

**EATON BOARD OF EDUCATION SPECIAL MEETING**  
**Treasurer's Office**  
**February 28, 2013**  
**6:00 p.m.**

**I. Opening of the Meeting**

**1. Call to Order – President**

**2. Roll Call – President**

D. Mowen \_\_\_ R. McKinney \_\_\_ T. Parks \_\_\_ B. Pool \_\_\_ J. Renner \_\_\_

B. Neavin \_\_\_ P. Dodson \_\_\_ C. Neanen \_\_\_

**3. Pledge of Allegiance**

**4. Adopt the Agenda**

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_ to  
adopt the agenda.

Discussion.

Mowen \_\_\_ McKinney \_\_\_ Parks \_\_\_ Pool \_\_\_ Renner \_\_\_

President declares motion \_\_\_\_\_

**II. New Business**

**1. Resolution**

A. The Administration recommends approval of ***A RESOLUTION APPROVING THE DETAILED ESTIMATE OF COST FOR THE LANDSCAPING BID PACKAGE AND PLAYGROUND BID PACKAGE AND AUTHORIZING THE COMMENCEMENT OF BIDDING INCLUDING THE ADVERTISEMENT FOR AND REVIEW OF BIDS THEREFOR ALL RELATED TO THE CONSTRUCTION OF THE EATON ELEMENTARY SCHOOL***

**WHEREAS**, the Eaton Community School District, County of Preble, Ohio (hereinafter called the "School District") building program identifying classroom

facilities needs and basic project costs (hereinafter called the “Master Plan”) for the Eaton Elementary School Project (the “Project”) has been conditionally approved by the Ohio School Facilities Commission, State of Ohio (hereinafter called the “Commission”) and Ohio Controlling Board, as authorized under Section 3318.36 of the Ohio Revised Code (“O.R.C.”);

**WHEREAS**, the Board of Education has contracted with a qualified professional design firm, Fanning/Howey Associates, Inc. (hereinafter called the “Architect”), under Sections 153.65 to 153.71, O.R.C., to prepare separate plans, specifications and estimates of cost, and such data as the Board of Education deems necessary for the Project and in compliance with the specifications set forth in the Commission’s Design Manual, where applicable;

**WHEREAS**, the OSFC has retained a qualified construction management firm, Megen Construction Company, Inc. (hereinafter called the “Construction Manager”), under Sections 9.33, 9.331 and 9.332, O.R.C., related to constructability, logistics, availability of materials and labor, and time requirements for construction, preliminary budgets and possible economies;

**WHEREAS**, the Board of Education has appointed Thomas Doseck as its authorized representative (hereinafter called the “Authorized Representative”) to act on its behalf during the planning, bidding, award and construction phases of the Project;

**WHEREAS**, the Construction Manager, with the assistance of the Architect and Authorized Representative, has completed the scope of landscaping and playground packages in order to facilitate the bidding and awarding of bid packages related thereto (hereinafter called the “Landscaping Bid Package” and the “Playground Equipment Bid Package”), taking into consideration factors including, but not limited to, time of performance, availability of labor, and overlapping trade jurisdictions;

**WHEREAS**, the Architect, with the assistance of the Construction Manager, has prepared and submitted to the Board of Education, draft bid documents for the Landscaping Bid Package and the Playground Equipment Bid Package setting forth in detail the necessary requirements related thereto; and

**WHEREAS**, the Board of Education now desires to commence the competitive bidding process for the Landscaping Bid Package and the

Playground Equipment Bid Package as authorized under Section 3313.46, O.R.C.

**NOW, THEREFORE BE IT RESOLVED**, by the Board, that after careful consideration and evaluation of the information before it:

**Section 1.** The Board of Education, as authorized under Sections 3313.46(A)(1), O.R.C., approves the Detailed Estimate of Cost of (i) \$209,000 for the Landscaping Bid Package, and (ii) \$145,000 for the Playground Equipment Bid Package, in substantially the form presently on file with this Board of Education.

