

Board of Education Special Meeting

Monday, January 11, 2016 5:30 PM

Library at the Bennet Elementary School 50 Dogwood Street, Bennet, NE

50 Dogwood

Bennet, NE 68317

District Mission:

“Together we prepare our students to successfully meet the challenges of the future.”

Strategic Goal 1: District OR-1 Public Schools will provide the facilities needed to be competitive with other area schools in athletics and fine arts programs.

Strategic Goal 2: District OR-1 Public Schools will foster a unified community.

Strategic Goal 3: District OR-1 Public Schools will continuously implement (academic) programs and the curriculum needed to remain competitive with other area schools.

Attendance Taken at 5:35 PM.

Jaimi Calfee: Present

Doug Church: Present

Kipp Haight: Present

Clayton Maahs: Present

Susan Royal: Present

Kevin Schroder: Present

1. Call to Order The meeting was called to order at 5:34 p.m.
2. Open Meetings Act Posting
3. Action Items
 - 3.1. Presentation, discussion and or official action regarding building construction and design decisions and determinations. Clark Enersen personnel presented information regarding construction and design plans for the project. Information included design plans for new construction and renovation of current space. Clark Enersen personnel presented information regarding flooring systems for new and old space as well as paint schemes and color options. Clark Enersen personnel also presented information on mechanical systems and lighting. The Board reviewed preliminary plans for the Palmyra facility. Members of the Board offered suggestions on a variety of topics to further define design options.
 - 3.2. Presentation, discussion and or official action regarding Construction Change Orders and Construction Change Directives. The Board requested to place this item on the January 18 agenda. Superintendent Hanger informed the Board that he will request further clarification from Rex Schultze.
 - 3.3. Presentation, discussion and or official action regarding (a) enhanced construction administration services from the architecture firm or (b) owner’s representation services from a third party for observation and supervision of the Work of the Bennet and Palmyra

construction projects. The Board indicated interest in examining the possibility of an owners representative. The item will be placed on the January 18 agenda.

3.4. Presentation, discussion and or official action establishing construction staging areas.

The Board requested that Superintendent Hanger obtain information regarding the existing Pre-K building and the Bennet rental property for presentation at a later meeting. Mr. Hanger informed the Board that he would consult with the school legal counsel regarding various options for the buildings and with Clark Enersen regarding specifics for staging areas.

4. Closed Session

5. Next Regular Meeting

6. Adjournment The meeting was duly adjourned at 8:33 p.m.

Chairperson

Superintendent

Palmyra District OR-1 Public Schools – Board of Education Protocol Re: 2015 Bond Issue Projects - Construction Change Orders and Construction Change Directives.

A. Purpose of Protocol: In accordance Neb. Rev. Stat. §§ 79-525 and 79-526, R. R. S., the Board of Education of the Palmyra District OR-1 Public School District has full authority and responsibility for all decisions regarding educational and ancillary school building (and appendages) construction contracts, change orders, and payments. Within this authority the School Board may, at its option authorize the Superintendent of Schools or other designated individual to approve change orders and construction change directives in the name of the School Board for pre-established amounts. Thus, this policy is established to prescribe the manner in which construction change orders shall be initiated, approved, and reported subject only to the provisions of the contract of construction or general conditions incorporated therein.

B. Applicability: This policy applies to all change orders associated with construction contracts awarded by the School Board.

C. Definitions: The following words and phrases shall have the meanings as provided below:

- Change Order means a written amendment to the construction contract issued and signed by the Superintendent or designee, the architect-engineer, and the contractor authorizing a change in the scope of work, an adjustment in the contract sum or contract time, or both.
- Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- Construction means demolition, renovation, remodeling or new construction. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- Construction Contract and/or Contract Documents means the agreement between the Board and the contractor or architect-engineer, plans and specifications, approved construction change orders and any addenda issued prior to the execution of the contract, and other written modifications.
- Critical Path means the longest sequence of critical activities in a project plan which must be completed on time for the entire project to be completed on the due date. An activity on the critical path cannot be started until its predecessor activity is complete. The completion of the construction project is delayed when one of the critical path activities is not started and/or not finished on time.

- Emergency means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population of the school community or substantial damage to or loss of School Board property.
- Final Completion means when the Work and the requirements of the construction contract documents are fully and finally completed.
- Major Construction Projects means projects for the construction, renovation or repair of new or existing buildings, facilities, or other permanent improvements with approved budgets of more than \$1 million in cost.
- Minor Construction Projects means projects for the construction, renovation or repair of new or existing buildings, facilities, or other permanent improvements with approved budgets of up to \$1 million in cost.
- Project means the total design and construction of which the Work performed under the contract documents may be the whole or a part.
- Substantial Completion means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. When substantial completion occurs for a portion of a construction contract for which the contract states a separate price, substantial completion occurs only to the work under that portion of the contract.
- Work means the construction and services required by the construction contract documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the architect, construction manager, or contractor to fulfill their obligations to the School Board. The Work may constitute the whole or a part of a construction project.

D. Policy Statement: The School Board recognizes that construction projects are complex undertakings and as such unforeseen conditions, market conditions, errors, omissions, and a number of other factors may impact the cost or schedule of projects, necessitating a construction change order. However, the School Board further believes that thoughtful planning should minimize the construction change orders that are necessary to a construction contract for any construction project. Thus, all changes which may be required after a construction contract has been awarded must be approved in accordance with this policy and be appropriately documented.

1. A construction change order shall not be binding on the School Board unless in writing, approved and executed by duly authorized parties as provided herein. All work which is the subject of a construction change order shall not commence until approved as provided herein. Otherwise, the Board will not be responsible for payment on a construction change order. Such authorized and fully executed construction change order shall be attached to and become a part of the original contract.

2. All construction change orders shall be funded by contingencies approved by the Board.

3. A construction project shall not be separated into smaller segments of funding, cost, work, or function to avoid the approval by a higher administrative or governing authority as provided herein.

E. Initiation of Change Orders: A construction change order is required for a change in the scope of Work, an increase or decrease in the amount of the construction cost, or to adjust the substantial or final completion date of a construction project. Construction change orders may be initiated by use of either Change Order Proposal Requests (COPR) or Construction Change Directives (CCD).

1. Change Order Proposal Requests (COPR). A COPR may be issued only when the contractor is in agreement and the backup to the construction change order contains no qualifying language from the contractor. This method should be used when the change affects items not on the critical path schedule and as provided herein.

2. Construction Change Directives (CCD). CCD changes may be authorized in a day or less and should be used for items that would delay the project's critical path, or when the contractor is not in agreement with the terms on the face of the construction change order. When terms of a CCD are finally agreed upon, a COPR should be issued.

F. Change Order Approval Authority:

1. Board Authority. The Superintendent shall recommend to the Board for its review and approval any major or minor construction change order that:

a. Is greater than \$25,000, or that increases the cumulative total of all construction change orders of a construction project approved by the Superintendent or designee to greater than \$100,000, or by more than 10% of the original construction contract amount, whichever is less;

b. Eliminates the Board's right to pursue liquidated damages, due to late delivery or untimely performance;

c. Impacts the occupancy date of a construction project; or,

d. Provides for facilities not approved in the specifications for facilities as approved by the Board; or significantly alters the design or extent of facilities provided for in the original contract documents.

