby;
- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

Init.

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

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials**

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

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

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

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

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

Init.

**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

**ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

**§ 11.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

**§ 11.2 Correction of Work**

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

**§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

**§ 11.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish

Init.

the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

**§ 11.3 Acceptance of Nonconforming Work**

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

**ARTICLE 12 COPYRIGHTS AND LICENSES**

**§ 12.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

**§ 12.2** The Design-Builder 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.

**§ 12.3** Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

**§ 12.3.1** The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor 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 alteration or use of the Instruments of Service.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, 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 alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

**ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

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

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

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

**§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

**§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- 4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

init.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

**§ 13.2.2 Termination by the Owner For Cause**

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

**§ 13.2.3 Suspension by the Owner for Convenience**

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

**§ 13.2.4 Termination by the Owner for Convenience**

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

Init

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

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2

### § 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

### § 14.1.7 Claims for Consequential Damages

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

Int.

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### § 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### § 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

Int.

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

**§ 14.3 Mediation**

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

**§ 14.4 Arbitration**

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded

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

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

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

**§ 14.4.4 Consolidation or Joinder**

§ 14.4.4.1 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).

§ 14.4.4.2 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Governing Law

The Contract 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 14.4.

### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 15.4 Rights and Remedies

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

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

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 15.6 Confidential Information

If the Owner or Design-Builder 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 15.6.1.

§ 15.6.1 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 Contract.

#### § 15.7 Capitalization

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

#### § 15.8 Interpretation

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

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

### ARTICLE 16 SCOPE OF THE AGREEMENT

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

- 1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- 2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- 3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- 4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- 5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

init.

.6 Other:

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
DESIGN-BUILDER (Signature)

Roger Riachi President

\_\_\_\_\_  
(Printed name and title)

Init.



4577 Hinckley Industrial Parkway  
Cleveland, OH 44109  
216-459-8333 | Fax 216-459-0910

440 Grant Street  
Akron, OH 44311  
234-205-1700 | Fax 234-205-1701

**CUSTOMER ORDER FORM**

Ship to: <u>Strongsville City Schools</u>	Bill to: <u>Strongsville City Schools</u>
Address: <u>See Excel A.</u>	Address: <u>18199 Cook Ave.</u>
City: _____	City: <u>Strongsville</u>
State: _____ Zip: _____	State: <u>OH</u> Zip: <u>44136</u>
Phone: _____	Phone: <u>440-572-7052</u>
Fax: _____	Fax: _____
Key Op Contact: <u>Steve Breckner</u>	Email: <u>sbreckner@scsmustangs.org</u>
	Fed Tax ID #: _____

Qty	Equipment	Price	Total
11	Ricoh MPC2004EX, (10) Cabinets, (1) PB3220 Paper Bank, (3) Fax M19 (2) SR3130 Finishers		
13	Ricoh MP6503, (13) SR4120 Finishers, (12) PU3060 Punch, (2) Fax M25		
2	Ricoh MP7503, (2) SR4120, (2) PU3060		
3	Ricoh SP377Nwxf		
1	Ricoh MPC6004EX, (1) PB3240 Paper Bank, (1) BU, (1)SR3210 Fin		
1	Ricoh MP4054, (1) PB3220 Paper Bank, (1) BU, (1) SR3210 Finisher, (1) Fax M29, (1) PU3050 Punch		
		<b>TOTAL:</b>	

Lease Term	Payment <small>excludes sales tax</small>	Additional Information	Equipment Pick Up
36 months			Model / ID #
39 months			
48 months			Leasing Co. <u>DLL</u>
60 months	X	Muni-Lease w/ \$1.00 Out @ \$2,967.96	Buyout Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
63 months			

Image Management Agreement			
Base:	B&W Allowance: 0	Color Allowance: 0	Term: Monthly
			Overage B&W: Locked
			Overage Color: Locked
Payment includes 0	B&W Images per month	Overages billed Monthly	at \$ See Excel A per B&W Image
Payment includes 0	Color Images per month	Overages billed Monthly	at \$ See Excel A per Color Image

Qty	Supplies	Price	Total
	Toner / Image Unit	CPC Locked for Five-Years	
	Staples		

**\*\*Remote Meter Reading: (Please Initial)** \_\_\_\_\_

**Acceptance**

Sales Rep: Kelly Clause

Install Date: \_\_\_\_\_

Authorized By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_ P O # \_\_\_\_\_

Decline	
Subtotal	
Technical Installation/Training	\$495.00
Network Connectivity Fee (Up to 3 workstations)	\$295.00
Over 3 Workstations Networked * \$25.00 each	
Total Amount of Order	
Sales Tax	
Less Deposit	
<b>BALANCE</b>	

Purchaser agrees to purchase/lease items described above in accordance with the terms hereof. Purchaser shall execute any documents and take any action necessary to complete any lease transaction described above and acknowledge that the lessor of the equipment may be a third party leasing company. Purchaser understands that Meritech is not bound by any written or oral representations made by its salesperson which do not reflect on the face of the order. This order is firm and binding and may not be revoked by the purchaser. This order is not binding on Meritech until accepted and signed by an authorized Meritech officer.

Meritech Auth. Signature: \_\_\_\_\_

By authorizing this agreement, customer agrees to all Terms and Conditions of the Image Management Agreement so listed on the reverse side of this order  
THIS IS A NON-CANCELLABLE CONTRACT; Prices and policies are subject to change without notice

# Image Management Agreement

The Meritech Image Management Agreement provides full service on all covered equipment. The Image Management Agreement includes all parts, labor, travel for all service, preventative maintenance, toner and image units. Any exceptions or exclusions must be so noted on the face of this agreement. Impressions made during the billing period will be invoiced at the monthly rates as noted on the front of this order.

## PRINT CONTROLLER / CONNECTIVITY SUPPORT / APPLICATION SUPPORT AGREEMENT

~~\$24.95 Monthly Print Controller / Connectivity and Application support. (1) Unlimited remote and phone support of Print Controller Software for the term of the agreement. Support includes "Can't Print, Can't Scan" items such as reconfiguring of the Network Controller, Device Application Server Reinstallation, Print Driver Installation / Reinstallation and Troubleshooting. Two on-site visits included per year, additional visits billed at a reduced rate. (2) Unlimited remote and phone support of all device applications installed. Additional devices billed at \$5.00 each.~~

First 60 days of Can't Print / Can't Scan support are included in new installation at no charge.

~~If customer elects not to take the optional Print Controller / Connectivity Support / Applications Support, the customer will be billed at the current hourly rate for on-site and/or phone support pertaining to print driver and connectivity issues not covered under this agreement. In addition, should customer decide to take ownership of MFP/HDD upon termination of the lease, customer will pay for time and materials at the current rates for that day and time.~~

Software Disclaimer: Meritech does not guarantee controller compatibility with any proprietary software products and/or operating systems

## SERVICE / SUPPLY BILLING TERMS

~~The service / supply coverage on this agreement is for one year or "X" amount of clicks as agreed upon for a set price.~~

~~\$35.00 / \$45.00 / \$55.00 per machine monthly minimum billing.~~

~~Monthly \$5.00 administrative fee per unit assessed for all declined Meritech Remote Meter Reading Reporting Services (RMR software). Billing invoice varies depending on the billing cycle chosen.~~

If there is a lapse in payment Meritech reserves the right to withhold service on any equipment covered by this agreement

All cancelled contracts where supplies are included will receive a final invoice for any toner and developer residing in machine and any unused supplies not returned at the time of cancellation at manufacturer's suggested retail pricing

Freight billed represents the shipping & handling cost based upon size, weight and destination of package

## RENEWAL TERMS

- 1 ~~This agreement will automatically renew and be invoiced 30 days prior to the ending date listed on the front of this agreement, for the next successive 12 months, at the prices, terms, and conditions in effect at the time of renewal.~~
- 2 ~~If there is a lapse in payment of the agreement, all service will be charged at the current hourly rate.~~
- 3 If there is a lapse in payment of the agreement and the customer wishes to reinstate the agreement, there will be a reinstatement fee assessed.
- 4 The customer has the option not to renew the agreement, this must be done in writing, no later than 60 days prior to the renewal of the agreement.
- 5 Meritech reserves the right to cancel the agreement due to non-payment of invoices, excessive abuse of equipment and/or irreconcilable differences.

## TERMS & CONDITIONS

- 1 All parts and labor are provided during normal business hours of 8:00 am to 5:00 pm Monday through Friday, excluding Holidays. Refer to Meritech's M Guarantee program regarding various M Services terms and conditions.
- 2 Customer is required to submit monthly meter readings to Meritech. You can submit your meter readings through the web at [www.meritechinc.com](http://www.meritechinc.com) or by fax at 216-459-0909. For networked machines, Meritech will provide PrintFleet software to automatically report meter readings. ALL METER OVERAGES ARE DUE MERITECH WHEN BILLED. If the customer fails to provide meter readings in a timely fashion, Meritech, at its discretion, will estimate all necessary meter readings. If the customer disputes invoices generated from estimated reads and rebilling is required, the customer will be assessed an administrative fee of \$4.95 for each meter affected. Customer authorizes remote access for meter reads and diagnostics throughout this agreement.
- 3 ~~The amount of toner included in this agreement will be sufficient to provide 20% above manufacturers published yields for both black and color output. If applicable, an excess toner charge may be assessed on a pro-rated basis.~~
- 4 ~~Prices are subject to change without prior notification. All pre-paid service contracts are non-refundable.~~
- 5 Non-Transferable/Non-Refundable Agreement; this agreement becomes void upon the sale or transfer of this equipment within or outside Meritech's servicing territory.
- 6 Any damages incurred from the movement of equipment by non-authorized Meritech Personnel will be the responsibility of customer.

## EXCLUSIONS

- 1 UNCONTROLLABLE CIRCUMSTANCES: This agreement does not cover the repair of any or all equipment, if the equipment is damaged by Uncontrollable Circumstances; i.e. natural disasters, fire, water, accident, theft, act of third party, casualty, or any loss or damage occurring from uncontrollable circumstances.
- 2 Customer abuse: This agreement does not cover the repair of any or all equipment resulting from misuse or neglect to follow proper operating procedures. All components which may become broken, lost or damaged are chargeable.
- 3 This agreement does not cover the repair of any or all equipment, if it is deemed that the electrical supply to the equipment is bad or faulty.
- 4 Circuit Board failures, unless a Meritech approved surge protection device is installed in-line with listed equipment.
- 5 Meritech reserves the right to charge customer for any parts and supplies deemed by Meritech as noncompliant.



**ATTACHMENT 1**

**STATE AND LOCAL GOVERNMENT LEASE-PURCHASE AGREEMENT**

**Lease Payment Schedule**

LESSOR: DE LAGE LANDEN PUBLIC FINANCE LLC

LESSEE: STRONGSVILLE CITY SCHOOL DISTRICT

LEASE NUMBER: PUB 17831

LEASE DATE: AUGUST 15, 2018

Lease Payments are due on each periodic anniversary of the Commencement Date that occurs during the Full Lease Term until all of the payments set forth below have been received by US. The period for each periodic anniversary is MONTHLY, as specified in the Payment Frequency box of this Lease. If the Commencement Date occurs on the 29th, 30th or 31st day of any month, the periodic anniversary will be deemed to occur on the 1st day of the month commencing on the 1st day of the SECOND succeeding month after the month of such Commencement Date.