**Section 2.** That the Board of Education, as authorized under Section 3313.46(A)(1), O.R.C., approves the draft bid documents for the Landscaping Bid Package and Playground Equipment Bid Package in substantially the form presently on file with this Board of Education, subject to finalization and approval as to legal form by construction counsel and the procurement of all necessary government approvals.

**Section 3.** The Board of Education authorizes the Construction Manager and Architect, upon finalization of the bid documents and procurement of all necessary government approvals, to commence the bidding process for the Landscaping Bid Package and Playground Equipment Bid Package in compliance with all applicable laws, including, but not limited to, Sections 9.31, 9.311, 153.12, 153.50, 153.51, 153.52, 153.54 to 153.571, 3313.46, O.R.C., and to use the Detailed Estimate of Cost stated in Section 1 as the estimate of cost to be included in the bidding documents as required by Section 153.12, O.R.C.

**Section 4.** The Board of Education approves for publication a “Notice To Bidders” for the Landscaping Bid Package and Playground Equipment Bid Package and authorizes the Construction Manager to publish said Notice for one week in a newspaper of general circulation within the School District and to simultaneously post said Notice on the School District’s website prior to the date specified for receiving bids in conformance with Sections 7.12 and 3313.46(A)(2), O.R.C.

**Section 5.** The Board of Education authorizes the Construction Manager and Authorized Representative, with the assistance of the Architect, to coordinate the opening of bids for the Landscaping Bid Package and Playground Equipment Bid Package in compliance with Section 3313.46(A)(3), O.R.C., and, immediately

following the opening of all bids, the Construction Manager and Architect are authorized to substantiate the bids for responsiveness, then conduct a responsibility investigation of the apparent low bidder for said Landscaping Bid Package and Playground Equipment Bid Package, and any other bidder as appropriate, in conformance with the Instructions to Bidders and any bid evaluation process agreed to with the Board of Education and its construction counsel, and prepare and submit to the Board of Education a recommendation about the award or rejection of any bid or bids for the Landscaping Bid Package and Playground Equipment Bid Package, and the acceptance or rejection of any alternate therefor, in accordance with applicable law.

**Section 6.** This Board of Education hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board of Education, and that all deliberations of this Board of Education and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22, O.R.C.

**Section 7.** This resolution shall be in full force and effect from and immediately after its adoption and shall supercede any prior resolution or act of this Board of Education, which may be inconsistent or duplicative with the provisions of this resolution.

B. The Administration recommends approval of ***A RESOLUTION AUTHORIZING THE ISSUANCE OF A NOTICE OF INTENT TO AWARD MULTIPLE CONTRACTS RELATED TO THE TECHNOLOGY EQUIPMENT PACKAGES, THE NOTIFICATION OF SURETIES RELATED THERETO, AND AUTHORIZING THE PRESIDENT AND THE TREASURER TO ENTER INTO SAID CONTRACT UPON COMPLIANCE WITH ALL CONDITIONS PRECEDENT RELATED THERETO AND THE AUTHORIZATION TO EXECUTE SAID CONTRACT IN CONNECTION THEREWITH***

**WHEREAS**, the Eaton Community School District, County of Preble, Ohio (hereinafter called the "School District"), building program identifying classroom facilities needs and basic project costs (hereinafter called the "Master Plan") for the Eaton Middle School

Project (the “Project”) has been approved by the Ohio School Facilities Commission, State of Ohio (hereinafter called the “Commission”) and Ohio Controlling Board, as authorized under Section 3318.36 of the Ohio Revised Code (“O.R.C.”);

**WHEREAS**, the Eaton Community School District Board of Education (hereinafter called the “Board of Education”) has issued its bond or notes as required under Section 3318.80(A) and 3318.091, O.R.C. and deposited the proceeds thereof in the Board of Education’s Construction Account as required by Sections 3318.80(B) and 3318.091, O.R.C.;

**WHEREAS**, the Board of Education has contracted with a qualified professional design firm, Fanning/Howey Associates, Inc. (hereinafter called the “Architect”), under Sections 153.65 to 153.71, O.R.C., to prepare separate plans, specifications and estimates of cost, and such data as the Board of Education deems necessary for the Project and in compliance with the specifications set forth in the Commission’s Design Manual, where applicable;