2. Delegation of Authority for Major Construction Projects:

a. Superintendent or Designee Authority. The Superintendent may approve a construction change order request, whether a COPR or CCD, for a single, major construction

contract in an amount not to exceed \$25,000; provided however, the cumulative total of all approved construction change orders for a single, major construction contract by the Superintendent or designee does not increase the original construction contract amount by more than 10% or \$100,000, whichever is less. For the purposes of this subsection, the original construction contract amount for a construction management at risk contract shall be the amount approved by the Board in agreement, and amendment to the agreement, that establishes the guaranteed maximum price (GMP). The Board must approve all change orders in excess of the maximums shown above and as provided for in subsection 6(a)(i) herein.

(i) Designee's Authority. If the Superintendent delegates any of his authority as provided herein, the delegation shall be limited to the following:

(a) The designee has authority to approve a construction change order request, whether a COPR or CCD, for a single, major construction contract in an amount not to exceed \$25,000; provided however, the cumulative total of all approved construction change orders for a single, major construction contract by the Superintendent or designee does not increase the original construction contract amount by more than 10% or \$100,000, whichever is less;

(b) The designee may not re-delegate such authority; and the designee may not approve matters falling within the Board's authority as provided herein.

3. Delegation of Authority for Minor Construction Projects:

a. Delegation to Superintendent. The Superintendent may approve a construction change order request, whether a COPR or CCD, for a single, minor construction contract in an amount not to exceed \$25,000; provided however, the cumulative total of all approved construction change orders for a single, minor construction contract by the Superintendent or designee does not increase the original construction contract amount by more than 25% or \$100,000, whichever is less. The Board must approve all change orders in excess of the maximums as provided in this subparagraph.

b. Designee's Authority. If the Superintendent delegates any of his authority as provided in this subsection, the delegation shall be limited to the following:

(1) The designee has authority to approve a construction change order request, whether a COPR or CCD, for a single, minor construction contract in an amount not to exceed \$25,000; provided however, the cumulative total of all approved construction change orders for a single, minor construction contract by the Superintendent or designee does not increase the original construction contract amount by more than 25% or \$100,000, whichever is less;

(2) The designee may not re-delegate such authority; and,

(3) The designee may not approve matters falling within the Board's authority as provided in subsection 6(a) herein.

Emergency Change Orders: In an emergency situation, the Superintendent may approve a change order, beyond his/her authority limits described in this policy, which is reasonably necessary for emergency purposes to:

1. Prevent or minimize an imminent threat to the health, welfare and safety of District students, employees, volunteers, contractors and visitors; or,

2. Protect, the work and structural integrity of a facility, equipment, material to be used in the work, human safety, or the environment at or near the work from substantial and immediate danger or injury; or,

3. Protect, where damage or injury has occurred, work equipment or materials to be used in the work, human safety, or the environment at or near the site of the work, from further or additional damage or injury or deterioration.

The Superintendent shall present a written finding of the existence of the emergency and the change order in a report to the Board at the next subsequent meeting following approval by the Superintendent.

G. Documentation Required:

1. A construction change order shall be in writing on a District-specified form and supported by a written justification, appropriate backup and a written cost proposal from the contractor/construction manager showing quantities and sizes of materials; unit cost (itemized costs and/or credits); labor; profit and overhead; a statement indicating what the proposed change in work will have on the contract/project time and/or cost; and a narrative justification of the change in relation to the original bid/educational specifications. Change order requests shall include any work that is added, omitted or deleted, along with attached costs or deductions where applicable. On Design-Bid-Build and Construction Management at Risk projects, the architect/engineer shall examine the requested change order to determine that the request is justified and reasonable and the information provided is accurate. Such documentation shall be signed by the architect/engineer and the contractor prior to submission the District. If additional information is requested by the Board/District for the purposes of evaluating the change order request, such information shall be timely submitted.

2. Where a construction change order is made at no additional cost, or where added or deleted work balance in cost, the change order shall be prepared to record the fact that such changes were made, including a description, explanation and monetary sums.

3. When considering cumulative limits as provided above, deductive change orders shall be tracked separately from and not count towards the cumulative limits.

4. For each construction contract, the Director of Facilities Services shall ensure a construction change order log and all related change order documentation are maintained in an auditable manner.

5. [OPTIONAL] Review by the Construction Oversight and Review Committee: All construction change orders, whether to be approved by the Superintendent, designee, or the School Board, shall be forwarded to the Construction Oversight and Review Committee (CORC) for its review and comment, as soon as practical, consistent with Board Policy.

6. [OPTIONAL] General Counsel Review: Prior to a construction change order being presented to the Superintendent and/or Board, the General Counsel shall review and sign-off on all construction change orders to ensure the change order is in conformance with this policy and otherwise legally sufficient.

H. Reporting of Change Orders: All COPRs and CCDs approved by the Superintendent, or designee, must be reported to the Board at the next regular meeting. A report detailing the construction change orders, activities and finances shall be provided to the Board and the Construction Oversight and Review Committee comparing the initial budget approved by the Board for the construction project and the actual cost to construct the project so that the Board and Committee are informed, in a summary format, of construction change orders affecting the project costs and schedules. The information shall be entered into the official minutes of the Board and Committee.

I. Implementation of Policy: The Superintendent or designee is responsible for ensuring that this School Board policy covering construction change orders is properly implemented.

J. Prohibitions: Construction change orders shall not be divided to evade the provisions of this policy. Further, a proposed change to a construction contract shall not be split so that the resulting change orders do not exceed the limits established by this policy.

K. Administrative Procedures or Directives: The Superintendent shall add any additional conditions necessary to protect the policies and interests of the School Board and promulgate any necessary administrative procedures or directives.

**OWNER'S REPRESENTATIVE AGREEMENT WITH OTOE COUNTY DISTRICT 66-0501, A/K/A
PALMYRA-BENNET PUBLIC SCHOOL DISTRICT FOR CONSULTING AND SUPERVISION
SERVICES WITH REGARD TO DESIGN AND CONSTRUCTION OF THE ADDITIONS AND
RENOVATIONS TO SCHOOL FACILITIES IN PALMYRA, NEBRASKA AND BENNET,
NEBRASKA**

This Agreement made by and between Otoe County School District 66-0501, a/k/a Palmyra-Bennet Public Schools a/k/a Palmyra District OR 1, 425 "F" Street, Palmyra, Nebraska 68418-0130, Telephone: (402) 780-5327, hereinafter referred to as "Owner" or "District", and [Insert Name of Owner's Representative], [Insert Address], [City], [State] 00000, Telephone: (000) 000-0000, hereinafter referred to as "Owner's Representative."

The Owner and the Owner's Representative in consideration of the mutual covenants herein set forth, agree as follows:

**SECTION I
BASIC SERVICES**

The Owner's Representative agrees to perform the following professional Owner's Representative services to the Owner in connection with the project(s) described herein:

1. General Terms.

A. The "Owner" or "District." The Owner or District referred to in this Agreement is the Palmyra-Bennet Public Schools a/k/a Palmyra District OR 1, 425 "F" Street, Palmyra, Nebraska 68418-0130.

B. The "Project Architect." The Project Architect referred to in this Agreement is the Clark Enersen Partners, 1010 Lincoln, Mall, Suite 200, Lincoln, Nebraska 68508.