Payment Number	Rental Payment	Interest Portion	Principal Portion	Balance	Purchase Price
Loan	0	0 00	0 00	158 039 00	0 00
1	2 967 96	632 21	2 335 75	155 703 25	160 374 35
2	2 967 96	622 86	2 345 10	153 358 15	157,958 89
3	2 967 96	613 48	2 354 48	151 003 67	155 533 78
4	2 967 96	604 06	2 363 90	148 639 77	153 098 96
5	2 967 96	594 61	2,373 35	146,266 42	150,654 41
6	2 967 96	585 11	2 382 85	143 883 57	148 200 08
7	2 967 96	575 58	2 392 38	141 491 19	145 735 93
8	2 967 96	566 01	2 401 95	139,089 24	143,261 92
9	2 967 96	556 40	2 411 56	136 677 68	140 778 01
10	2 967 96	546 76	2 421 20	134 256 48	138 284 17
11	2 967 96	537 07	2 430 89	131 825 59	135 780 36
12	2 967 96	527 35	2,440 61	129,384 98	133 266 53
13	2 967 96	517 58	2 450 38	126 934 60	130 742 64
14	2 967 96	507 78	2 460 18	124 474 42	128 208 65
15	2,967 96	497 94	2,470 02	122 004 40	125 664 53
16	2 967 96	488 06	2 479 90	119 524 50	123 110 24
17	2 967 96	478 14	2,489 82	117 034 68	120,545 72
18	2 967 96	468 18	2 499 78	114 534 90	117 970 95
19	2 967 96	458 18	2 509 78	112 025 12	115,385 87
20	2 967 96	448 14	2 519 82	109 505 30	112 790 46
21	2 967 96	438 06	2 529 90	106 975 40	110 184 66
22	2 967 96	427 94	2,540 02	104,435 38	107,568 44
23	2 967 96	417 78	2 550 18	101,885 20	104 941 76
24	2 967 96	407 57	2 560 39	99 324 81	102,304 55
25	2 967 96	397 33	2 570 63	96 754 18	99,656 81
26	2 967 96	387 05	2 580 91	94 173 27	96 998 47
27	2 967 96	376 72	2,591 24	91 582 03	94 329 49
28	2 967 96	366 36	2 601 60	88 980 43	91 649 84
29	2 967 96	355 95	2 612 01	86 368 42	88,959 47
30	2 967 96	345 50	2 622 46	83 745 96	86 258 34

Sales tax of \$0.00 is included in the financed amount shown above.

The interest rate reflected herein is provided as an indication only and may need to be revised prior to closing. The Lessor will make reasonable efforts to maintain the rate presented herein. However, the rate may need to be revised prior to closing due to change in law or market conditions. In the event that market interest rates increase prior to the date of closing (which causes an increase in the Lessor's cost of funds) the interest rate will be indexed to reflect adjustments to the Lender's actual cost of funds due to market and legal changes incurred since the date of this documentation.

Lessee Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

12PFDOC224

**ATTACHMENT 1**

**STATE AND LOCAL GOVERNMENT LEASE-PURCHASE AGREEMENT**

**Lease Payment Schedule**

LESSOR: DE LAGE LANDEN PUBLIC FINANCE LLC  
 LESSEE: STRONGSVILLE CITY SCHOOL DISTRICT  
 LEASE NUMBER: PUB 17831  
 LEASE DATE: AUGUST 15, 2018

Lease Payments are due on each periodic anniversary of the Commencement Date that occurs during the Full Lease Term until all of the payments set forth below have been received by US. The period for each periodic anniversary is MONTHLY, as specified in the Payment Frequency box of this Lease. If the Commencement Date occurs on the 29th, 30th or 31st day of any month, the periodic anniversary will be deemed to occur on the 1st day of the month, commencing on the 1st day of the SECOND succeeding month after the month of such Commencement Date

Payment Number	Rental Payment	Interest Portion	Principal Portion	Balance	Purchase Price
31	2,967.96	335.01	2,632.95	81,113.01	83,546.40
32	2,967.96	324.48	2,643.48	78,469.53	80,823.62
33	2,967.96	313.90	2,654.06	75,815.47	78,089.93
34	2,967.96	303.29	2,664.67	73,150.80	75,345.32
35	2,967.96	292.63	2,675.33	70,475.47	72,589.73
36	2,967.96	281.92	2,686.04	67,789.43	69,823.11
37	2,967.96	271.18	2,696.78	65,092.65	67,045.43
38	2,967.96	260.39	2,707.57	62,385.08	64,256.63
39	2,967.96	249.56	2,718.40	59,666.68	61,456.68
40	2,967.96	238.69	2,729.27	56,937.41	58,645.53
41	2,967.96	227.77	2,740.19	54,197.22	55,823.14
42	2,967.96	216.81	2,751.15	51,446.07	52,989.45
43	2,967.96	205.80	2,762.16	48,683.91	50,144.43
44	2,967.96	194.75	2,773.21	45,910.70	47,288.02
45	2,967.96	183.66	2,784.30	43,126.40	44,420.19
46	2,967.96	172.52	2,795.44	40,330.96	41,540.89
47	2,967.96	161.34	2,806.62	37,524.34	38,650.07
48	2,967.96	150.11	2,817.85	34,706.49	35,747.68
49	2,967.96	138.84	2,829.12	31,877.37	32,833.69
50	2,967.96	127.52	2,840.44	29,036.93	29,908.04
51	2,967.96	116.16	2,851.80	26,185.13	26,970.68
52	2,967.96	104.75	2,863.21	23,321.92	24,021.58
53	2,967.96	93.30	2,874.66	20,447.26	21,060.68
54	2,967.96	81.80	2,886.16	17,561.10	18,087.93
55	2,967.96	70.25	2,897.71	14,663.39	15,103.29
56	2,967.96	58.66	2,909.30	11,754.09	12,106.71
57	2,967.96	47.02	2,920.94	8,833.15	9,098.14
58	2,967.96	35.34	2,932.62	5,900.53	6,077.55
59	2,967.96	23.60	2,944.36	2,956.17	3,044.86
60	2,967.96	11.79	2,956.17	0.00	-
Grand Totals	178,077.60	20,038.60	158,039.00		

Lessee Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

12PFDOC224

**ATTACHMENT 2**

**STATE AND LOCAL GOVERNMENT LEASE-PURCHASE AGREEMENT  
EQUIPMENT DESCRIPTION**

LESSOR: DE LAGE LANDEN PUBLIC FINANCE LLC

LESSEE: STRONGSVILLE CITY SCHOOL DISTRICT

LEASE NUMBER: PUB 17831

LEASE DATE: AUGUST 15, 2018

Quantity	Description/Serial No./Model No.	Location
11	RICOH MP C2004EX DIGITAL COPIER WITH ATTACHMENTS	
13	RICOH MP 6503SP DIGITAL COPIER WITH ATTACHMENTS	
2	RICOH MP 7503SP DIGITAL COPIER WITH ATTACHMENTS	
3	RICOH SP377Nwx DIGITAL COPIER WITH ATTACHMENTS	
1	RICOH MP C6004EX DIGITAL COPIER WITH ATTACHMENTS	
1	RICOH MP 4054SP DIGITAL COPIER WITH ATTACHMENTS	
SEE ATTACHED FOR SERIAL NUMBERS		

LESSEE Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_



4577 Hinckley Industrial Parkway  
Cleveland, OH 44109  
216-459-8333 | Fax 216-459-0910

440 Grant Street  
Akron, OH 44311  
234-205-1700 | Fax 234-205-1701

**CUSTOMER ORDER FORM**

Ship to:	<u>Strongsville City Schools</u>	Bill to:	<u>Strongsville City Schools</u>
Address:	<u>See spreadsheet</u>	Address:	<u>18199 Cook Avenue</u>
City:	<u>Strongsville</u>	City:	<u>Strongsville</u>
State:	<u>Ohio</u> Zip: <u>44136</u>	State:	<u>Ohio</u> Zip: <u>44136</u>
Phone:	<u>440-572-7052</u>	Phone:	<u>440-572-7052 Stephen Breckner</u>
Fax:	<u>440-572-8562 Jhamelic@scsmustangs.org</u>	Fax:	<u>440-572-8562 sbreckner@scsmustangs.org</u>
Key Op Contact:	<u>Jim Hamelic 440-572-7033</u>	Email:	<u>sbreckner@scsmustangs.org</u>
		Fed Tax ID #:	

Qty	Equipment	Price	Total
1	EUL1000-PS1 User Base Lincense (EUL 501-1000)		\$34,303
51	ERC21-PS1 Ricoh ESA Level 3		inc
1	PSF05-PS1Five Yrs Premium M&S. The license covers unlimited , workstations, printers and servers.		inc
2	3RD-PAQ1-05 Remot assistnce (per day - 6 hours)		inc
46	RELO6-DS TNW4 HID prox Reader USB		inc
46	PRE01-DS Plastic Reader HHOlder inc 1 yr.		inc
46	REW04-PS1 Reader 4 YR ext. Warr incl 4 yr.		inc
<b>TOTAL:</b>			<b>\$34,303</b>

Lease Term	Payment excludes sales tax	Additional Information	Equipment Pick Up
36 months		Model / ID #	
39 months		Leasing Co.	
48 months		Buyout	Yes <input type="checkbox"/> No <input type="checkbox"/>
60 months			
63 months			

Image Management Agreement					
Base:	B&W Allowance:	Color Allowance:	Term: Monthly	Overage B&W:	Overage Color:
Payment includes	B&W Images per month	Overages billed Monthly	at \$		per B&W Image
Payment includes	Color Images per month	Overages billed Monthly	at \$		per Color Image

Qty.	Supplies	Price	Total
	Toner / Image Unit		
	Staples		

<b>**Remote Meter Reading: (Please Initial)</b>		<b>Acceptance</b>	<b>Decline</b>	
Sales Rep:	<u>Kelly Clause</u>		Subtotal	<b>\$34,303.00</b>
Install Date:	<u>by August 15 hardware and PC prior</u>		Technical Installation/Training	<b>\$495.00</b>
Authorized By:			Network Connectivity Fee (Up to 3 workstations)	<b>\$295.00</b>
Signature:			Over 3 Workstations Networked x \$25.00 each	
Title:			Total Amount of Order	
Email:			Sales Tax	<b>0</b>
Date:		P O # _____	Less Deposit	
			<b>BALANCE</b>	<b>\$34,303.00</b>

Purchaser agrees to purchase/lease items described above in accordance with the terms hereof. Purchaser shall execute any documents and take any action necessary to complete any lease transaction described above and acknowledge that the lessor of the equipment may be a third party leasing company. Purchaser understands that Meritech is not bound by any written or oral representations made by its salesperson which do not reflect on the face of the order. This order is firm and binding and may not be revoked by the purchaser. This order is not binding on Meritech until accepted and signed by an authorized Meritech officer.