**WHEREAS**, the OSFC has retained a qualified construction management firm, Megen Construction Company, Inc. (hereinafter called the “Construction Manager”), under Sections 9.33, 9.331 and 9.332, O.R.C., related to constructability, logistics, availability of materials and labor, and time requirements for construction, preliminary budgets and possible economies;

**WHEREAS**, the Board of Education has appointed Thomas Doseck as its authorized representative (hereinafter called the “Authorized Representative”) to act on its behalf during the planning, bidding, award and construction phases of the Project;

**WHEREAS**, the Authorized Representative and Construction Manager, on behalf of the Board of Education and with the assistance of the Architect, received sealed bids in connection with new technology equipment packages (collectively, the “Bid Packages”) at the time and place established for the receipt of such bids in the Notice To Bidders and opened and read aloud said bids immediately thereafter;

**WHEREAS**, the Authorized Representative and Construction Manager, with the assistance of the Architect, have tabulated the bids received and advised the Board of Education on the acceptance or rejection of any or all bids, alternates and budget considerations;

**WHEREAS**, the Authorized Representative and Construction Manager, with the assistance of the Architect, have reviewed all bids received and the Construction Manager and Architect have conducted a responsible investigation of the apparent low Bidders in compliance with Sections 153.12 and 3313.46(A)(6), O.R.C., and any other authorizing provisions of law;

**WHEREAS**, the Board of Education now desires to award the technology contracts and to authorize the President and the Treasurer to enter into said contracts upon compliance with all conditions precedent related to the Technology.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Education, that after careful consideration and evaluation of the information before it:

**Section 1.** The Board of Education hereby accepts the recommendation of the Construction Manager, Architect and Authorized Representative to award the Base Bid and any Alternates for the Bid Packages for the Technology to the bidders as provided below as the lowest responsible bidders in compliance with Section 3313.46(A)(6), O.R.C., and any other authorizing provisions of law, contingent upon compliance with all conditions precedent to contract execution:

<b>Bid Package #8</b>	<b>Lowest Responsible Bidder</b>	<b>Base Bid</b>	<b>Alternate</b>	<b>Total</b>
ES &MS Technology	ESI	\$856,053	\$18,100	\$874,153
				\$
				\$
				\$
				\$
				\$
	<b>Total</b>	\$856,053	\$18,100	<b>\$874,153</b>

**Section 2.** The Board of Education hereby authorizes the Construction Manager, on its behalf, to forward a Notice of Intent to Award Contract for said Bid Packages, with the appropriate Contract Form, to the lowest responsible bidders referenced in Section 1. The Construction Manager shall simultaneously notify the surety and agent of the surety of said lowest responsible bidders of the intent to award pursuant to Section 9.32, O.R.C.

**Section 3.** Subject to the approval of the Board of Education construction counsel, and upon compliance with all conditions precedent to Contract execution, the Board of Education hereby authorizes the President and Treasurer to sign said Contracts.

**Section 4.** The Board of Education hereby authorizes the Treasurer to sign the Certificate of Funds, upon execution of said Contracts, and attach to said Contracts a copy of the Certificate of Funds.

**Section 5.** The Board of Education hereby authorizes the Construction Manager (at a time determined appropriate by Construction Manager), after the Construction Manager's receipt of said Contracts signed by the Contractors to forward a Notice to Proceed for said Contracts.

**Section 6.** The Board of Education hereby authorizes the Treasurer, at the appropriate time and with the assistance of the Board of Education construction counsel, to prepare, and make available upon request, a Notice of Commencement pursuant to Section 1311.252, O.R.C., prior to the performance of any work related to said Contracts.

**Section 7.** The Board of Education hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board of Education, and that all deliberations of this Board of Education and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22, O.R.C.

**Section 8.** This resolution shall be in full force and effect from and immediately after its adoption and shall supersede any prior resolution or act of this Board of Education that may be inconsistent or duplicative with the provisions of this resolution.