C. The "Owner's Representative." The Owner's Representative referred to in this Agreement is [Insert Name of Owner's Representative], [Insert Address], [City], [State] 00000. The Owner's Representative shall provide professional construction consultant services, and shall have no responsibility for, or interest in profits from, the cost of the Project, subject to the following requirements:

(1) **Certification.** The Owner's Representative certifies that the personnel designated as the principal-in-charge or Project Manager shall at all times during the term of this agreement have a minimum of ten (10) years of experience in the construction industry as a project manager and site superintendent under a general contractor, construction management, and/or design build construction delivery systems.

(2) **Fiduciary Capacity.** The Owner's Representative will serve in a fiduciary capacity as the Owner's professional construction consultant and advocate in those phases of the Project to which this Agreement applies and will give consultation and advice to, and representation of, the Owner during performance of the Owner's Representative services hereunder. For purposes of this Agreement a "fiduciary" means a position of advocacy and trust on the part of the Owner's Representative for the benefit of the Owner.

(3) **Assigned and Dedicated Personnel.** The Owner's Representative has been selected based upon the firm's qualifications for the Project, which qualifications relate specifically to the unique and special skills and professional design and construction management experience of the personnel of the Owner's Representative assigned and dedicated to the Project for its term. A material consideration in the selection of the Owner's Representative, was the representation by the Owner's Representative to the Owner that the personnel identified during the selection process as assigned and dedicated to the Project will be available and assigned to the Project through the completion of all

Owner's Representative services required under this Agreement. The removal, replacement, resignation, incapacity or death of assigned and dedicated personnel of the Owner's Representative may be deemed by the Owner to constitute a material breach of this Agreement. The Owner's Representative's personnel assigned and dedicated to the Project shall not be removed or replaced without the Owner's consent, which consent will not be unreasonably withheld. The failure of the Owner's Representative to obtain such consent of the Owner to remove or replace assigned and dedicated personnel or the resignation of key personnel of the Owner's Representative may be deemed by the Owner to constitute a material breach of this Agreement. The Owner shall have the right to direct the Owner's Representative to remove or replace any personnel whose performance becomes unsatisfactory to the Owner.

(4) Ineligibility to Perform the Work: The Owner's Representative, or any individual, partnership or corporation with which the Owner's Representative is affiliated or has a pecuniary interest, may not submit a bid for or perform any of the Work of the Project as a contractor, subcontractor or supplier.

D. Project Team. The Project Team referred to in this Agreement is the Owner, the Project Architect, Owner's Representative and General Contractor.

E. Scope of the Work. The scope of the work that shall be the subject of the Owner's Representative services relate to the (1) construction of additions and renovations and demolition of a portion of the current building at the Palmyra Secondary School building located at 425 "F" Street, Palmyra, Nebraska, and (2) construction of additions and renovations to the Bennet Elementary building located at 50 Dogwood Street, Bennet, Nebraska (hereinafter referred to as the "Project" or "Projects").

F. Scope of Services. Owner's Representative's services generally include assistance and consultation to the Project Team with regard to (1) budget and design and specification development; (2) project schedule; (3) review and value analysis and consultation with regard to schematic design, design development and construction documents for the Work; (4) development of a critical path schedule of the work including bench-mark dates for the issuance of bids for a general contractor for each of the Projects; (5) recruitment of qualified general contractors to bid the Work; (6) identification of the low responsible bidder for the Project; (7) contract supervision of the execution of the Work by the general contractor for the Project, including on-site inspections, processing and review of pay applications, review of pay applications, review of requests for information (RFI's), change orders (CO's) and progress reports (PR's); (8) management and supervision of Project close-out procedures and punch-list items; and, (9) verification and completion of warranty work required of the various contractors.

G. Term of Contract. The term of this contract shall be for a period beginning the date of the execution of this agreement by the Owner, and continuing through the occurrence of one of the following events, whichever occurs first in time:

(1) Project Completion. The term of this Agreement shall end upon the issuance to the Owner by the Project Architect of the Certificate of Substantial Completion for the Project issued last in time. Any additional services to be provided by the Owner's Representative after issuance of the Certificate of Substantial Completion shall be determined by a separate contract or addendum to this Agreement. This Agreement shall not create a continuing contract for Owner's Representative services for future building projects beyond the terms of this paragraph.

(2) Termination per Agreement. The termination of this Agreement according to its terms.

H. Contract Documents. The Agreement shall include by incorporation the following documents:

- (1) Exhibit A identified in Section IV.
- (2) Certificate of Insurance.

(3) Any amendments or modifications of this Agreement made after execution of this Agreement.

(4) The Owner's Representative's proposal and interview presentation materials; provided, that in the event any provision of such proposal is in conflict with any provision of the other Contract Documents listed in this section, the provision in such other Contract Document shall control.

I. Method of Construction Delivery. The Owner intends the following procurement or delivery method for the Project shall be Design-Bid-Build (competitive bid of a general contractor to construct the entire Scope of the Work).

J. Ownership and Use of Architect's Drawings, Specifications and Other Documents. Drawings, specifications and other documents prepared by the Project Architect for this Project are the product of work made for hire. These are and shall remain the sole property of the Owner. The Owner retains proprietary rights that the Project Architect and its consultants may possess in all such work product including without limitations, all copyright and other intellectual property rights. Disputes between the Owner and the Project Architect with regard to such documents shall be resolved by and between such parties. The Project itself is the property of the Owner, and the Owner's representative may not use the drawings or specifications for any purpose not related to the Project without the Owner's prior written consent.

2. Construction Review Services.

A. General Provisions. The Owner's Representative's basic services for professional construction consultant services of the Project shall consist generally of the services described in the Scope of Services section above as those services are described more specifically in this Agreement or derived logically from the terms of this Agreement, and any other services normally performed by an Owner's Representative employed to administer a project of this nature. The scope of the Owner's Representative's basic services is to also include those Owner's Representative services not described that are reasonable, consistent with, and necessary to provide the Owner with a complete and functioning facility. All of the Owner's Representative's services and documents of service shall comply with the restrictions and requirements of all governmental and quasi-governmental authorities, utility companies, fire underwriters, public authority, and other agencies and organizations having jurisdiction over this Project in accordance with such codes, statutes, requirements, and regulations in effect at the time of the commencement of construction of the Project. For purposes of construction consultation services to be provided by the Owner's Representative, the following descriptions shall apply:

(1) **General Administration of Project.** The Owner's Representative shall provide general oversight of the construction phases of the Project on behalf of the Owner. The Owner's Representative shall consult with the Owner, attend Project meetings, communicate with members of the Project Team and issue progress reports. The Owner's Representative shall coordinate the services provided by the Owner's Representative's consultants with those services provided by the Owner and the Owner's consultants, the Project Architect and the General Contractor.

(2) **Master Project Schedule.** The Master Project Schedule is to be prepared by the General Contractor for the Project, and shall identify benchmark and milestone dates for decisions required by the Owner for the delivery of design services furnished by the Project Architect, and commencement of construction and substantial completion of the work. The Owner's Representative shall provide advice to the Owner regarding the Master Project Schedule and the scheduling and sequencing of the work and shall work with contractors to enforce the schedule for the Project to assure Substantial Completion by the date established by such schedule.

(3) **Value Engineering.** Value engineering shall consist of consultation with the Project Team with regard to the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics of the Project. The Owner's

Representative shall review the design documents based upon the educational program established for the Project by the Owner and Project Architect and provide consultation with regard to general value engineering for the Project, including an analysis of construction means, materials and systems including an analysis of the long-term cost effectiveness of alternative design choices for the systems described in the design documents.