Meritech Auth Signature: \_\_\_\_\_  
By authorizing this agreement, customer agrees to all Terms and Conditions of the Image Management Agreement so listed on the reverse side of this order  
THIS IS A NON-CANCELLABLE CONTRACT; Prices and policies are subject to change without notice



# PURCHASE AGREEMENT

820 N. Main St. Wellington | 1-800-686-3614 | BuyHarrisonFord.com

PURCHASER <i>Strongsville Board of Education</i>		DATE		TOTAL VEHICLE & OPTIONS	\$
ADDRESS				PACKAGE DISCOUNTS	-
CITY <i>KEITH SIMAK</i>	STATE	COUNTY		MSRP	\$
PHONE <i>cell # 216-544-4876</i>	EMAIL			DEALER DISCOUNT	-
S.S.# <i>W# 440-572-7055</i>	DOB			SALE PRICE <i>per unit</i>	\$ 40347.72
DELIVERY DATE <i>2 Units</i>	PIN#			EXTENDED SERVICE PLAN	\$
VEHICLE PURCHASED: <input checked="" type="checkbox"/> NEW <input type="checkbox"/> CERTIFIED <input type="checkbox"/> USED		STOCK#		TERM	MILEAGE
YEAR <i>2017</i>	MAKE <i>FORD</i>	MODEL <i>F-350 4x4</i>		<i>Price includes Reading Service Body &amp; 2" Receiver Hitch w/ 4x7 pin trailer plug</i>	
TRIM	COLOR <i>WHITE</i>	MILEAGE			
VIN					
TRADE-IN VEHICLES:					
YEAR	MAKE	MODEL			
TRIM	COLOR	MILEAGE			
VIN					
TRADE-IN CASH VALUE \$		PAYOFF \$		ACCESSORIES TOTAL	\$
NET TRADE-IN VALUE		\$		SUBTOTAL	\$
YEAR	MAKE	MODEL		DOCUMENTATION FEE	\$
TRIM	COLOR	MILEAGE		RETAIL \$250 X PLAN \$100 AZ \$75	
VIN					
TRADE-IN CASH VALUE \$		PAYOFF \$		LESS TRADE-IN VALUE (NEW ONLY)	-
NET TRADE-IN VALUE		\$		TOTAL TAXABLE AMOUNT	\$
TRADE-IN CASH VALUE \$		PAYOFF \$		TAX %	\$
NET TRADE-IN VALUE		\$		TITLE	\$ 15.00
I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the cash price of the vehicle be increased by \$ _____ to cover negative equity from my trade-in/the amount owed on my lease turn-in.				PLATES TEMPORARY TAG \$18.50 -OR- TRANS \$4.50	\$ 18.50
ALL WARRANTIES, IF ANY, BY MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES PURCHASER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.				TOTAL DELIVERED PRICE	\$ 40,381.22
CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) THE INFORMATION YOU SEE ON THE WINDOW STICKER FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW STICKER OVERRIDES ANY CONTRACT PROVISIONS IN THE CONTRACT OF SALE.				NET TRADE-IN VALUE	\$
The front and back of this agreement and any documents incorporated herein comprise the entire agreement affecting the purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Agreement. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.				DEPOSIT	\$
				CASH DOWN	\$
				REBATES	\$
				TOTAL DOWN PAYMENT	-
				UNPAID BALANCE	\$

X  
Customer Signature

X *Robert B. Kelly*  
Authorized Dealer Signature

IMS2 screen capture

CNGP530

VEHICLE ORDER CONFIRMATION

06/29/18 11:55:09

==>

Dealer: F44089

2019 F-SERIES SD

Page: 1 of 1

Order No: 0001 Priority: J3 Ord FIN: QA877 Order Type: 5B Price Level: 925

Ord PEP: 610A Cust/Flt Name: STRONGSVILLE PO Number:

		RETAIL			RETAIL
X3B	F350 4X4 S/C	\$39660	66D	PU BOX DELETE	\$(625)
	164" WHEELBASE			JOB #1 BUILD	
Z1	OXFORD WHITE		18B	PLAT RUNNING BD	445
A	VNYL 40/20/40			10700# GVWR PKG	
S	MEDIUM EARTH GR		425	50 STATE EMISS	NC
610A	PREF EQUIP PKG		473	SNOW PLOW PKG	185
	.XL TRIM			TELE TT MIR-PWR	
	.TRAILER TOW PKG		67D	XTR HVY DTY ALT	NC
572	.AIR CONDITIONER	NC		SP FLT ACCT CR	
	.AM/FM STER/CLK			FUEL CHARGE	
996	.6.2L EFI V8 ENG	NC		DEST AND DELIV	1495
44P	6-SPD AUTOMATIC	NC		TOTAL BASE AND OPTIONS	42630
TBM	LT245 BSW AT 17	165		TOTAL	42630
X3E	3.73 BLOCKING	390		*THIS IS NOT AN INVOICE*	
90L	PWR EQUIP GROUP	915			

F1=Help

F2=Return to Order

F3/F12=Veh Ord Menu

F4=Submit

F5=Add to Library

S099 - PRESS F4 TO SUBMIT

QC02380



MCKEON EDUCATION GROUP

### Service Agreement

This agreement between *McKeon Education Group, Inc.*, hereinafter referred to as *MEG, Inc.* and *Strongsville City Schools* hereinafter referred to as the School/Agency Board, is made for the purpose of providing one part time Intervention Specialists to work with students enrolled at SS. Joseph & John Interparochial School who have been identified with disabilities under IDEA categories.

#### Witnesseth

*MEG, Inc.* agrees to provide one *Licensed Intervention Specialists* to work a total of 4.5 hours per day, 22.5 hours per week, 756 hours per year, for a total of 168 days to be housed in the non public school during the 2018 - 2019 academic year, as per third party contract for the sum of \$35,101.08 (\$46.43 per hour). Duties and responsibilities of the professional staff include but are not limited to:

- a. *To abide by all Federal and State laws applicable to employment of Certified Intervention Specialists.*
- b. *To provide supervision by a licensed Intervention Specialist including but not limited to:*
  - *Supervision of the professionals assigned to SS Joseph & John School*
  - *Review of all reports submitted by Certified Intervention Specialists*
- c. *The professionals assigned to SS. Joseph & John School duties include but are not limited to:*
  - *Providing services in accordance to each student's Individual Services Plan.*
  - *Developing written reports for all students receiving services*
  - *Attending Intervention Assistance Team meetings with parents, students and other professionals*
  - *Utilizing effective written and verbal communication with school personnel parents and students*
  - *Establishing and maintaining comprehensive plans for all students that qualify for services*
  - *Develop educational programs for students receiving services*
  - *Maintain Time a Time and Effort Log to document minutes served under the auspices of Title 6.*

MEG, Inc.

Page #2

MEG, Inc. also certifies that the above services for which payment is requested will be rendered on specific dates and times as determined by the MEG, Inc. and the school district. MEG, Inc. will invoice the school district monthly beginning on October 1, 2018 and concluding on June 5, 2019. Payments for invoices are due on the 5<sup>th</sup> of the month following receipt invoices.

McKeon Education Group, Inc.

By: Henry M. McKeon, President 5.25.18  
Signature & Title Date

Address: 656 Continental Drive; Sagamore Hills, Ohio 44067  
Tax Identification Number: 73-1672066

Strongsville City Schools

By: \_\_\_\_\_  
Signature & Title Date

Address: 18199 Cook Avenue; Strongsville; Ohio 44136



KidsLink Neurobehavioral Center  
899 Frost Road  
Streetsboro, OH 44241  
330-963-8600  
www.kidslinkohio.com

## KIDSLINK SCHOOL DISTRICT CONTRACT

### RECITALS

This Placement Contract (hereinafter "Agreement") is made by and between the KidsLink School, LLC and Strongsville School District. Both parties enter into this Agreement for the purpose of meeting the educational needs and providing the necessary services of the Individual Educational Plans of the student identified in section 3 below.

WHEREAS, Strongsville School District agrees to purchase therapeutic services (hereinafter "placement") from KidsLink School for the student.

WHEREAS, KidsLink School is qualified and willing to provide services to the student.

### AGREEMENT

#### Services:

The Strongsville School District's team responsibility is to evaluate and provide the most up to date "ETR" and "IEP" prior to placement of the student. The district may contract with KidsLink School separately in order to assist with the assessment and comprehensive evaluation for an additional fee. Upon placement of the student, the district will continue to be responsible for the three year comprehensive "ETR" assessment.

KidsLink School shall provide a placement for the student to include individual weekly therapy in the areas of academics, direct therapies as listed in the IEP as well as behavior management. The development and implementation of the above services, being presented in an individualized education program "IEP", are the mutual responsibility of KidsLink School and The District. Excluded are any other services not mentioned in this contract.

There is a minimum of a 15 hour program development/initiation fee and up to 15 hour transition fee to assist with transition out of the program when the IEP team determines it is appropriate that is billed at the rate of \$165 per hour. Additional hours beyond this described amount will be discussed by the team prior to accruing or billing for any of these hours.

KidsLink School's overall goal, where possible, is to transition students back to their home district per the IEP team support. With this goal in mind KidsLink would request access to general education student materials (i.e. books, curriculum and related supports) for the collaborating age/grade level of the student enrolled to appropriately prepare them to transition.

Upon placement of the student, the student and their family will operate under the KidsLink School policies and practices which include a heavy emphasis on behavior management.

**Communication:**

As part of KidsLink School's primary obligation to provide the most appropriate education to the student, communication between the family and KidsLink School is very important. KidsLink School will be providing the family with daily communication notes, as well as quarterly reports pertaining to the progress of the child in his education. The family and the district may also request communication via email and phone calls at the discretion of the KidsLink School Staff. Observations of the classroom may be requested by the family and school district on a monthly basis (1 hour in length). The time and date of observations are at the discretion of the KidsLink School Staff. Additional home visits may be requested quarterly by the family.

**Term:** Placement shall begin September 1, 2018 and end August 31, 2019. Dates of services are identified by the adopted KidsLink School Calendar reflecting 200 days of services in the school year from 9/1/18 to 8/31/19. At any time, should either party under this agreement be dissatisfied with any services rendered, they have the right to withdraw from the agreement providing they submit a thirty (30) day notice.

**Program Staffing:** KidsLink School reserves the right to determine the appropriate and suitable staffing personnel for the child. Any staff changes are at KidsLink's sole discretion and determination and without prior notice of any changes or decisions.

There can be no guarantees pertaining to the integrity or outcomes of services. KidsLink School cannot guarantee the effectiveness of the outcomes of the programming implemented, but will be sure to provide quarterly documentation of progress for review.

**Compensation:** The total amount per student is as follows:

- \$78,000.00/year  
\$6,500.00 per month

Which will be billed in (12) installments of \$6,500.00 beginning September 1, 2018. Invoices will be sent on the 15th of the previous month with payment due by the 15th of the month of service. There will be a \$100 discount for payments postmarked by the 1st of each month. The final bill for this contract will be August 1st of 2019.