C. The Administration recommends approval of the **SECOND AMENDMENT TO THE AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

**THIS SECOND AMENDMENT TO THE AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES** (the “Agreement”), dated as of February 28th, 2013, is by and between the **OHIO SCHOOL FACILITIES COMMISSION** (“OSFC”) and **MEGEN CONSTRUCTION COMPANY, INC.** (the “Construction Manager”) and acknowledged by the **EATON COMMUNITY SCHOOL DISTRICT** (the “Owner”).

**WHEREAS**, the Construction Manager and the OSFC have entered into an Agreement For Construction Management Services, dated December 17, 2010, as amended by a First Amendment dated August 13, 2012 (collectively, the “Agreement”) related to the Eaton Community School District’s Elementary and Middle School Buildings funded through the OSFC; specifically, the **Eaton Community School District Master Plan Implementation Project – OSFC Project No. 408** (the “Project”);

**WHEREAS**, the Owner has entered into a Project Agreement with the OSFC as authorized under Section 3318.08, ORC, pursuant to the receipt of State of Ohio’s monies for basic project costs set aside and approved by the Ohio Controlling Board under Section 3318.04, O.R.C.;

**WHEREAS**, the Agreement did not include the scope of services related to locally funded initiatives for electrical work to the Auditorium Work in the amount of \$350, 254.80.

**WHEREAS**, the Construction Manager has requested an increase in the Basic Fee under Subparagraph 5.3 due to the foregoing and said increase in the Basic Fee has been negotiated to the mutual and reasonable satisfaction of the Owner and Construction Manager, subject to the approval of the OSFC; and

**WHEREAS**, it is the intention of the OSFC and Construction Manager to amend their Agreement related to the foregoing to reflect said negotiated increase in the Basic Fee pursuant to Subparagraph 9.5.2.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the OSFC and Construction Manager agree to amend their Agreement as follows:

1. The Fourth Whereas Clause in the Agreement is amended as follows: Change “One Million Six Hundred Seventy-Three Thousand One Hundred Nine and 05/100 Dollars (\$1,673,109.05) to “Two Million Twenty Three Thousand Three Hundred Sixty Four Dollars (\$2,023,364.00);”



2. Section 5.1 of the Agreement is amended as follows: Change “One Million Six Hundred Seventy-Three Thousand One Hundred Nine and 05/100 Dollars (\$1,673,109.05) to “Two Million Twenty Three Thousand Three Hundred Sixty Four Dollars (\$2,023,364.00);”
3. Section 5.3 of the Agreement is as follows: Change “Six Hundred Ninety-One Thousand Eight Hundred Sixty-Five and 05/100 Dollars (\$691,865.05)” to “Seven Hundred Twelve Thousand Eight Hundred Eighty and 05/100 Dollars (\$712,880.05);”

D. The Administration Recommends approval of **A RESOLUTION AUTHORIZING THE PAYMENT OF ADDITIONAL FEES TO THE CONSTRUCTION MANAGER IN CONNECTION WITH NON-OFCC WORK ASSOCIATED WITH THE EATON MIDDLE SCHOOL AS FURTHER PROVIDED HEREIN (Attachment A)**

**WHEREAS**, the Eaton Community School District, County of Preble, Ohio (hereinafter called the “School District”) building program identifying classroom facilities needs and basic project costs (hereinafter called the “Master Plan”) for the Bruce Elementary School Project and the Eaton Middle School Project (collectively, the “Projects”) has been conditionally approved by the Ohio School Facilities Commission, State of Ohio (hereinafter called the “Commission”) and Ohio Controlling Board, as authorized under Section 3318.36 of the Ohio Revised Code (“O.R.C.”);

**WHEREAS**, the Board of Education has contracted with a qualified professional design firm, Fanning/Howey Associates, Inc. (hereinafter called the “Architect”), under Sections 153.65 to 153.71, O.R.C., to prepare separate plans, specifications and estimates of cost, and such data as the Board of Education deems necessary for the Projects and in compliance with the specifications set forth in the Commission’s Design Manual, where applicable;

**WHEREAS**, the OSFC has retained a qualified construction management firm, Megen Construction Company, Inc. (hereinafter called the “Construction Manager”), under Sections 9.33, 9.331 and 9.332, O.R.C., related to constructability, logistics, availability of materials and labor, and time requirements for construction, preliminary budgets and possible economies;