(4) Estimates of the Cost of the Work. Estimates of the Cost of Work shall be prepared by the Project Architect, shall include the estimated cost of each of the sixteen (16) standard divisions of the Work, and may incorporate contingencies for price escalation and possible Owner change orders or construction change directives. The Owner's Representative shall review the cost estimates provided by the Project Architect based upon the design documents, provide consultation and advice to the Owner with regard to the validity and accuracy of such cost estimates for the materials, equipment, component systems and types of construction within the Construction Documents, and evaluate such cost estimate in consideration of the project budget.

(5) Compliance with Applicable Laws and Regulations. Compliance with applicable laws shall consist of consultation with the Project Team in complying with and satisfying applicable codes, ordinances, rules, and regulations of any governmental authority having jurisdiction over the construction of the Project. The Owner's Representative shall assist the Owner in connection with the Owner's responsibility for filing the documents that are required for the approval of governmental authorities having jurisdiction over the Project.

B. Construction Phase Services. During the construction phase the Owner's Representative shall perform the following services:

(1) Pre-Commencement of Construction Meetings. The Owner's Representative shall organize and schedule advance construction progress meetings with the Owner, Project Architect, and the Contractor for the Work or portion of the Work to (a) educate all parties regarding the schedule, budget, quality requirements, and sequencing of the Work; (b) establish and monitor mutual project goals, and generate understanding of the entire project; (c) establish effective issue resolution procedures; and, (d) facilitate information flow to and from the Project Architect using Requests for Information (RFI's) from the contractor and the routing of inquiries for interpretation of the contract documents.

(2) Coordination of the Work. The Owner's Representative shall establish procedures for coordination meetings, and schedule such meetings, among the Owner, Project Architect, Contractors and Owner's Representative with respect to all aspects of the Work. The Owner's Representative shall consult with the Project Architect and General Contractor with regard to the requirements of the plans and specifications and Master Project Schedule for the Project as may be necessary to properly coordinate the Work of the various Contractors and report to the Owner any issues or concerns regarding such coordination.

(3) Construction Meetings and Conference Calls. The Owner's Representative shall attend all weekly meetings and/or conference calls with the Project Architect and General Contractor and represent the interests of the Owner during these meetings, as well as document and report to the Owner any and all pending challenges to the Project's quality of construction or materials and on time and under budget completion that arise.

(4) Insurance and Bonding. The Owner's Representative shall verify the receipt by the Owner from each contractor the performance and payment bonds with a well rated surety company; and, shall verify that the contractor has all required insurance with the specified levels of coverage as set forth in the contract documents for each such contract, and assure that the Owner have a copy of the certificate of insurance from each Contractor on file for the term of the contract.

(5) General Conditions of Contractor Contracts. The Owner's Representative shall review the administration of the Contracts for Construction in conjunction with the Project Architect and General Contractor to confirm compliance by each contractor on the Project with the General Conditions

of the Contract for Construction adopted by the Owner for the Project, or such other general conditions of construction contract document specified by the Owner.

(6) Update of Master Project Schedule. The Owner's Representative shall review all updates to the Master Project Schedule by the General Contractor as the construction phase of the Project progresses. The Owner's Representative shall provide the current Master Project Schedule on a regular basis to the General Contractor for use in the sequencing and completion of the Work, or portions thereof.

(7) Reports to Owner. The Owner's Representative shall provide monthly written reports to the Owner on the progress of the entire Work. The Owner's Representative shall maintain a daily log of activities at the site, including: A record of weather; Contractors working on the site; number of workers; a list of visitors, their titles, and time and purpose of their visit; nature and location of Work accomplished; verbal instructions and interpretations given to Contractor; specific observations of the Work on that day; any occurrence or Work that might result in a claim for a change in Contract Sum or Contract Time; and, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Project Architect.

(8) Quality Control. The Owner's representative shall review the quality control of the construction of the Work by the General Contractor. The Owner's Representative shall consult with the General Contractor on the means and methods employed by the General Contractor to assure that the Work of each Contractor or subcontractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Owner's Representative shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work by the General Contractor in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Owner's Representative, in consultation with the Project Architect, may reject Work which does not conform to the requirements of the Contract Documents. To ensure quality construction of the Project according to the plans and specifications, the Owner's Representative shall:

(a) Owner's Representative's Project Management Personnel. Maintain exclusively for the Project an On-Site Owner's Representative approved by the Owner to observe the Work and progress of the Contractors. The On-Site Owner's Representative shall be on the Project site at all times work is being performed by a contractor on the Project, and shall:

(i) Compliance with the Contract Documents. Review all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents;

(ii) Safety of Construction Means and Methods. Review with the General Contractor in charge of the Work the safety programs developed by each of the Contractors or Subcontractors for purposes of coordinating the safety programs with those of the other Contractors or Subcontractors, and provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors, provided safety shall be the sole responsibility of the General Contractor, and the Owner's Representative shall have no responsibility therefor;

(iii) On-Site Inspection. Make continuous on-site inspections to check quality or quantity of the Work; and,

(iv) Defects and deficiencies. Keep the Owner informed of progress of the Work, and will guard the Owner against defects and deficiencies in the Work.

(b) Monitoring, Documenting and Reporting. The performance of each contractor or subcontractor, and the General Contractor as applicable, shall be monitored, documented and reported by the Owner's Representative and tracked against the construction meeting minutes and

the updated Master Project Schedule on a weekly basis, with one formal conference call report to the Owner each week of progress made and issues outstanding with regard to the Project. In documenting Contractor performance, the Owner's Representative shall:

(i) Contractor Performance Report. Produce and update a contractor performance report on a monthly basis. Such Contractor Performance Report to include:

(aa) Evaluation of Contractor Performance. An evaluation of the performance of each contractor prepared and submitted on a form provided by the Owner, appraising the Contractor's performance of the Work of the Contractor with regard to compliance with the plans and specifications, the Master Project Schedule, including meeting benchmark and critical path dates and conformance with sequencing of the work of other contractors, and other pertinent information.

(bb) Log of Correspondence and Communications. Upon request of the Owner, prepare a log providing a record of all written correspondence (including e-mail and text messages) and telephone conversations, and general accountability for other members of the Project Team based upon their representations in terms of schedule, man-power, availability of materials, sequencing of the work, and other issues; such documentation to be provided from the perspective of the Owner, with the imperative of preventing miscommunication and attendant claims.

(cc) Project Photographs and/or Video Documentation. Digital photographs and video imaging of the Work at appropriate stages, the preparation and archiving of such photographs/videos, and the inclusion of such photographs and videos into the weekly and monthly reports provided to the Owner.

(dd) Follow-up with Non-Performing Contractors. A report prepared in conjunction with the General Contractor, of follow-up, on a daily basis, with contractors or subcontractors not meeting responsibilities or deliverable requirements to increase the level of effort, and shall make weekly recommendations to the Owner and the General Contractor of corrective action needed and a time frame for such corrective action to occur. The Owner's Representative shall recommend a course of action to the Owner if construction contract requirements are not being fulfilled.