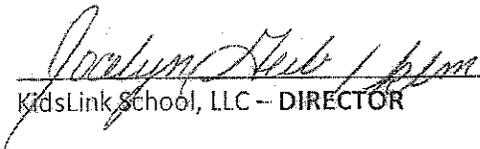
All checks shall be made payable to KidsLink School, LLC and be addressed to 899 Frost Road, Streetsboro, OH 44241.

**Termination.** Either party may terminate this Agreement at any time with 30 days written notice. Payment prior to services being provided is not a guarantee that this contract will continue or cannot be terminated. Upon termination, a final billing or refund will be processed based on the actual weeks of services provided.

**Drafting of Agreement** Both parties contributed equally in the drafting of the Agreement.

**Entire Agreement** This Agreement contains the entire agreement between both parties. Any and all amendments to this Agreement must be made in writing and signed by the two parties. The terms of any agreement between KidsLink and another party supersedes any other agreement that the other party has entered into with any other party.

**Governing Law.** This Agreement is made in Portage County Ohio and shall be governed by the laws of Ohio.

  
\_\_\_\_\_  
KidsLink School, LLC – DIRECTOR

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
The Strongsville School District's Representative  
By:

\_\_\_\_\_  
Date



KidsLink Neurobehavioral Center  
899 Frost Road  
Streetsboro, OH 44241  
330-963-8600  
www.kidslinkohio.com

### KIDSLINK SCHOOL DISTRICT CONTRACT

#### RECITALS

This Placement Contract (hereinafter "Agreement ") is made by and between the KidsLink School, LLC and Strongsville School District. Both parties enter into this Agreement for the purpose of meeting the educational needs and providing the necessary services of the Individual Educational Plans of the student identified in section 3 below.

WHEREAS, Strongsville School District agrees to purchase therapeutic services (hereinafter "placement") from KidsLink School for the student.

WHEREAS, KidsLink School is qualified and willing to provide services to the student.

#### AGREEMENT

##### Services:

The Strongsville School District's team responsibility is to evaluate and provide the most up to date "ETR" and "IEP" prior to placement of the student. The district may contract with KidsLink School separately in order to assist with the assessment and comprehensive evaluation for an additional fee. Upon placement of the student, the district will continue to be responsible for the three year comprehensive "ETR" assessment.

KidsLink School shall provide a placement for the student to include individual weekly therapy in the areas of academics, direct therapies as listed in the IEP as well as behavior management. The development and implementation of the above services, being presented in an individualized education program "IEP", are the mutual responsibility of KidsLink School and The District. Excluded are any other services not mentioned in this contract.

There is a minimum of a 15 hour program development/initiation fee and up to 15 hour transition fee to assist with transition out of the program when the IEP team determines it is appropriate that is billed at the rate of \$165 per hour. Additional hours beyond this described amount will be discussed by the team prior to accruing or billing for any of these hours.

KidsLink School's overall goal, where possible, is to transition students back to their home district per the IEP team support. With this goal in mind KidsLink would request access to general education student materials (i.e. books, curriculum and related supports) for the collaborating age/grade level of the student enrolled to appropriately prepare them to transition.

Upon placement of the student, the student and their family will operate under the KidsLink School policies and practices which include a heavy emphasis on behavior management.

**Communication:**

As part of KidsLink School's primary obligation to provide the most appropriate education to the student, communication between the family and KidsLink School is very important. KidsLink School will be providing the family with daily communication notes, as well as quarterly reports pertaining to the progress of the child in his education. The family and the district may also request communication via email and phone calls at the discretion of the KidsLink School Staff. Observations of the classroom may be requested by the family and school district on a monthly basis (1 hour in length). The time and date of observations are at the discretion of the KidsLink School Staff. Additional home visits may be requested quarterly by the family.

**Term:** Placement shall begin September 1, 2018 and end August 31, 2019. Dates of services are identified by the adopted KidsLink School Calendar reflecting 200 days of services in the school year from 9/1/18 to 8/31/19. At any time, should either party under this agreement be dissatisfied with any services rendered, they have the right to withdraw from the agreement providing they submit a thirty (30) day notice.

**Program Staffing:** KidsLink School reserves the right to determine the appropriate and suitable staffing personnel for the child. Any staff changes are at KidsLink's sole discretion and determination and without prior notice of any changes or decisions.

There can be no guarantees pertaining to the integrity or outcomes of services. KidsLink School cannot guarantee the effectiveness of the outcomes of the programming implemented, but will be sure to provide quarterly documentation of progress for review.

**Compensation:** The total amount per student is as follows:

- \$78,000.00/year  
\$6,500.00 per month

Which will be billed in (12) installments of \$6,500.00 beginning September 1, 2018. Invoices will be sent on the 15th of the previous month with payment due by the 15th of the month of service. There will be a \$100 discount for payments postmarked by the 1st of each month. The final bill for this contract will be August 1st of 2019.

---

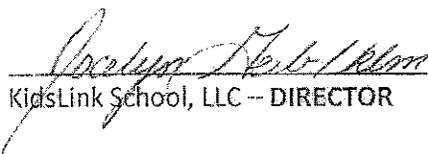
All checks shall be made payable to KidsLink School, LLC and be addressed to 899 Frost Road, Streetsboro, OH 44241

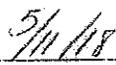
**Termination.** Either party may terminate this Agreement at any time with 30 days written notice. Payment prior to services being provided is not a guarantee that this contract will continue or cannot be terminated. Upon termination, a final billing or refund will be processed based on the actual weeks of services provided.

**Drafting of Agreement.** Both parties contributed equally in the drafting of the Agreement.

**Entire Agreement.** This Agreement contains the entire agreement between both parties. Any and all amendments to this Agreement must be made in writing and signed by the two parties. The terms of any agreement between KidsLink and another party supersedes any other agreement that the other party has entered into with any other party.

**Governing Law.** This Agreement is made in Portage County Ohio and shall be governed by the laws of Ohio

  
\_\_\_\_\_  
KidsLink School, LLC -- DIRECTOR

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
The Strongsville School District's Representative  
By:

\_\_\_\_\_  
Date



KidsLink Neurobehavioral Center  
899 Frost Road  
Streetsboro, OH 44241  
330-963-8600  
www.kidslinkohio.com

### KIDSLINK SCHOOL DISTRICT CONTRACT

#### RECITALS

This Placement Contract (hereinafter "Agreement") is made by and between the KidsLink School, LLC and Strongsville School District. Both parties enter into this Agreement for the purpose of meeting the educational needs and providing the necessary services of the Individual Educational Plans of the student identified in section 3 below.

WHEREAS, Strongsville School District agrees to purchase therapeutic services (hereinafter "placement") from KidsLink School for the student.

WHEREAS, KidsLink School is qualified and willing to provide services to the student.

#### AGREEMENT

##### Services:

The Strongsville School District's team responsibility is to evaluate and provide the most up to date "ETR" and "IEP" prior to placement of the student. The district may contract with KidsLink School separately in order to assist with the assessment and comprehensive evaluation for an additional fee. Upon placement of the student, the district will continue to be responsible for the three year comprehensive "ETR" assessment.

KidsLink School shall provide a placement for the student to include individual weekly therapy in the areas of academics, direct therapies as listed in the IEP as well as behavior management. The development and implementation of the above services, being presented in an individualized education program "IEP", are the mutual responsibility of KidsLink School and The District. Excluded are any other services not mentioned in this contract.

There is a minimum of a 15 hour program development/initiation fee and up to 15 hour transition fee to assist with transition out of the program when the IEP team determines it is appropriate that is billed at the rate of \$165 per hour. Additional hours beyond this described amount will be discussed by the team prior to accruing or billing for any of these hours.

KidsLink School's overall goal, where possible, is to transition students back to their home district per the IEP team support. With this goal in mind KidsLink would request access to general education student materials (i.e. books, curriculum and related supports) for the collaborating age/grade level of the student enrolled to appropriately prepare them to transition.

Upon placement of the student, the student and their family will operate under the KidsLink School policies and practices which include a heavy emphasis on behavior management.

**Communication:**

As part of KidsLink School's primary obligation to provide the most appropriate education to the student, communication between the family and KidsLink School is very important. KidsLink School will be providing the family with daily communication notes, as well as quarterly reports pertaining to the progress of the child in his education. The family and the district may also request communication via email and phone calls at the discretion of the KidsLink School Staff. Observations of the classroom may be requested by the family and school district on a monthly basis (1 hour in length). The time and date of observations are at the discretion of the KidsLink School Staff. Additional home visits may be requested quarterly by the family.

**Term:** Placement shall begin September 1, 2018 and end August 31, 2019. Dates of services are identified by the adopted KidsLink School Calendar reflecting 200 days of services in the school year from 9/1/18 to 8/31/19. At any time, should either party under this agreement be dissatisfied with any services rendered, they have the right to withdraw from the agreement providing they submit a thirty (30) day notice.

**Program Staffing:** KidsLink School reserves the right to determine the appropriate and suitable staffing personnel for the child. Any staff changes are at KidsLink's sole discretion and determination and without prior notice of any changes or decisions.

There can be no guarantees pertaining to the integrity or outcomes of services. KidsLink School cannot guarantee the effectiveness of the outcomes of the programming implemented, but will be sure to provide quarterly documentation of progress for review.

**Compensation:** The total amount per student is as follows:

- \$81,000.00/year  
\$6,750.00 per month

Which will be billed in (12) installments of \$6,750.00 beginning September 1, 2018. Invoices will be sent on the 15th of the previous month with payment due by the 15th of the month of service. There will be a \$100 discount for payments postmarked by the 1st of each month. The final bill for this contract will be August 1st of 2019.

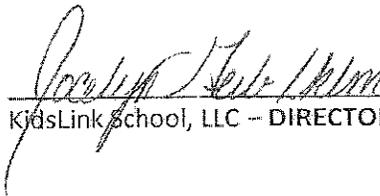
All checks shall be made payable to KidsLink School, LLC and be addressed to 899 Frost Road, Streetsboro, OH 44241

**Termination.** Either party may terminate this Agreement at any time with 30 days written notice. Payment prior to services being provided is not a guarantee that this contract will continue or cannot be terminated. Upon termination, a final billing or refund will be processed based on the actual weeks of services provided.

**Drafting of Agreement.** Both parties contributed equally in the drafting of the Agreement.

**Entire Agreement.** This Agreement contains the entire agreement between both parties. Any and all amendments to this Agreement must be made in writing and signed by the two parties. The terms of any agreement between KidsLink and another party supersedes any other agreement that the other party has entered into with any other party.

