

# School District of Manawa

## Special Board of Education Meeting Agenda

November 29, 2018



1. Call to Order – President Johnson – **5:30 p.m.** – MES Boardroom, 800 Beech Street
2. Pledge of Allegiance
3. Roll Call
4. Verify Publication of Meeting
5. New Business:
  - a. School Perceptions Survey Review
  - b. Consider Approval of Contract with Hoffman Planning, Design, and Construction, Inc. as Presented
  - c. Consider Approval of Request for Leave of Absence as Presented
6. Next Meeting Dates:
  - a. Dec. 4, 2018 – Finance Committee Meeting – 6:00 p.m. – MES Board Room
  - b. Dec. 5, 2018 – Curriculum Committee – 4:00 p.m. – MES Board Room
  - c. Dec. 5, 2018 - Policy & HR Committee Meeting – 5:00 p.m. – MES Board Room
  - d. Dec. 5, 2018 – Buildings & Grounds Committee Meeting – 6:30 p.m. – MES Board Room
  - e. Dec. 17, 2018 - Regular BOE Mtg – 6:30 p.m. Retiree Reception; 7:00 p.m. Regular Mtg-Brd Rm
  - f. Jan. 16, 2019 – Spec BOE Mtg – 5:30 p.m. – Hoffman Update - MES Board Room
  - g. Jan. 21, 2019 – Regular Mtg – 6:30 p.m. Rapid Improvement Process Study; 7:00 p.m. Regular Mtg
7. Adjourn

PLEASE NOTE: Any person with a qualifying disability under the Americans with Disabilities Act that requires the meeting or material to be in accessible format, please contact the District Administrator to request reasonable accommodation. The meeting room is wheelchair accessible.

# ConsensusDocs 840 and 830

## AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL/CONSTRUCTION MANAGER AS AGENT (CM Provides General Condition Items)



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### ARTICLE 1 AGREEMENT

This Agreement is made this 29th day of November in the year 2018, by and between the



**OWNER:** School District of Manawa, 800 Beech Street, Manawa, WI 54949 (“Owner”)

and the

**DESIGN PROFESSIONAL AND CONSTRUCTION MANAGER AS AGENT:** Hoffman Planning, Design & Construction, Inc., 122 E College Avenue, Suite 1G, Appleton, WI 54911 (“Hoffman”)

for design and construction management Services in connection with the following

**PROJECT**

Design and construction management services for school renovations and/or additions approved by referendum.

The following Exhibits are made part of this Agreement:

Exhibit A: Hoffman’s Hourly Rate

Exhibit B: Hoffman’s Certificate of Insurance

Notice to the above Parties shall be given at the above addresses.

**ARTICLE 2 GENERAL PROVISIONS**

2.1 **CONTRACT DOCUMENTS** The Contract Documents consist of this Agreement, Owner’s Program, Owner Provided Information, Schematic Design Documents (upon Owner’s approval), Design Development Documents (upon Owner’s approval), Construction Documents (upon Owner’s approval) and Addenda or Modifications mutually agreed to and issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. This Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the Contract Documents, other than an Addenda or Modification, is inconsistent with this Agreement, this Agreement shall govern.

2.2 **PARTIES’ RELATIONSHIP** Hoffman shall furnish or provide the architectural and engineering services (“Services”) for the Project by Hoffman’s licensed employees or procure such services from licensed, independent design professional/s retained by Hoffman. The person(s) or entity(ies) providing architectural and engineering services shall be referred to as “Design-Professional.” The Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, location, and complexity, during the time in which the Services are provided (“Standard of Care”). Hoffman shall be Owner’s agent to the extent provided in this Agreement and shall perform its Services in an economical and timely manner. Owner shall retain Trade Contractors, consultants not retained by Hoffman, testing and inspecting agencies to perform all Work and other services needed for the Project.

2.3 **DEFINITIONS**

2.3.1 “Agreement” means this Agreement Between Owner and Design Professional/Construction Manager As Agent Agreement (CM Provides General Condition Items), as modified, and Exhibits and Attachments made part of this Agreement upon its execution.

2.3.2 The term “Cost of the Work” shall mean the Owner’s final, actual cost to construct the Project including but not limited to trade contracts, materials, equipment, general conditions costs, contingencies and allowances excluding the Owner’s allowances for Moving, STEAM, FF&E and Abatement.