(ii) Evaluation of Project Architect Performance. An evaluation of the performance of the Project Architect prepared and submitted on a form provided by the Owner, appraising the performance of the work of the Project Architect with regard to the preparation and overall quality of the plans and specifications, the Master Project Schedule, and construction administration services to be provided by the Project Architect. Upon request of the Owner, the Owner's Representative shall prepare a log providing a record of all written correspondence (including e-mail and text messages, RFI's, ASI's, change orders, etc.) and telephone conversations, and general accountability for other members of the Project Team with regard to issues relating to the Project Architect's prepared plans and specifications for the project.

(9) Cost Control. The Owner's Representative shall develop and maintain an effective system of monitoring the Cost of the Work which is satisfactory to the Project Architect, General Contractor, and the Owner. To ensure the Cost of the Work is within the budget parameters established for the Project, the Owner's Representative shall:

(a) Monitor Estimate of Construction Cost. Monitor the approved estimate of construction cost, and shall chart actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

(b) Review of Cash Flow Reports. Review cash flow reports and forecasts for the Project and advise the Owner and the Architect as to variances between actual and budgeted or estimated costs.

(c) Cost and Payment Status Report. Produce and update a cost and payment status report on a monthly basis showing the original budget, revisions made and approved by the Owner to the original budget, and the current budget, and include therein contract amounts, invoices received, payments issued, and current and pending changes to the overall contract amounts, culminating with a variance from the budget for each contract. The report shall contain an executive summary of the Project's progress, over and under budget items, outstanding major issues, future risks to the Project's progress, and a detailed cost and payment status tracking log on a line item basis in the level or detail and granularity requested by the Owner. Cost and payment status reports shall be included as part of the monthly written report to be provided by the Owner's Representative. At the discretion of the Owner such reports may be required to be updated on a bi-monthly or weekly basis.

(d) Identification of Variances in Budget. Upon identification of variances between actual and budgeted or estimated costs, advise the Owner and Project Architect of the reasons that such projected costs are below or exceed budgets or estimates, and provide advice and counsel as to strategies and options to make changes in the plans and specifications or delivery of the contracts to bring the Project within the budget parameters.

(e) Accounting. Maintain a system of accounting consistent with generally accepted accounting principles on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, and other work requiring accounting records. The Owner's Representative shall preserve all accounting records for a period of four (4) years after final acceptance of the Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

(10) Processing and Approval of Shop Drawings, Product Data, Samples and Other Submittals. In collaboration with the Project Architect, the Owner's Representative shall review the procedures established by the Project Architect for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals by the Project Architect. The Owner's Representative may as deemed appropriate and necessary review Shop Drawings, Product Data, RFI's, ASI's, and samples and other submittals from the Contractors. The Owner's Representative shall coordinate submittals with information contained in related documents and transmit to the Project Architect those which have been approved by the Owner's Representative. The Owner's Representative shall ensure that the General contractor is:

(a) Creating, implementing, and maintaining a detailed submittal schedule, issuing it at each weekly meeting for review and comment by all team members. The General Contractor, each Subcontractor from which a submittal is required, the Project Architect, the structural, mechanical, or electrical engineer, and the Owner should all be entered into a resource table by the General Contractor. Using such resource table, the submittal schedule shall be resource-loaded, and the activity-within-resource report generated by the General Contractor, which will serve to simplify the accountability in each team meeting for the timely issuance and approval of submittals.

(b) Maintaining a log of all submittals for the Project, and shall have knowledge of where each submittal is among the possible team members, and when each such submittal is due. In the event the General Contractor, any subcontractor, the Project Architect, or any design consultant fails to perform in accordance with the submittal schedule, the log prepared hereunder will be used to resolve any impasse in the submittal process. The Owner's Representative's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors.

(11) Evaluation of Adequacy of Contractors' Personnel. The Owner's Representative shall observe and evaluate the adequacy of Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule for each Project. In consultation with the Owner and Project Architect, the Owner's Representative shall recommend to the Owner necessary corrective actions when requirements of a Contract or a Contractor's schedule are not being met at no cost to the Owner.

(12) Review and Processing Change Orders. The Owner's Representative shall develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Project Architect's responsibilities for design, the Owner's Representative shall do a detailed analysis of all change orders presented by the General Contractor, reviewing them for detail of information provided, compliance with industry standards, and accuracy of pricing. In addition, each Change Order's impact on the overall Project Budget, sequencing of the Work and schedule, as well as its impact on specific line items in business days will be validated. In addition, the Owner's Representative shall ensure that the General Contractor prepares and maintains a Change Order Log showing each change order by number and containing a description with the "As Submitted" and "As-Approved" amounts set forth therein, and the current status of the progress of the Work resulting from such change order. The Owner's Representative shall prepare and maintain a "Contingency Log" showing the cost of each change order allocated to the Owner's budgeted contingency.

(13) Applications for Progress and Final Payments. The Owner's Representative shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

(a) Review and Certification of Contractors' Applications for Payment. Based on the Owner's Representative's observations and evaluations of each Contractor's Application for Payment, the Owner's Representative shall review and certify to the Owner the amounts due the respective Contractors through the issuance of a Certification of Payment. Upon receipt of an application for payment, the Owner's Representative shall obtain and review the supporting information provided by the General Contractor or Contractor and verify its mathematical and contractual correctness, as well as verifying the status of the completion of the project in relation to these items. The Owner's Representative shall use an earned value concept that is based upon a cost-loaded schedule showing completion by percent in each of the numerous activities that are verified by on-site review, and shall also carefully scrutinize the job-cost-coded labor reports of the General Contractor for all self performed work for reasonableness and compliance with the plans and specifications and industry standards. For each Application for Payment, the Owner's Representative shall require the General Contractor or Contractor to provide the consent of the surety holding for the performance and payment bond with the Application for Payment. With regard to the issuance of Certificates of Payment, the following standards shall apply to the Owner's Representative:

(i) Issuance of Certificate of Payment - Progress Payments. The issuance of a Certificate for Payment shall be a representation that the Owner's Representative has (1) made continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(ii) Issuance of Final Certificate of Payment - Substantial Completion. The Owner's Representative's certification of final payment upon the Contractor achieving substantial completion of the Work shall constitute a representation to the Owner, based on the Owner's Representative's determinations at the site and on the data comprising the Contractors' Applications for Payment, that, to the best of the Owner's Representative's knowledge, information and belief, the Work has been completed in accordance with the Contract Documents. The foregoing representations are based on an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, the results of subsequent tests and inspections, the correction of minor deviations from the Contract Documents, and to specific qualifications expressed by the Owner's Representative. The issuance of a Final Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

(14) Review the Safety Programs. The Owner's Representative shall review the safety programs developed by the General Contractor for each of the Contractors or Subcontractors for

purposes of coordinating the safety programs with those of the other Contractors checking for coordination of safety programs, compliance with job site security requirements in the construction documents, receipt of and review of certificates of insurance, and delivery, storage and protection of Owner purchased materials; provided that overall Project safety shall be the sole responsibility of the General Contractor, and the Owner's Representative shall have no responsibility therefor.

(15) Monitoring of Third Party Testing and Inspections. The Owner's Representative shall confirm with the Project Architect and General Contractor that all third-party testing and inspections required by law or regulation or the contract documents has been performed according to the process and procedures required by governmental authorities or the plans and specifications, and provide assistance to the Project Team with the retention of such third-party testing and inspection providers and confirming the number of tests or inspections required.

C. Project Completion. As part of determining Project completion and issuing Certificates of Substantial Completion, the Owner's Representative shall:

(1) Certificate of Occupancy. Assist the Project Team in applying for and receiving a Certificate of Occupancy.