**WHEREAS**, the Board of Education has appointed Thomas Doseck as its authorized representative (hereinafter called the “Authorized Representative”) to act on its behalf during the planning, bidding, award and construction phases of the Projects;

**WHEREAS**, the Construction Manager performed services in connection with improvements to the theatre located at the Eaton Middle School which are not included as part of the Master Plan (“Non-OFCC Work”) and therefore not compensable under the Construction Manager’s agreement with the Commission; and

**WHEREAS**, the Construction Manager has requested compensation for the Non-OFCC Work in the amount of \$18,231.00, which amount has been negotiated to the mutual reasonable satisfaction of the Board of Education and Construction Manager.

**NOW, THEREFORE BE IT RESOLVED**, by the Board of Education, that after careful consideration and evaluation of the information before it:

**Section 1.** The Board of Education approves payment in the amount of \$18,231.00 to the Construction Manager pursuant to the Memorandum of Agreement, a copy of which is attached hereto as Exhibit A (the “Memorandum of Agreement”).

**Section 2.** The Board of Education hereby authorizes the Treasurer to sign the Certificate of Funds, upon execution of the Memorandum of Agreement, and attach a copy of the Certificate of Funds thereto.

**Section 3.** This Board of Education hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board of Education, and that all deliberations of this Board of Education and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22, O.R.C.

**Section 4.** This resolution shall be in full force and effect from and immediately after its adoption and shall supersede any prior resolution or act of this Board of Education, which may be inconsistent or duplicative with the provisions of this resolution.

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_ to approve agenda items II 1.

Discussion.

Mowen \_\_\_ McKinney \_\_\_ Parks \_\_\_ Pool \_\_\_ Renner \_\_\_

President declares motion \_\_\_\_\_

**III. Adjournment**

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_  
to adjourn the meeting.

Discussion.

Mowen \_\_\_ McKinney \_\_\_ Parks \_\_\_ Pool \_\_\_ Renner \_\_\_

President declares motion \_\_\_\_\_

President adjourns meeting at \_\_\_\_\_ a.m.

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** is effective as of March 1st, 2013 (the "Effective Date") by and between the **EATON COMMUNITY SCHOOL DISTRICT** (the "Owner") and **MEGEN CONSTRUCTION COMPANY, INC.** (the "Construction Manager").

**WHEREAS**, the Construction Manager and the Ohio School Facilities Commission, State of Ohio ("OSFC") entered into an Agreement For Construction Management Services, dated December 17, 2010, as amended by a First Amendment dated August 13 , 2012 (collectively, the "CM Agreement") related to Eaton Community School District's Elementary and Middle School Buildings funded through the OSFC (the "Project");

**WHEREAS**, the Construction Manager has been requested to perform services in connection with improvements to the theatre located at the Eaton Middle School which are not included as part of the Master Plan approved by the OSFC (the "Non-OFCC Work") and therefor not compensable under the CM Agreement with the OSFC; and

**WHEREAS**, it is the intention of the Board of Education and the Construction Manager to memorialize their agreement for the Construction Manager to provide construction management services in connection with Non-OSFC Work as hereinafter provided ("Basic Services").

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the Board of Education and Construction Manager agree as follows:

1. The Board of Education and the Construction Manager acknowledge that Articles 1, 6, 7, 8, 9 and Sections 2.6 and 2.7 set forth in the CM Agreement are hereby incorporated by reference (collectively, the "CM Obligations") such that the Construction Manager's Basic Services shall be subject to and performed in accordance with the CM Obligations with respect to the Non-OSFC Work.
2. For Basic Services provided by the Construction Manager hereunder, the Owner shall pay the Construction Manager the Basic Fee of \$18,231.00, which amount shall include all reimbursable expenses, if any.

This Memorandum of Agreement is executed as of this 1<sup>st</sup> day of March, 2013.

**MEGEN CONSTRUCTION COMPANY, INC.**  
("Construction Manager")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EATON COMMUNITY SCHOOL DISTRICT**  
("Owner")

\_\_\_\_\_  
Superintendent                      Date

\_\_\_\_\_  
Treasurer                              Date