2.3.3 The term “Cost of Construction” shall mean the Cost of the Work plus the Construction Manager’s fee.

2.3.4 “Defective Work” is any portion of the Work that is not in conformance with the Contract Documents.

2.3.5 “General Conditions Items” are for the field services, work performed, or facilities provided, by Hoffman during Construction Phase Services. The General Conditions Items shall not include any items or



costs included within Hoffman's Fee, but they are inclusive of cost items identified as Reimbursable Cost items as defined in ARTICLE 8. General Conditions Items may include, but are not necessarily limited to, the following: preparation for ceremonies; signs; watchmen; photographs; field office(s) and related costs thereof such as equipment, furnishings and office supplies; temporary toilets; communication equipment; temporary utility services; cleanup; refuse removal services; trash chutes; surveys; testing; and temporary roads and parking.

2.3.6 A "Hazardous Material" is any substance or material identified now or in the future as toxic or hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

2.3.7 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which Hoffman must comply that are enacted as of the Agreement date.

2.3.8 "Others" means other contractors, Suppliers, and persons at the Worksite who are not employed by the Trade Contractor or Subcontractors. Others does not include Hoffman.

2.3.9 "Services" is Hoffman's Scope of Services under this Agreement and includes Design Services, Construction Management Services and the designated General Conditions Items.

2.3.10 A "Subcontractor" is a person or entity retained by a Trade Contractor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work.

2.3.11 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with Construction Documents so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption.

2.3.12 A "Supplier" is a person or entity retained by the Trade Contractor or Hoffman to provide material or equipment for the Work.

2.3.13 "Trade Contractor" means a party or entity retained by Owner as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work.

2.3.14 "Work" means Construction and services provided by the Trade Contractors necessary or incidental to the fulfillment of the Trade Contractors' obligations for the Project in accordance with and reasonably inferable from Construction Documents. The Work may refer to the whole Project or only a part of the Project.

2.3.15 "Worksite" means the geographical area at the location of the Project as identified in ARTICLE 1 where the Work is to be performed.

### **ARTICLE 3 HOFFMAN'S SERVICES**

Hoffman shall provide Services in an expeditious manner. Estimates including, but not limited to, schedules and completion dates, budgets, the cost of the Project, life cycle analysis, energy usage and energy cost savings will be developed consistent with the Standard of Care but are not warranted or guaranteed by Hoffman.

#### **3.1 DESIGN PHASE SERVICES**

3.1.1 OWNER'S PROGRAM The Owner's Program is a description of Owner's objectives developed under separate agreement between Owner and Hoffman dated April 17, 2017. The Owner's program includes a preliminary Project Schedule and preliminary estimate of the cost of the Project (the "Budgetary Estimate") utilizing area, volume, or similar conceptual estimating techniques.



3.1.2 SCHEMATIC DESIGN DOCUMENTS Hoffman shall prepare, for Owner's approval, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Hoffman shall identify all material changes and deviations from Hoffman's Preliminary Evaluation, preliminary Project Schedule, and Budgetary Estimate.

3.1.3 PLANNING PERMITS AND APPROVALS If regulatory approvals or permits are required prior to or in conjunction with obtaining a building permit for the Project, Design Builder shall obtain and the Owner shall pay for all costs incurred by Design Builder in obtaining such permits or approvals.

3.1.4 DESIGN DEVELOPMENT Hoffman shall prepare, for Owner's approval, Design Development Documents which shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, architectural, mechanical and electrical systems. Hoffman shall identify all material changes and deviations from the Schematic Design Documents and the previously approved Budgetary Estimate and Project Schedule.

3.1.5 CONSTRUCTION DOCUMENTS Hoffman shall prepare, for Owner's approval, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws and regulations enacted at the time of their preparation at the location of the Project. Hoffman shall identify all material changes and deviations for Owner's approval from the Design Development Documents and the previously approved Budgetary Estimate and Project Schedule. Construction shall be in accordance with these approved Construction Documents.

3.1.6 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance by Owner of notice to proceed with construction. Hoffman shall furnish interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them. Hoffman shall assist in the evaluation and processing of requests for changes in the Work.