(2) Testing and Start-Up of Systems. With the Architect and the Owner's maintenance personnel, the Owner's Representative shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment, and observe training sessions of District personnel on all new mechanical/electrical or other equipment ensuring proper documentation of the training and videography of the training for future use, and that the Owner's operations and maintenance manuals for the facility are properly distributed and in compliance with industry standards.

(3) Check Conformance of the Work. When the Owner's Representative has been advised by the General Contractor that the Work or a designated portion thereof is substantially complete, meet with the General Contractor and the Contractor or Subcontractor to check the conformance of the work with the plans and specifications, and shall then prepare for the Project Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Owner's Representative shall assist the Project Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

(4) Determine the Date or Dates of Substantial Completion and Move-In. Work with the Project Architect to supervise final inspections and acceptance of the Project by the Owner, and determine the date or dates of Substantial Completion and the date of final completion for each Contractor. In conjunction with the Project Architect verify for the Owner the issuance of Certificates of Substantial Completion; and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by each Contractor; and issue a final Certificate for Payment for each contract based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Schedule staff move-in, and start up of normal operations in the building, coordinating the transition from the General Contractor possession of the building to the Owner's occupancy and beneficial use of the building.

(5) Punch Lists and Separate Warranty Work Lists. Work with the Owner through their respective staff personnel, to develop a final punch list, producing a schedule with the General contractor for completion of each of the punch list items, work with the General Contractor and Project Architect to develop a weekly program to validate the implementation of the punch list schedule, estimate the remaining cost to complete the punch list items for withholding that amount from the General Contractor or Contractor's Application for Payment over and above any required retainage, and facilitate the sign-off on all of the punch list items by the Owner and the Project Architect.

(6) Warranties, Guarantees, Operating and Maintenance Instruction Books. Secure written warranties, guarantees, operating and maintenance instruction books, keys, diagrams, charts,

record drawings, and technical specifications required of the construction contractor and ensure delivery and explanation of such documents to the Owner.

(7) Balances on Contracts and Retainage. When the Work is found to be substantially complete, the Owner's Representative shall inform the Owner about the balance of the Contract Sum remaining to be paid to the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

(8) Bonding and Consent of Sureties. The Owner's Representative shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; (3) any other documentation required of the Contractor under the Contract Documents; and, (4) a final Notice of Substantial Completion.

(9) Report of Final Cost and Other Final Reports or Logs. Provide a formal report for the Project, to include the final cost and payment status report, a final comparison of actual verses targeted cost for each division of the Work and dates for construction, a final master change log, a final contingency allocation log, final proposal request log, final field clarification log, final Architect's supplemental information log, final submittal log, a sample monthly application for payment request, a post-occupancy evaluation report, and any other such information that may be helpful to the Owner's personnel in evaluating the success of the construction process on the Project.

(10) As-Built Drawings. Promptly after the Owner receives the Notice of Substantial Completion for the entire Project from the Project Architect and Owner's Representative, the Owner's Representative will assist the Project Architect in preparing for the Owner, at no expense to the Owner, reproducible As-built Drawings in a form approved by the Owner, and shall include all revisions made in the course of construction. The Owner's Representative may require a Contractor to maintain and update throughout the construction period a set of construction plans and specifications noting as-built conditions; the Owner's Representative shall rely on the accuracy of these documents in the preparation of As-built drawings for submittal to the Owner. The Owner's Representative shall on behalf of the Owner work with contractors and suppliers with regard to the preparation of operating and maintenance manuals, extensive assistance in utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.

(11) First Year Review of the Facility Operations and Performance. Upon request of the Owner, and prior to the expiration of one (1) year from the date of Substantial Completion, the Owner's Representative shall, without additional compensation, conduct a meeting with the Owner and Project Architect to review the facility operations and performance.

SECTION II OWNER'S RESPONSIBILITIES

1. Provide information as to its requirements for the Project.
2. Assist Owner's Representative by placing at its disposal all available information pertinent to the site of the Project including previous reports, plans, and other data relative to the design and construction of the Project.
3. Furnish Owner's Representative with all civil engineering, materials testing and inspections, property, boundary, right-of-way, topographic and utility surveys, core borings, probings and subsurface explorations, laboratory tests and inspections of samples and materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
4. Guarantee access to and make provisions for Owner's Representative to enter on the building site as required in the performance of services under this Agreement, including access to conditioned office

space at the Project site with adequate power, access to internet, access to high-speed copier/printer and other reasonably requested office furnishings. The Owner's Representative shall provide its personnel with cell phones and all other necessary computer hardware at its expense.

5. Provide such legal, accounting and insurance counseling services as may be required for the performance of the work of the Project.

6. Give prompt notice to Owner's Representative whenever Owner observes or otherwise becomes aware of any defect in the Project.

7. The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Owner's Representative's responsibilities under this Agreement. The Owner's Representative shall notify the Owner if any such independent action will interfere with the Owner's Representative's ability to perform the Owner's Representative's responsibilities under this agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and have the same rights as the Contractor for the Project.

SECTION III PAYMENTS TO OWNER'S REPRESENTATIVE

1. Payments for Services and Expenses

A. **Basic Services.** For the Owner's Representative's Basic Services described under Section I, the Owner shall compensate the Owner's Representative as follows:

(1) Owner's Representative Compensation Elements. The Owner's Representative shall be compensated for basic services for Construction Phase Services pursuant to the terms negotiated by the Owner and the Owner's representative. The Owner's Representative's compensation shall be based upon a negotiated not-to-exceed maximum fee with actual compensation paid based upon actual hours worked by the Owner's Representative personnel approved for the Project by the Owner hereinafter referred to as "Maximum Personnel Expense" or "MPE", which shall represent the total amount to be paid to the Owner's Representative for services under this Agreement. The components to determine the Maximum Personnel Expense (MPE) for Owner's Representative services for the Project are as follows:

(a) Direct Personnel Expense. "Direct Personnel Expense" is defined as the direct salaries of the Owner's Representative's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. The hourly Direct Personnel Expense may also include an identified amount added to cover the Owner's Representative's overhead which shall be based upon a multiplier applied to the hourly direct personnel costs.

(b) Direct Personnel Expense Hourly Rate. "Direct Personnel Expense Hourly Rates" is the cost of the Direct Personnel Expense of the Owner's Representative expressed in an hourly contract man-hour rate for the Owner's Representative professional staff services and billed support staff identified on the negotiated Efforts Schedule. Direct Personnel Expense hourly rates shall be used for pricing the level of effort for the Owner's Representative services to be provided for the Project. The rates for each classification of position or discipline proposed by the Owner's Representative as necessary to perform the services of Owner's Representative according to the Construction Documents for the Project shall include the actual Direct Personnel Expense for the personnel proposed to be assigned to the Project. The Owner's Representative shall provide a matrix of the classifications of positions and discipline proposed for the Project and the skills, experience and education necessary to same and the Direct Personnel Expense hourly rate for each such classification of employee or position so described: Project manager = [Insert Dollar Amount] Dollars (\$__.00) per hour.