**Governing Law** This Agreement is made in Portage County Ohio and shall be governed by the laws of Ohio

  
\_\_\_\_\_  
KidsLink School, LLC – DIRECTOR

6/1/18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
The Strongsville School District's Representative  
By:

\_\_\_\_\_  
Date

**EDUCATIONAL SERVICE CENTER OF NORTHEAST OHIO**

**AGREEMENT FOR ADMISSION OF TUITION PUPILS PURSUANT TO  
SECTION 3313.841 O.R.C.**

**DISTRICT OF RESIDENCE**

The **STRONGSVILLE CITY SCHOOLS** Board of Education, 18199 Cook Avenue, Strongsville, OH 44136 hereby enters into a contract for admission of student(s) with the Educational Service Center of Northeast Ohio for educational purposes for the school year of 2018-2019 school year

The above Board of Education hereby agrees to pay to the Educational Service Center of Northeast Ohio for each pupil an amount equal to the direct costs as calculated for the school district

The above Board of Education acknowledges that student(s) are to be included in the ADM certification of the above school district

**SERVICE: VISUAL IMPAIRMENTS**

**Billing periods: (1) Aug.-Oct. (2) Nov.-Jan. (3) Feb.-April (4) May-June**

<b>VISUALLY IMPAIRED SERVICES (VI)</b>	<b>\$91.50 per hr.</b>
<b>ORIENTATION &amp; MOBILITY (O &amp; M)</b>	<b>\$70.38 per hr.</b>
<b>FUNCTIONAL LOW VISION ASSESSMENT (FLVA)</b>	<b>\$70.38 per hr.</b>
<b>*BRAILLE SERVICES</b>	<b>\$27.98 per hr.</b>
<b>*REHABILITATION SERVICES (REHAB)</b>	<b>\$51.91 per hr.</b>
<b>* SERS surcharge will be billed in fall of 2019</b>	

\_\_\_\_\_  
Signature Superintendent of District of Residence \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature Treasurer of District of Residence \_\_\_\_\_  
Date

The above signatures were approved by Board Resolution # \_\_\_\_\_

**EDUCATIONAL SERVICE CENTER OF NORTHEAST OHIO**

We do hereby admit the above listed pupil to our schools on the terms described above for the school year 2018-2019

*Robert M. Munguel*  
\_\_\_\_\_  
Signature Superintendent of Educational Service Center

*[Signature]*  
\_\_\_\_\_  
Signature Treasurer of Educational Service Center

Please return a signed copy of this Agreement along with a signed P.O. for the above service to Leanne Long, ESC of Northeast Ohio, Essex Place, Suite 300, 6393 Oak Tree Blvd., S. Independence, OH 44131

**EDUCATIONAL SERVICE CENTER OF NORTHEAST OHIO**

**AGREEMENT FOR ADMISSION OF TUITION PUPILS PURSUANT TO  
SECTION 3313.841 O.R.C.**

**DISTRICT OF RESIDENCE**

The **STRONGSVILLE CITY SCHOOLS** Board of Education, 18199 Cook Avenue, Strongsville, OH 44136 hereby enters into a contract for admission of student(s) with the Educational Service Center of Northeast Ohio for educational purposes for the school year of 2018-2019 school year

The above Board of Education hereby agrees to pay to the Educational Service Center of Northeast Ohio for each pupil an amount equal to the direct costs as calculated for the school district

The above Board of Education acknowledges that the student(s) are to be included in the ADM certification of the above school district

**SERVICE: AUDIOLOGY and/or HEARING IMPAIRED SERVICES**

**Billing periods: (1) Aug.-Oct. (2) Nov.-Jan. (3) Feb.-April (4) May-June**

Audiology Services per Student per hour (Audio)	\$91.63
Teacher of Hearing Impaired per hour (HI)	\$84.88

\_\_\_\_\_  
Signature Superintendent of District of Residence

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature Treasurer of District of Residence

\_\_\_\_\_  
Date

The above signatures were approved by Board Resolution # \_\_\_\_\_

**EDUCATIONAL SERVICE CENTER OF NORTHEAST OHIO**

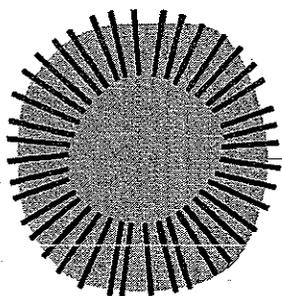
We do hereby admit the above listed pupil to our schools on the terms described above for the school year 2018-2019

*Robert A. Wengert*

\_\_\_\_\_  
Signature Superintendent of Educational Service Center

*[Signature]*  
\_\_\_\_\_  
Signature Treasurer of Educational Service Center

Please return a signed copy of this Agreement along with a signed P.O. for the above service to Leanne Long, ESC of Northeast Ohio, Essex Place, Suite 300, 6393 Oak Tree Blvd., S. Independence, OH 44131.



**EA** education  
alternatives

### SERVICE AGREEMENT

This SERVICE AGREEMENT (the "Agreement") is entered into on \_\_\_\_\_ 2018, between **Strongsville City School District** (the "District"), an Ohio Public School, chartered under Chapter 3311 of the Ohio Revised Code, and **Education Alternatives ("EA")**, an Ohio nonprofit corporation, with offices at 5445 Smith Road, Cleveland, OH 44142 (the "Parties").

### BACKGROUND

WHEREAS, the District must provide a free and appropriate education ("FAPE") for its students, in accordance with state and federal laws,

WHEREAS, EA is an accredited service provider equipped to educate students with varying educational, emotional and physical needs and meet the students' FAPE requirements;

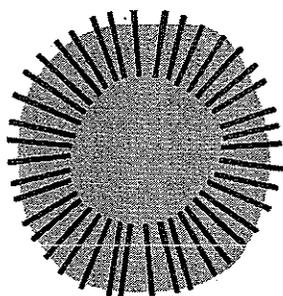
WHEREAS, this Agreement permits the District to place individual students in designated EA programs, on an as needed basis during the 2018-2019 school year;

The Parties agree as follows:

#### 1. EA Programming.

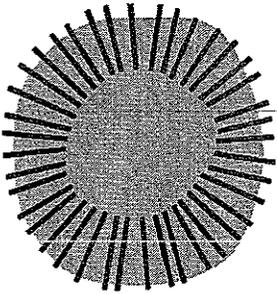
A. The District has the choice of five programs, depending upon the individual student's needs and the student's Individual Education Placement ("IEP") team determination.

- i. Day Treatment Program. EA's Day Treatment program is a non-residential program where students are provided intense mental health services in conjunction with the student's educational programming. EA's program features a 1:6 staff to student ratio, an emphasis on social skills development and behavior management. This program is best suited for students on an IEP, whose behavior issues prevent him or her from learning in a traditional education environment.
- ii. ECHO Program. EA's "ECHO" program is a flexible computer and individual tutoring based learning model for students at risk of dropping out of school, in need of credit recovery, or wanting a non-traditional learning environment. ECHO primarily serves students in grades 9-12, but can accommodate middle school students. ECHO's classrooms are staffed by licensed intervention specialists, to assist the student when necessary. The ECHO program is not suitable for students who demonstrate significant emotional disturbance.
- iii. Coral Autism Program. EA's "Coral Autism Program" is a program for students with an autism designation who may also have behavioral difficulties, but cannot function in a day-treatment classroom. The Coral program has a 1:3 staff-to-student ratio and the environment is tailored to the students' particular needs.
- iv. Plato Pre-School. EA's "Plato Pre-School" is a program for students who may be exhibiting behavioral difficulties prior to Kingergarten. The program is tailored to social skills development and behavior management for children ages 3-5.



**EA** education  
alternatives

- v. VisionQuest. EA's "VisionQuest" program is for 18-22 year-olds with moderate disabilities, who require assistance in community involvement, employment and independent living skills.
2. **Related Services**. The District is responsible for ensuring its students are provided related services designated by the student's IEP, including speech pathology, occupational therapy, and physical therapy services. EA will assist the District in providing these services, by permitting District personnel, and/or District independent contractors, to provide these services at EA facilities. The District shall be solely responsible for contacting and contracting with the licensed professionals who will provide these services to the Districts' students.
3. **Term**. The term of this Agreement shall begin August 27th, 2018 and will automatically expire June 7th, 2019.
4. **Rates and Billing**.
- A. The District shall pay EA the per diem rate, shown in Schedule A attached to this Agreement, for each student enrolled by the District, not to exceed 182 educational school days. The educational school year includes all: teacher in-services, calamity days, truancy days in accordance with Section 5(B), absenteeism, local and national catastrophes and parent teacher conferences, which may occur during the Term of this Agreement.
- B. The District shall pay EA the cost of providing the enrolled *Day Treatment* student's mental health services, if the student does not qualify for Ohio Medicaid behavioral health services. The per diem rates for such services are shown in Schedule A. If the student does qualify for Ohio Medicaid, then EA will bill the District for the lesser amount shown in Schedule A.
- C. Students are counted on the District's Average Daily Membership ("ADM") for federal, state and local funding purposes.
5. **Termination Of A Student's Placement**.
- A. District's Obligations Cease. In the event that the District is no longer legally or financially obligated to provide educational services to a particular student, or if the student is discharged from EA for any reason, the parties' respective obligations under this Agreement for that particular student shall terminate.
- B. Non-Attendance. EA will suspend billing if a student exceeds ten (10) consecutive absences.
- C. FAPE. If the IEP team, in accordance with federal and state law, determines that a particular student is not benefiting from the EA's programming and services, the parties will terminate the student's placement at EA.
- D. Student A Danger to Self or Others. In the event that a EA mental health professional identifies a student to be homicidal, or have a strong likelihood of inflicting bodily harm on himself/herself or others that is not likely to be mitigated by EA's therapeutic approach, then the Parties will provide a more appropriate educational placement or immediately terminate the student's placement at EA. A more appropriate placement may be in-home instruction provided by EA staff, as determined by the IEP team and the student's needs.



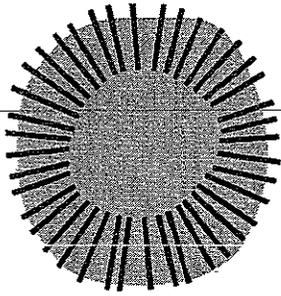
**EA** education  
alternatives

**6. Education Records.**

- A. EA and the District agree to exchange all educational records pertaining to students placed under this agreement, including but not limited to: multifactor evaluations, re-evaluations, individual education program documents, functional behavior assessments, behavior intervention plans, report cards, progress reports, transcripts, assessments, discipline records and any other educational records necessary for the Parties to fulfill their respective educational and legal obligations.
- B. The District shall have access to its assigned students' educational records, and may request such records at any time. EA shall provide such records within fourteen (14) calendar days of the request.
- C. Before placement at EA has begun, the District shall provide to EA documents or information regarding a student's violent or aggressive propensities

**7. Background Checks And Teacher Licenses.**

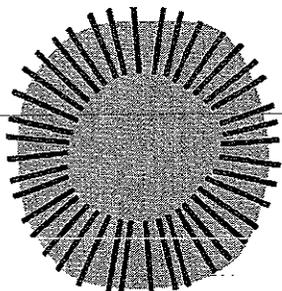
- A. EA represents and warrants that it has obtained criminal background checks for all EA employees having direct or indirect access to students, in accordance with Ohio Revised Code Sections 3319.39 and 3319.392.
  - B. EA represents and warrants that its teachers are special education teachers, holding current licenses in the state of Ohio.
- 8. Insurance.** EA shall at all times during the Term, or any extension thereof, procure, maintain and keep in force general public liability insurance for claims for personal injury, death, or property damage, occurring in connection with EA, with limits of not less than Two Million Dollars (\$2,000,000.00) in respect to: death or injury of a single person or in respect to any one accident, and not less than One Million Dollars (\$1,000,000.00) per accident in respect to property damage.
- 9. Indemnification.** EA, for itself and its agents, contractors, directors, employees, officers, representatives, successors and assigns hereby agrees to defend, indemnify, and hold harmless the District and its administrators, agents, attorneys, consultants, contractors, directors, employees, officers, owners, representatives, successors, assigns, and insurers from and against all liability, claims, causes of action, lawsuits, administrative proceedings of every name or nature, damages, loss, cost or expense, including attorney fees and other litigation costs, arising out of or in connection with: i) a breach of this Agreement by EA; or ii) any third party claims made by students, parents, or guardians arising out of the Day Treatment Services or use of EA facilities as provided for under this Agreement. Notwithstanding anything contained herein to the contrary, EA is not obligated to defend, indemnify, or hold harmless the District against: i) any claim (whether direct or indirect) if such claim or corresponding losses arise out of or result from, in whole or in part, the District's breach of its obligations set forth in this Agreement; or ii) a breach of the District's obligations pursuant to 20 U.S. Code §§ 1411-1419, or corresponding state special education law.