(c) Preparation of Proposed Efforts Schedule. The Owner's Representative shall prepare an Efforts Schedule for the Project which shall state:

(i) Identity and Number of Personnel. The identity and number of each classification of positions and disciplines of the Owner's Representative's personnel proposed for the Project;

(ii) Hours Per Month. The anticipated number of hours per month for each of the classification of positions and disciplines of the Owner's Representative's personnel proposed for the Project;

(iii) Hourly Rates. The hourly Direct Personnel Expense rates to be charged to the Owner for each of the classification of positions and disciplines of the Owner's Representative's personnel proposed for the Project;

(iv) Maximum Cost for Each Position. The proposed maximum cost for each position proposed by the Owner's Representative for the Project calculated on the following formula: Total Anticipated Hours x Direct Personnel Expense Hourly Rate = Total Anticipated Cost.

(2) Final Efforts Schedule and Maximum Personnel Expense. Upon completion of the Efforts Schedule, the Owner's Representative will meet with the Owner and review the Proposed Efforts Schedule and Direct Personnel Expense Hourly Rates, and negotiate and agree upon the positions and personnel in each classification to be assigned to the project and the hours and hourly rate for each such position to be included in the Final Efforts Schedule in light of the overall project budget and scope. The Owner and Owner's Representative shall then execute the Final Efforts Schedule and Maximum Personnel Expense which shall be attached to this Agreement as EXHIBIT "A" - FINAL EFFORTS SCHEDULE AND MAXIMUM PERSONNEL EXPENSE, and is incorporated herein by this reference. The MPE Addendum attached to this Agreement shall establish the Maximum Personnel Expense (MPE) to be paid by the Owner for the Pre-Construction Phase and Construction Phase services of the Owner's Representative's personnel for the Project. Work shall not commence and no services shall be performed by the Owner's Representative until the Addendum with the Final Efforts Schedule and Direct Personnel Expense hourly rates has been approved by the Owner and Owner's Representative, and fully executed by all necessary parties.

(3) Calculation of Owner's Representative's Actual Compensation for the Project. Upon establishment of the MPE for the Project, the Owner's Representative's compensation for basic services shall be calculated by multiplying the stated Direct Personnel Expense Hourly Rates set forth in the Final Efforts Schedule times the actual hours expended for each such personnel not to exceed the MPE for such Project. Savings derived from an under-run to the MPE shall inure to the Owner.

(4) Adjustment of Final Efforts Schedule for Changes in the Work and Schedule. Adjustments to the schedule for the Project on account of changes in the Work subsequent to the execution of the Agreement and MPE Addendum may be the basis for an adjustment of the Final Efforts Schedule and attendant Maximum Personnel Expense for such Project.

B. Additional Services. Owner will pay for additional services performed hereunder on the basis of Owner's Representative's time calculated based upon the Direct Personnel Expense Hourly Rates for such personnel set forth above and in Exhibit "A" attached hereto, which is incorporated herein by this reference, plus reimbursable expenses as hereinafter defined.

C. Reimbursable Expenses.

(1) Project Budget of Expenses to Be Reimbursed: The Owner's Representative shall prepare for the Project an itemized list of anticipated costs to be reimbursed to the Owner's

Representative for such Project, and a cost estimate for each item listed. The Owner's Representative shall prepare an invoice for all reimbursable expenses and present same to the Owner for approval prior to incurring any cost for such expense. Reimbursable expenses shall be paid to the Owner's Representative only for those expenses for which reimbursement is authorized in this Agreement.

(2) Payment for Reimbursable Expenses. Reimbursable Expenses shall be paid to the Owner's Representative by the Owner at a multiple of ONE (1.0) times the actual expenses incurred by the Owner's Representative. Records of all reimbursable expenses for services performed on the basis of flat rates shall be kept on a generally recognized accounting basis and shall be available for review by the Owner or its authorized representative during business hours at the Owner's Representative's office. Proof of payment of any reimbursable expense item shall be provided to the Owner with each claim for reimbursement by the Owner's Representative.

(3) Authorized Reimbursable Expenses. "Reimbursable Expenses" are limited to the following:

(a) Reproduction Costs. Reproduction costs, including costs of reproduction of Drawings and Specifications distributed to prospective Contractors, costs of telegrams, facsimile transmissions and long distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

(b) Miscellaneous Costs. Miscellaneous costs including:

(i) Insurance. That portion directly attributable to this Contract of premiums for insurance and bonds purchased specifically for the Project. (If charges for self insurance are to be included, specify the basis of reimbursement.)

(ii) Travel and Subsistence. Cost of the Owner Representative's personnel for travel and subsistence, provided such costs are approved in advance by the Owner.

(4) Non-Authorized Expenses. The Reimbursable Expenses shall not include and the Owner shall in no event pay for any of the following costs:

(a) Salaries and other compensation of the Owner's Representative's personnel stationed at the Owner's Representative's principal office or offices other than the site office.

(b) Expenses of the Contractor's principal office and offices other than the site office.

(c) Data processing costs related to the Work.

(d) Overhead and general expenses included in the Direct Personnel Expense Hourly Rates paid for Basic Services under Section III, A. 1 above, including but not limited to the cost for the project manager, superintendents and all other on-site and off-site personnel, and expenses attendant thereto as part of the Owner's Representative's services on the Project.

(e) Costs paid or incurred by the Owner's Representative for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions.

(f) Costs due to the negligence or failure to fulfill a specific responsibility of the Owner's Representative or anyone directly or indirectly employed by the Owner's Representative or for whose acts the Owner's Representative may be liable.

(g) Any cost not specifically and expressly described above.

2. **Times of Payment.** Payments for services shall be made within forty-five (45) days of billing of Owner's Representative.

3. **Period of Repose.** If the services covered by this Agreement have not been completed within twenty-four (24) months of the date hereof, through no fault of the Owner's Representative, the amounts of compensation, rates and multiples set forth herein may be adjusted by mutual agreement.

SECTION IV TERMINATION, SUSPENSION OR ABANDONMENT

1. **Termination.** This Agreement may be terminated as follows:

A. **Termination for Cause.** This Agreement may be terminated by either party in the event of substantial failure to perform in accordance with the terms hereof through no fault of the party initiating the termination. The non-performing party shall be given a written notice specifying the basis for the termination for cause and shall be given a reasonable amount of time, in no event less than five (5) business days to cure said non-performance as a condition precedent to termination. Just cause for termination shall include:

(1) **Failure of Performance.** The Owner's Representative fails to perform or provide the services or personnel to perform such services as outlined in this Agreement, or fails to submit work in accordance with industry standards.

(2) **Failure of Payment.** The Owner fails to make timely payment to the Owner's Representative for services rendered under this Agreement.

(3) **Suspension or Abandonment of the Project.** The Owner suspends or abandons the Project for the convenience of the Owner for more than ninety (90) consecutive calendar days.

B. **Termination Without Cause.** This Agreement may be terminated by either party without cause upon thirty (30) days written notice.

C. **Compensation Upon Termination.** In the event of such termination, Owner's Representative shall be paid in accordance with the provisions of Section III.

D. **Notices.** All notices referenced in this paragraph shall be sent to the address of the Owner or the Owner's Representative set forth on page 1 of this agreement.

2. **Suspension of the Project.** In the event the Owner suspends the Project for the convenience of the Owner, this agreement may also be suspended for a like period of time. In the event of a suspension greater than one hundred eighty (180) calendars days, the Direct Personnel Expense hourly rates provided in Section IV of this Agreement shall be subject to equitable adjustment as agreed to by the parties hereto.