**EA** education  
alternatives

10. **Miscellaneous.**

- A. Merger. This Agreement contains the entire understanding of the parties concerning the matters contained herein, and supersedes and replaces any prior or contemporaneous oral or written contractors or communications concerning the matters contained herein.
- B. Assignment. EA shall not assign this Agreement without the written consent of the District.
- C. Notices. All notices or communications under this Agreement shall be in writing and delivered by US mail or email to a designated EA email address
- D. Amendments. All amendments to this Agreement shall be in writing and executed by both Parties.
- E. Independent Contractor. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created by or between the Parties. Neither party has the power to bind the other, or incur obligations on the other party's behalf.
- F. Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument.
- G. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.
- H. Binding Effect. This Agreement will extend to, benefit, and be binding upon the parties hereto and their respective heirs, beneficiaries, successors, and assigns.
- I. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original for all purposes and which together will constitute one and the same instrument. The parties agree that any duplicate of this Agreement, including electronic copies or photocopies, shall be deemed as sufficient evidence of the original Agreement.
- J. Choice of Law. This Agreement shall be governed and construed by the laws of the State of Ohio without regard to conflict of law principles.



**EA** education  
alternatives

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year stated in the Preamble.

**EDUCATION ALTERNATIVES**

**Strongsville City School District**

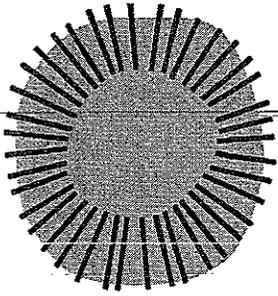
By:

Gerald Swartz, Executive Director

By: \_\_\_\_\_

Name: \_\_\_\_\_

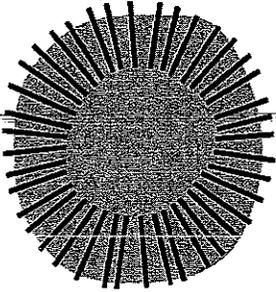
Title: \_\_\_\_\_



**EA** education  
alternatives

**Exhibit A  
Education Alternatives Per Diem Rates 2018-2019**

<b>Day Treatment Program</b> CARF-accredited educational and therapeutic program.	\$212 per day \$152/Non-Medicaid
<b>One-on-One Aide</b> Individualized services available in accordance with the student's IEP.	\$152 per day
<b>ECHO Program</b> Computer-based dropout prevention program.	\$45/per half day, <4 hours \$90/Full-Day, >4 hours
<b>VisionQuest</b> Transitional job training program for young adults with Autism/DD at EA Ravenna.	\$150 per day
<b>Plato Pre-School</b> Early childhood program at EA Ravenna.	\$125 per day
<b>Coral Autism Program</b> Specialized program for students on the autism spectrum at EA Kent.	\$205 per day



**EA** education  
alternatives

## STUDENT TRANSPORTATION AGREEMENT

This Student Transportation Agreement (the "Agreement") is entered into on \_\_\_\_\_, 2018, between **Strongsville City Schools** (the "District"), an Ohio public school, chartered under Chapter 3311 of the Ohio Revised Code, and **EDUCATION ALTERNATIVES**, an Ohio nonprofit 501(c)(3) corporation, ("EA").

### BACKGROUND

WHEREAS, EA is in the business of providing transportation services for students of school districts throughout northeast Ohio;

WHEREAS, this Agreement engages EA to provide transportation services for the District during the 2018-2019 school year;

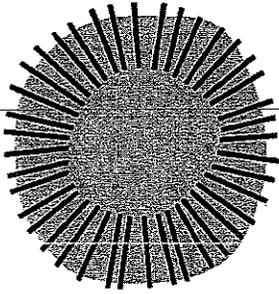
### THE PARTIES AGREE AS FOLLOWS:

#### 1. Scope Of Services: EA shall:

- a. Provide transportation services for the Districts' students, based upon the District's transportation needs during the Term of this Agreement; EA's transportation services include pickup and drop-off of the students at their homes, or other locations mutually agreed upon by the parties;
- b. Organize the transportation routes including pick-up and drop-off times and schedules;
- c. Promptly communicate with the parents, guardians and the District when transportation issues arise. Transportation issues may include, but are not limited to the following: issues regarding pick-up/drop-off times, scheduling, immediate safety of students, and behavioral incidents;
- d. Comply with the applicable current federal, state, and local laws, rules, and regulations for the special education transportation of students in the state of Ohio, including but not limited to the Family Educational Rights and Privacy Act the Individuals with Disabilities in Education Act and Ohio Department of Education requirements

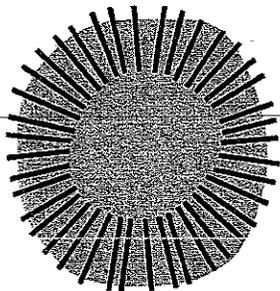
#### 2 Representations And Warranties. EA represents and warrants that:

- a. EA's vehicles satisfy the safety requirements of the Ohio Department of Education, including following a structured preventative maintenance schedule for all vehicles;
- b. EA drivers are trained and certified through the Ohio Department of Education, and meet the Ohio Department of Education's ongoing requirements of having a current driver's license;
- c. EA employees providing services under this Agreement have satisfied applicable criminal records, background checks and hiring restrictions, imposed by law, including the requirements of ORC §§ 3319.39 and 3319.392; and



**EA** education  
alternatives

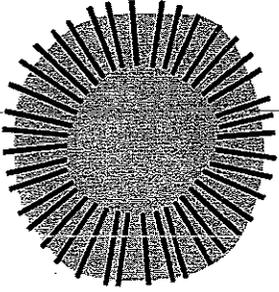
3. **Term Of The Agreement.** This Agreement will commence August 27, 2018 and expire on June 7, 2019 (the "Term"). This Agreement will not automatically renew at the expiration of the Term.
  
4. **Daily Rates, Billing And Payment.**
  - a. The District shall compensate EA **\$42.00 per day** for each contracted seat the District requires (the "Daily Rate"). If EA provides a monitor for the route, The District shall compensate an additional **\$65.00 per day**.
  - b. The District shall compensate EA an additional **\$25.00 per day**, per student, for any mid-school day routes, for which the student is transported alone (the "Additional Rate").
  - c. The District shall pay EA the Daily Rate and any Additional Rates, for the transportation of each student enrolled by the District, including calamity days, truancy, and absenteeism, not to exceed 180 days;
  - d. EA shall bill the District on a monthly basis, and the District shall pay each invoice within thirty days of receipt of the invoice.
  - e. In the event that the District is no longer financially responsible for the student, the District may choose to continue to contract the seat for another student or terminate use of the seat. If the District chooses to terminate the seat, the District will incur no further financial obligation under this contract in regards to the individual seat.
  
5. **Insurance.**
  - a. General Corporate Liability. During the Term of this Agreement, EA shall procure and maintain commercial general liability insurance with policy limits of not less than a combined single limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate
  - b. Automobile Liability. EA will at all times during the term of this Agreement, maintain a vehicle insurance policy. Such coverage shall be in an amount of \$1,000,000, with an umbrella policy of \$5,000,000
  
6. **Indemnification.** To the extent permissible by law, EA shall hold harmless, defend, indemnify, or cause to be reimbursed, the District, their respective Boards, agents and representatives, from all losses, damages, claims, causes of action, liabilities, fees, and costs of every kind and nature, caused by, relating to or arising from any act, neglect, default, or omission of EA, or by any person, firm or corporation employed by EA or acting directly or indirectly for EA in connection with EA's performance under this Agreement
  
7. **Independent Contractor Relationship.** All persons directly or indirectly employed by EA to perform the services under this Agreement shall at all times during the performance of the services be and remain



# EA education alternatives

employees or agents of EA, and at no time shall they be employees or agents of the District. Accordingly, EA shall be solely responsible for payment of any and all contributions, taxes or penalties now or hereafter imposed under any local, county, state or federal law due on account of EA's employees or agents, including but not limited to taxes and/or contributions for social security, Medicare, worker's compensation, unemployment and retirement.

8. **Waiver.** No waiver of any condition, covenant or breach of this Agreement by either party will imply or constitute a further waiver of the same or any other condition or covenant.
9. **Severability.** All agreements and covenants contained in this Agreement are severable and in the event that any of them are held invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements and covenants were not contained herein
10. **Entire Understanding.** This Agreement sets forth the entire understanding between the parties with respect to all matters referred to herein, and may not be changed or modified except by an instrument in writing, signed by both parties.
11. **Exhibits.** All exhibits, amendments, addenda, or attachments, attached to this Agreement are fully incorporated and made a part by this reference
12. **Captions.** The captions used as headings for the various sections of this Agreement are used as a matter of convenience for reference purposes only
13. **Governing Law.** The construction, validity and performance of this Agreement shall be governed in all respects by the law of the State of Ohio, without regard to its conflicts of laws provision.
14. **Approval.** This contract shall be subject to the written approval of the District's authorized representative and shall not be binding until so approved



**EA** education  
alternatives

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year stated in the Preamble.

**EDUCATION ALTERNATIVES**

**THE DISTRICT**

By: \_\_\_\_\_  
Gerald Swartz, Executive Director

By: \_\_\_\_\_

Name: \_\_\_\_\_



### Service Agreement

This agreement between *McKeon Education Group, Inc.*, hereinafter referred to as *MEG, Inc.* and *Strongsville City Schools* hereinafter referred to as the School/Agency Board, is made for the purpose of providing one full time Reading/Remedial Math/LD Teacher; one full time Remedial Tutor; and one part time Certified LD Tutor for SS Joseph & John Interparochial School located in Strongsville, Ohio.

#### Witnesseth

*MEG, Inc.* agrees to provide one *Certified Reading/Remedial Math/LD Tutor* to work 7 hours per day, 5 days per week, 180 days per year, one *LD Tutor* to work 7 hours per day, 5 days per week, 180 days; and one *Certified Remedial Tutor* to work 2.5 hours per day; 5 days per week; 180 days per year, to be housed in the non public school during the 2018 - 2019 academic year, as per third party contract for the sum of \$142,762.00 (\$58,500.00 for Full time/LD Tutor, and \$58,500.00 for full time; tutor, and \$25,762.00 for part time 2.5 hours, 5 day tutor). *MEG, Inc.* does further agree to the following:

- a. *To abide by all Federal and State laws applicable to employment of Certified Intervention Specialists and LD Tutors.*
- b. *To provide supervision by a licensed Intervention Specialist and LD Tutor including but not limited to:*
  - *Supervision of the professional assigned to SS Joseph & John School*
  - *Review of all reports submitted by Certified Intervention Specialist*
- c. *The professional assigned to SS. Joseph & John School duties include but are not limited to:*
  - *Developing written reports for all students receiving services*
  - *Attending Intervention Assistance Team meetings with parents, students and other professionals*
  - *Utilizing effective written and verbal communication with school personnel parents and students*
  - *Establishing and maintaining comprehensive plans for all students that qualify for services*
  - *Develop educational programs for students receiving services*

MEG, Inc.  
Page #2

MEG, Inc. also certifies that the above services for which payment is requested will be rendered on specific dates and times as determined by the MEG, Inc. and the school district. MEG, Inc. will invoice the school district monthly in equal installments beginning in October 2018 and concluding in May 2019. Payments for invoices are due on the 5<sup>th</sup> of the month following receipt invoices.

**McKeon Education Group, Inc.**

By: Kelly M. McKeon; President 5.25.18  
Signature & Title Date

Address: 656 Continental Drive; Sagamore Hills, Ohio 44067  
Tax Identification Number: 73-1672066

**Strongsville City Schools**

By: \_\_\_\_\_  
Signature & Title Date

Address: 18199 Cook Avenue; Strongsville; Ohio 44136



**SERVICE AGREEMENT**

By and Between

**STRONGSVILLE CITY SCHOOLS and PSI AFFILIATES, INC /PSI ASSOCIATES, INC.**

**THIS AGREEMENT** for services is entered into this 1st day of June, 2018 by and between the Strongsville City Schools, hereinafter referred to as "Client", and PSI Affiliates, Inc /PSI Associates, Inc , hereinafter collectively referred to as "PSI," to perform services as specified to schools in the Strongsville City Schools specifically named in Attachment A to this Agreement and thereby becoming a part of this Agreement pursuant to relevant sections of the Ohio Revised Code. Additional Attachments to this Agreement may be included herein and, if included, will become part of this Agreement

**I. Services**

PSI agrees to provide the following Services, ("Services") in accordance with requirements of Client in such numbers and subject to such rules and regulations of the specific school of the client ("The School") as are applicable to the satisfactory performance of this Agreement to the benefit of The School for the stated school years, or part thereof

- Registered Nurse Services
- Licensed Practical Nurse Services
- School Health Assistant
- Medical Assistant
- Speech/Language Pathologist Services
- Intervention Specialist Services
- Gifted/Talented Teacher Services
- Remedial/Title 1 Teacher Services
- Foreign Language Teacher Services
- TESOL Teacher Services
- School Psychology/ Psychology Services
- Counselor
- Special Education/Coordinator/Compliance Services
- Health Screenings Program
- Clerk

A description of Services to be performed by PSI to Client is attached hereto as Attachment B. The parties agree that Services may vary depending upon the Client and the Client's needs and priorities. Client and PSI agree that the parties will regularly communicate with each other to determine Services to be provided pursuant to this Agreement. Client agrees to inform PSI on a timely basis if Services performed are deemed not to be satisfactory by Client and/or if Services so provided by PSI need to be revised. PSI will provide to Client a cost and service proposal for any revisions to Services requested by Client and any additional Services needed by Client that are not currently provided or contracted for as set forth in this Agreement

**II. Initial Term.** In accordance with this contract, PSI will provide Services to Client for a one (1) year term starting in the 2018-2019 school year, continuing through the conclusion of the 2018-2019 school year.

**III. Compensation:**

In consideration of the Services and/or provisions as set forth and as incorporated into this Agreement, Client shall cause to be paid to PSI no more than the following Yearly Fees, except as may be provided for pursuant to the terms of this Agreement. The schedule of all fees are specifically described in Attachment A which has been incorporated herein. Any additional fees as provided for in this Agreement will be assessed for additional Services or changes for Services as set forth in this Agreement.

YEAR ONE \$196,708.05

**IV. Payments for Services Rendered.** Client hereby agrees to pay to PSI within thirty (30) days of receipt of PSI's monthly invoices the specified value of actual Services rendered in the monthly billing cycle, with the total payment not to exceed the amount contracted for herein, except as agreed upon by Client and PSI to pursuant to the terms of this Agreement.

**V. Changes and Additional Services.** PSI shall provide the Additional Services and Additional Optional Services as noted in the Exhibits attached hereto and at the rates noted therein upon written request signed by Client. Client also agrees to pay PSI, in addition to the above-stipulated charges, the hourly rates indicated in Attachment A, for those additional and supplemental Services requested by Client and provided by PSI. Also, any changes to the Agreement that are required or requested by Client to PSI, shall be provided in writing and include the stipulated charges and/or hourly rates. Any Additional Services, Additional Optional Services and changes shall be included in

the appropriate monthly invoice and subject to payment as set forth above.

**VI. Reporting.** PSI agrees to provide Client with reports and/or documentation as needed and determined by Client to be necessary to complete local, state, and/or federal reports.

**VII. Compliance with Law.** PSI further agrees to employ personnel to service designated schools under the terms of this Agreement and agrees to fully abide by all Federal and State laws applicable to employment and/or assignment of such personnel including taking any appropriate action to insure that personnel so employed by PSI fully comply with the provisions of the Affordable Health Care Act. Non-licensed personnel will be appropriately supervised. Only persons with satisfactory criminal background checks will be employed. PSI further abides by all federal and state laws pertaining to employment obligations such as participation in Worker's Compensation, Unemployment Insurance and other appropriate entitlements.

**VIII. Coverage Schedule.** PSI shall establish a schedule satisfactory to Client setting forth, among other things, the dates, times and locations that personnel will be assigned to perform the Services. PSI shall provide to Client, upon request, a copy of the schedule and any updates to the schedule, and PSI shall make such changes to the schedule as reasonably requested by Client.

**IX. Dismissal of Employees.** PSI shall dismiss from performing Services to Client any person employed by PSI who Client reasonably determines to be incompetent, guilty of misconduct, dangerous to the safety of the students of Client, or detrimental to the operations of Client. Client shall provide written notice to PSI of all facts and issues pertaining to said request for dismissals and shall cooperate fully with PSI in regard to any investigation relating to said dismissal request.

**X. Office Space and Supplies.** Client shall provide suitable, appropriate office space that is quiet and private for use of the PSI staff assigned to the school/s. This also includes storage space for supplies and equipment. Client will also provide appropriate supplies and equipment that are customary and standard for the Services provided, where so agreed. Examples of these include, but are not limited to: office supplies and equipment, medical supplies and equipment (if health services are provided), and required testing materials for use by PSI and to enable PSI to provide the Services that they are contracted to perform. Client will be billed for all supplies and equipment, purchased at Client request, to include but not be limited to test equipment, protocols, health supplies, clinic equipment, etc. The testing protocols will be billed as replenishing is needed. Client agrees to provide adequate security at the school office site and to include any personnel provided by PSI to Client through this Agreement in any security training that personnel of Client are required to take.

**XI. Student Records.** All student records shall be the sole and exclusive property of Client, subject to any access and copying rights as permitted by law. PSI will have reasonable access to such documents, forms, records and other materials and information as permitted by law and as necessary to perform the Services and for other lawful purposes. Client will retain all records and other materials for the time periods required by applicable law and generally accepted practices. Client and PSI shall at all times comply with all applicable laws, rules and regulations relating to the confidentiality of medical records and other information.

**XII. Cooperation.** In the event that either party becomes aware of any alleged incident which may include injury resulting from the care or treatment of any person pursuant to this Agreement, each party has a duty to give the other party written notice of the incident in a timely manner of the known circumstances surrounding the incident including the name, school, and circumstances of the alleged incident and the contact information of any available witnesses. Each party further agrees to fully cooperate with the other party in regard to any investigations and follow through in regard to said incident.

**XIII. Agreement not to Hire.** Client hereby agrees that Client shall not, during the term of this Agreement and for a period of twenty-four (24) months following the termination or expiration of this Agreement, employ, solicit, or make an offer of employment or enter into any employment agreement with any person who has been a PSI employee who at any time during the term of this Agreement provided, supervised, directed or was involved in any manner in the provision of Services under this Agreement. Client further agrees not to hire any PSI employee nor any contractors, or subcontractors providing Services under this Agreement, without the express written permission of the President of PSI. This provision shall apply to any employee, independent contractor, any independent contractor or employee who is involved with an agency providing Services under this Agreement or is a related entity or is involved in any type of agreement to provide Services to the Client as an employee or subcontractor of PSI.

**XIV. Insurance.** Client shall keep Client's buildings, including the Premises and all property contained therein, insured against loss or damage from fire, explosion, similar casualties, or other cause including personal injury normally covered in standard broad form property insurance policies. Provider will maintain adequate security for damages within the self insured retention selected as determined by a reputable actuary.

**XV. Termination.** PSI shall have the right at its own discretion, to terminate this Agreement in the event that Client fails to make any payment when due under this Agreement and said payment remains unpaid for a period of five (5) days after written notice to Client from PSI. Furthermore, PSI shall have the right to terminate this Agreement in the event Client is determined by PSI to have engaged in any illegal, unethical or unprofessional behavior or actions that PSI deems to be detrimental to its continued performance of Services under this Agreement. PSI also reserves the right to terminate this Agreement in the event that Client materially breaches the terms of this Agreement and said breach is not cured within thirty (30) days of notice from PSI. Furthermore, PSI reserves the right to terminate this Agreement in the event of any filings pertaining to the insolvency of Client including bankruptcy, receivership, or State take-over.

**XV(a).** In the event that Client seeks to terminate this Agreement based upon an allegation of material breach of this Agreement by PSI, Client shall be obligated to do the following:

1. Client shall provide written notice to PSI specifically setting forth the facts and reasons utilized by Client to claim a material breach by PSI
2. PSI shall have thirty (30) days after receipt of notice from Client to work with Client to improve the situation to a reasonably satisfactory level that addresses the areas of concern set forth in the written notice provided by Client to PSI.
3. If PSI cannot improve the matters cited in the written notice to a reasonably satisfactory level as agreed upon by the parties within said thirty (30) day period, Client shall have the right to terminate the contract

**XVI. Confidentiality.** By virtue of this Agreement, Client shall have access to information that is Confidential and Proprietary to PSI, including (without limitation) business and financial records, billing information, contracts, vendor/supplier information, customer lists and demographic information, policies, and procedures. Confidential, Proprietary Information includes manuals, and strategic planning information which may be in various forms and media, and which may be or may come into existence at any time this Agreement is in effect. Such Confidential, Proprietary Information belongs solely to PSI and Client shall have no ownership in, or control over it. Client shall maintain the confidentiality of all Confidential and Proprietary Information, and shall not disclose it to third parties unless required to do so by law. Nor shall Client use any Confidential and Proprietary Information for its own benefit to the competitive detriment or embarrassment of PSI. This requirement is perpetual and survives the termination of this Agreement.