SECTION V GENERAL CONSIDERATIONS

1. **Indemnification.** The Owner's Representative agrees to indemnify and hold the Owner harmless from any damage, liability or cost, (including liability to third parties, reasonable attorney's fees and cost of defense) to the extent caused by the Owner's Representative's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her consultants.

2. **Insurance.**

A. Owner's Representative Insurance. Owner's Representative shall secure and maintain such insurance as will protect Owner, including the following:

(1) Errors and Omissions Liability Insurance. The Owner's Representative agrees to maintain errors and omissions liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate with a deductible not to exceed \$100,000 for a period from the date of this Agreement until thirty-six (36) months after Final Completion of the entire Project, if commercially available.

(2) Worker's Compensation Insurance and Employers Liability Insurance. Owner's Representative shall purchase and maintain throughout the duration of this Agreement, Worker's Compensation Insurance and Employers Liability Insurance to cover all employees engaged in services under the Agreement with a Company and in form satisfactory to Owner in the maximum statutory liability amount to cover all employees engaged in work on the Project, naming Owner as additional insured.

(3) General Public Liability Insurance. Owner's Representative shall purchase and maintain throughout the duration of this Agreement, General Public Liability insurance with a company and in form satisfactory to Owner in the amount of \$1,000,000 for each occurrence, naming Owner as additional insured. Said policies shall include contractual liability coverage and comprehensive automobile liability covering all owned, hired and non-owned vehicles.

(4) Thirty (30) Days Prior Written Notice of Cancellation or Non-renewal. Each of the insurance policies described in Paragraphs 1, 2 and 3 shall provide that insurance may not be cancelled or non-renewed without thirty (30) days prior written notice to Owner.

(5) Verification of Insurance. Owner's Representative shall provide Owner with verification and evidence of the above insurance prior to execution of this Agreement. At Owner's request, Owner's Representative shall provide Owner with full copies of the insurance policies required under Paragraphs 1, 2 and 3.

B. Insurance to Protect the Project. The Owner shall secure and maintain such insurance as will protect the Project, including the following:

(1) Property Insurance. The Owner shall purchase and maintain property insurance, including the value of the work of the Project for the full cost of replacement; such insurance to include as named insureds the Owner, Owner's Representative, and General Contractor and shall insure against loss from the perils normally insured against under a Builder's "All Risk" insurance policy for physical loss or damage including theft, vandalism, malicious mischief, transit collapse, damage resulting from testing, and damage resulting from defective design, workmanship or material. If the Owner determines to occupy or use a portion or portions of the Project prior to Substantial completion thereof, such occupancy shall not commence prior to the time mutually agreed to by the Owner and the Owner's Representative and to which the insurance company or companies providing property insurance have consented by endorsement to the policy or policies.

(2) Boiler Insurance. The Owner shall purchase and maintain boiler and machinery insurance as may be required or necessary. This insurance shall include the interests of the Owner, the Owner's Representative and the General Contractor.

3. Hazardous Materials or Toxic Substances. Unless otherwise provided in this Agreement, the Owner's Representative and Owner's Representative's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

4. Claims for Consequential Damages. The Owner hereby expressly reserves the right to claim consequential damages against the Owner's Representative for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement, provided that the total amount

paid under any such claim by the Owner's Representative shall be limited to the Owner's Representative's policy limits for professional liability insurance as prescribed in this Agreement. For purposes of this paragraph, the term "consequential damages" shall mean those damages incurred by the Owner as a consequence of the negligence of the Owner's Representative. Such damages incurred by the Owner include injuries to persons or damage to property or economic loss. A cause of action alleging professional negligence or breach of contract, the burden of proof is upon the Owner to demonstrate the generally recognized Owner's Representative standard of care, that there was a deviation from that standard by the Owner's Representative, and that the deviation was a proximate cause of the Owner's alleged damages. The Owner must prove each essential element of the claim asserted by a preponderance of the evidence.

5. **Commencement of Claims and Causes of Action.** The Owner and Owner's Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law.

6. **No Damages for Delay.** The Owner's Representative agrees to make no claim for damages for delay in the performance of this Agreement occasioned by the unavailability of the Project Site, or by an act or omission to act of the Owner or any of its representatives, or because of any injunctions which may be brought against the Owner or its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete the performance of the Owner's Representative's services under this Agreement.

7. **Nondiscrimination.** Owner's Representative agrees that Owner's Representative will comply with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and all requirements imposed by or pursuant to the regulation of the Department of Education (34 C.F.R. Part 100) issued pursuant to the title, to the end that, in accordance with Title VI of the Act and the regulations, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Owner receives federal financial assistance from the Department; and hereby gives assurance that Owner's Representative will immediately take any measure necessary to effectuate this Agreement. Owner's Representative further agrees that Owner's Representative will comply with all applicable requirements of state and local laws, ordinances, and regulations regarding nondiscrimination in employment.

8. **Exclusion of Persons with Criminal Records.** Owner's Representative shall not assign any individual or agent to be present at the Project location with a criminal record of a serious nature as defined by the Owner's policy, regulations, practices or directives, including but not limited to any of the following: (a) a felony involving murder, manslaughter, personal injury to another, assault, battery, other use of a weapon of any kind or manner; (b) rape, including statutory rape, or any other sexual assault; (c) sexual conduct with a minor of any kind; (d) abuse of a minor or child of any kind; (e) endangerment of a child or debauching a minor; (f) public indecency; (g) prostitution, pandering, or keeping a place of prostitution; (h) assault or battery; (i) kidnapping, false imprisonment or abduction; (j) child pornography; or (k) any offense in which a minor was a victim or a witness. The Owner's Representative shall authorize and give consent, and agrees to cooperate in obtaining any additional authorization or consent necessary to assure compliance with this requirement.

9. **Ethics.** Owner's Representative shall keep informed of and comply with all ethical standards governing Owner's Representative's profession.

10. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party, including the death or incapacity of Brian Sweeney, the Owner's Representative. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to

minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

11. **Independent Contractor.** The Owner's Representative shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The Owner's Representative shall assume sole responsibility for any debts or liabilities that may be incurred by Owner's Representative in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Owner's Representative or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner beyond the scope of services set forth in this Agreement. Owner's Representative agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to the Owner's employees will extend to the benefit of Owner's Representative or the Owner's Representative's agents and/or employees as a result of this Contract.

12. **Notice.** All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

13. **Fortius Contra Proferentem.** The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Agreement. Therefore, doubtful and ambiguous provisions, if any, contained in this Agreement, shall not be construed against the party who physically prepared this Agreement. The rule commonly referred to as Fortius Contra Proferentem shall not be applied to this Agreement or any interpretation thereof.

14. **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

15. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

16. **Warranty.** Owner's Representative warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Contract; it will endeavor to provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and it is responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services furnished by Owner's Representative under this Contract.

17. **Successors and Assigns.** Each of the parties to this Agreement binds its successors and assigns with respect to all covenants of the Agreement. This contract may not be assigned without the specific written consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall be construed as giving any rights or benefits hereunder to anyone other than parties to this Agreement.

This Agreement entered into as of the day and year affixed to the signature of each party.

OWNER - Otoe County School District 66-0501, a/k/a Palmyra-Bennet Public School District, Owner

Dated this __ day of _____, 2016

(Signature)

OWNER'S REPRESENTATIVE, [Insert Name of Owner's Representative], Owner's Representative

Dated this __ day of _____, 2016

(Signature)