**XVII. Notice.** Any notice or communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to PSI as follows:

To Client:       PSI  
                      Colleen Lorber,  
                      Chief Operating Officer  
                      2112 Case Parkway South #10  
                      Twinsburg, Ohio 44087-0468

**XVIII. Assignment.** The Agreement may not be assigned by either party without the written consent of the other.

**XIX. Waiver.** A waiver of any failure to perform under the Agreement shall neither be construed as nor constitute a waiver of any subsequent failure

**XX. Severability.** If any term or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law

**XXI. Amendments to Agreement.** All provisions of the Agreement shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision.

**XXII. Findings for Recovery.** PSI warrants and represents that it is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that Provider has taken the appropriate remedial steps required under Ohio Revised Code Section 9.24, or otherwise qualifies under Ohio Revised Code Section 9.24.

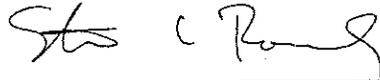
**XXIII. Captions.** Headings and titles of Articles, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

**XXIV. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

**XXV. Entire Agreement.** This Agreement and its attachments and other documents specifically incorporated by reference herein contains the entire understanding and agreement of the parties concerning the matters contained herein, and supersedes and replaces any prior or contemporaneous oral or written contracts or communications concerning the matters contained herein.

**XXVI. Purchase Order.** Receipt of Purchase Order from Client constitutes agreement with the terms and conditions of this Agreement, herein.

**XXVII. Governing Law.** This Agreement will be interpreted, construed, and governed according to the laws of the State of Ohio.



\_\_\_\_\_  
Strongsville City Schools Designee

\_\_\_\_\_  
PSI Designee

\_\_\_\_\_  
Steven L. Rosenberg, President

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title



\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

6-1-18

**ATTACHMENT A**

The schools and services to be served by PSI for the 2018-2019 school year are listed below. Any errors, additions, or deletions should be noted either on the purchase order submitted or through an explanatory letter

<u>School</u>	<u>Position</u>	<u>Hours per Wk</u>	<u>Days per Wk</u>	<u>Wks per Yr</u>	<u>Total Hours</u>	<u>Total Days</u>	<u>Annual Cost</u>
Ss. Joseph and John Interparochial	School Health Assistant	30	36		1080		\$18,900.00
Ss. Joseph and John Interparochial	Registered Nurse				63		\$2,501.73
Ss. Joseph and John Interparochial	Speech/Language Pathologist	17.5	36		630		\$36,143.10
Ss. Joseph and John Interparochial	School Psychologist / Psychologist	35	36		1260		\$66,502.80
Ss. Joseph and John Interparochial	Intervention Specialist	35	36		1260		\$65,431.80
Ss. Joseph and John Interparochial	VIB Speech	3.5	36		126		\$7,228.62

**Total** \$196,708.05

Additional Services to be billed at hourly charge, approved by a District or School Designee.



PSI Affiliates, Inc./PSI Associates, Inc.  
Attachment B  
REGISTERED NURSE (RN) POSITION DUTIES

Nurses employed by PSI are responsible to provide direct clinical nursing services to students entering the clinic or in need of first aid and / or CPR while on school premises. Distribution of medication and the provision of other standard clinical nursing services will be provided to ill or injured students as need indicate. The nurse is to be knowledgeable of PSI procedures and those promulgated by the State Board of Health and the appropriate County Board of Health

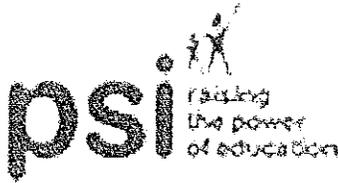
Guidelines and regulations of the State Department of Health are followed by PSI health personnel. Adherence to state requirements regarding immunizations, report of contagious diseases, etc is strictly maintained. In addition, all PSI RNs are conversant with the PSI Affiliates, Inc. *Health Resource Guide*.



PSI Affiliates, Inc./PSI Associates, Inc.  
Attachment B  
HEALTH AIDE POSITION DUTIES

Under the supervision and direction of PSI, the PSI Health Aide assists in providing services to schools that work toward the good health and wellness of students and the improvement of health conditions in general.

The PSI Health Aide, when appropriate, assists the PSI Registered Nurse with student health needs; administers prescribed oral, topical or inhaled, but not injectable medications with the exception of glucagon or an EpiPen; monitors student behavior and reaction to the administration of medication; provide first aid in accordance with established first aid procedures; assists the PSI Registered Nurse, when appropriate, in screening programs and school programs; completes required documentation of health services needed and provided; is responsible for health clinic records; is responsible for shared health clinic maintenance; provides and promotes relationships between community health providers and students, parents, and the community at large. In addition, all PSI Health Aides are conversant with the PSI Affiliates, Inc *Health Resource Guide*.



PSI Affiliates, Inc./PSI Associates, Inc.  
Attachment B  
Speech/Language Position

The goal of the Speech/Language Pathology Program is to provide educational instruction via direct services (in-person and/or virtual) to school-age children by certified, professional clinicians. Specific duties may vary depending upon the assigned school and are identified in consultation with school personnel. Among the responsibilities of a Speech/Language Pathologist include the following:

- 1) Ensure that all procedures are in compliance with state, federal, and local requirements regarding the evaluation, placement, and education of students with speech/language needs
- 2) Establish a productive, educational connection with students, and a professional relationship with school officials and designated school facilitator/e-Helper (if instructing via virtual model). Establish and maintain a professional relationship with students' parents/guardians
- 3) Conduct appropriate individual evaluations of the communicative status of students referred for suspected speech/language disabilities. Contribute appropriate paperwork for the Evaluation Team Report
- 4) Conduct screening activities for students according to timetables established by school and/or PSI policy.
- 5) Develop and implement Individual Education Plans, Service Plans and/or Intervention Programs for students.
- 6) Cooperatively schedule students identified for speech/language services according to minutes indicated on the students' IEPs, ISPs, and/or Intervention Plans. If providing services through the virtual model, the SLP will work cooperatively with the designated school facilitator/e-Helper to establish a speech/language schedule that accommodates student and school routines.
- 7) Conduct individual and/or small group therapeutic activities for students identified as needing Speech/Language services.
- 8) Maintain an appropriate workload/caseload ratio for quality service delivery
- 9) Consult and collaborate with building principal, teachers, and school staff members regarding appropriate educational practices for students.
- 10) Identify individual goals and objectives for each student served. Develop curriculum-based, lesson plans that are age, grade and skill appropriate.
- 11) Maintain accurate, complete, and up-to-date files for each student served. Such files should contain student therapy logs, evaluation reports, IEPs/ISPs/Intervention Plans (if applicable), progress reports, and records of correspondence regarding the student
- 12) Participate as a member of the multidisciplinary team in evaluation and decision-making activities for any student referred for a suspected disability, where assessment of communicative status is required
- 13) Make referrals to and communicate with qualified school professionals as appropriate
- 14) Provide school administrators, teachers and parents with periodic progress reports and documentation for students served when needed
- 15) Provide administrators with periodic reports of activities and caseload status through verbal and written communication, as appropriate
- 16) Develop and provide home assignments for remedial/enrichment activities for homework practice and/or during vacation breaks, as needed
- 17) Ongoing consultation with administrative and professional supervisors, including participation in site visits, in accordance with policies of PSI and the Ohio Board of Speech Language Pathology & Audiology
- 18) Adhere to federal, state and local law and regulations related to the delivery of speech/language services
- 19) Adhere to confidentiality standards in the provision of speech/language services for all students



PSI Affiliates, Inc. /PSI Associates, Inc.  
Attachment B  
Remedial/Title 1

The goal of PSI's Educational Services Program is to provide educational instruction via direct services to school-age children by certified/licensed professional educators. Specific duties may vary depending upon the building to which PSI staff is assigned. Among the responsibilities of an educational specialist are the following:

1. Establish a productive, educational connection with our students and a professional relationship with school officials. Establish and maintain a professional relationship with students' parents/guardians.
2. Identify individual goals and objectives for each student served. Develop lesson plans that relate to the student's goals/objectives and curriculum; are appropriate for the student's age, grade level, and ability; and are of a motivating, innovative nature.
3. Collaborate and consult with teachers, principal and other staff members regarding appropriate educational practices to enhance achievement and promote healthy adjustment.
4. Implement Individualized Education Program (IEP), Individualized Service Plan (ISP) and or Intervention Programs for students where applicable.
5. Provide administrators, teachers and parents with periodic progress reports for students served. This may be in the form of a verbal and/or written communication.
6. Complete and return by the due date all forms/paperwork required by PSI.



PSI Affiliates, Inc./PSI Associates, Inc.  
Attachment B  
School Psychology Personnel Position

The heart of PSI's school psychology program lies in the daily provision of direct services to school children by staff members. Duties may vary depending upon the building to which PSI staff is assigned. Specific duties are assigned by PSI in consultation with school personnel and may include the following:

- 1 Pre-referral consultation and intervention services delivered in accordance with state and federal guidelines
- 2 Participate in Student Assistance Teams.
- 3 Participate in the evaluation and decision-making activities of Evaluation and IEP Teams convened for students with suspected disabling conditions (e.g., Learning Disabilities; Intellectual Disabilities; Emotional Disturbances; etc.)
- 4 Multifaceted evaluation activities to plan interventions and/or assist in determining Special Education eligibility and needs
- 5 Consult and coordinate with school officials and PSI administrative supervisors regarding identification and placement activities for students with suspected disabilities.
- 6 Coordinate data collection and preparation of Evaluation Team Report.
- 7 Individual/Small group counseling for students to address social, emotional, behavioral and academic concerns.
- 8 Skill training programs with students to foster more appropriate social, emotional, behavioral and academic skills.
- 9 Consultation with teachers and other staff members regarding appropriate educational practices to enhance achievement and promote healthy adjustment
- 10 Attendance at periodic in-service and staff development programs offered by PSI, public school districts, and other agencies
- 11 Ongoing consultation with administrative and professional supervisors, including participation in site visits, in accordance with policies of PSI and the Ohio Board of Psychology.
- 12 Adherence to appropriate professional codes of ethics (e.g., OSPA, NASP)

Eligible\* employees may qualify for a maximum of two (2) leave days authorized for professional development, and a maximum of five (5) days authorized for illness, personal reasons, and emergency school closings during the school year. Such days are verified on monthly timesheets submitted to Client. Schools will not be charged for lost days beyond the maximum.

\*Eligible employees may include Speech/Language Pathologist, Intervention Specialist, Gifted/Talented Teacher, Remedial Teacher, Foreign Language Services, Psychologist, Counselor, and Special Education Services