3.1.6.1 SUBMITTALS Hoffman shall develop Trade Contractor's interest in the Project, assist Owner with the solicitation of Trade Contractor's submittals (adhering to the requirements of Owner's Board Policy 6320 requiring at least two (2) bids in each case), review the Trade Contractors' submittals and make approvals of or recommendations about such submittals (adhering to the selection criteria outlined in Owner's Board Policy 6320). Hoffman shall check the Trade Contractors' submittals for conformance with the design and scope of the Project and for compliance with the Construction Documents. Hoffman shall be entitled to rely on the accuracy and completeness of any professional certifications required by the Construction Documents of Trade Contractors concerning the performance criteria of systems, equipment or materials, including all calculations relating thereto and any governing performance requirements. Hoffman's review of submittals shall not extend to the Trade Contractors' means, methods, techniques, sequences or procedures, unless such means, methods, techniques, sequences or procedures have been specified by Hoffman.

3.1.6.2 Hoffman shall be available during the Trade Contractor's one-year correction period to assist Owner in evaluating the need for any corrective measures.

3.1.7 Hoffman shall conform the Drawings and Specifications to all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements applicable to the Project (collectively "Governmental Requirements") existing at the time of submission for state approval. Hoffman shall conform the Construction Documents to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"). Owner shall be solely responsible for compliance with the remaining provisions of the Americans with Disabilities Act.





3.1.8 In order to minimize construction problems and change orders, Architect's standard practice requires the completion of detailed working drawings prior to soliciting bids/proposals and issuance of construction contracts. However, Owner may choose to accelerate the completion of the Work on a fast-track basis pursuant to Section 4.1.25 hereof so that it is completed in a shorter time period than would normally be required. Owner understands that if construction or furnishing contracts are let prior to the completion of final Construction Documents, there may be increases in costs and change orders caused by the difficulty of coordinating Construction Documents and the inability to make various decisions until after early bids are received and some construction undertaken.

3.1.9 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive and retain ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information ("Documents") prepared, provided or procured by Hoffman or by consultants retained by Hoffman and/or Owner and distributed to Owner for this Project, upon the making of final payment to Hoffman or in the event of termination under ARTICLE 11, upon payment for all sums due to Hoffman.

3.1.9.1 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project provided payment has been made pursuant to § 3.1.7.

3.1.9.2 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. Owner's use of the Documents without Hoffman's involvement or on other projects is at Owner's sole risk and Owner shall defend and hold harmless Hoffman and its consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.9.3 HOFFMAN'S USE OF DOCUMENTS Design-Builder may reuse Documents prepared pursuant to this Agreement with prior written approval of Owner, approval not to be unreasonably withheld.

3.1.10 CONSTRUCTION CONTINGENCY Owner acknowledges that a "Construction Contingency" in an amount to be agreed upon by the parties shall be established by Hoffman to manage the financial risks associated with the scope of work under this Agreement and will be disbursed at the discretion of Hoffman. A Construction Budget Status Report showing the construction contingency balance shall be provided to Owner on a regular basis. The Construction Contingency is not for design errors and omissions which shall be addressed by a separate contingency, or project scope changes.

## 3.2 PRECONSTRUCTION PHASE SERVICES

3.2.1 CONSULTATION Hoffman shall schedule and conduct regular meetings with Owner. Hoffman shall consult with Owner regarding Worksite use and improvements, and the selection of materials, building systems, and equipment. Hoffman shall provide recommendations on: construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.2.2 CONSTRUCTION SCHEDULE When Project requirements have been sufficiently identified, Hoffman shall prepare a preliminary Construction Schedule for Owner's approval. Hoffman shall coordinate and integrate Construction Schedule with the services and activities of Owner, Hoffman, and the requirements of governmental entities. As design proceeds and following each approval of schematic design documents, design development documents, and Construction Documents, Hoffman shall update Construction Schedule, for Owner's approval, to indicate proposed activity sequences, durations, or milestone dates for



such activities as receipt and approval of pertinent information, issuance of Construction Documents, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated Date of Substantial Completion of the Project. If Construction Schedule updates indicate that milestone dates contained in prior Construction Schedules will not be met, Hoffman shall notify and make recommendations to Owner. If the Project is to be completed in phases, Hoffman shall make recommendations to Owner and Trade Contractors regarding the phased issuance of Construction Documents.

**3.2.3 COST ESTIMATES** Hoffman shall prepare, for the review and approval of Owner, estimates for the Project upon approval of the Owner's Program, schematic design documents and design development documents. When the Parties agree Construction Documents are sufficiently complete, Hoffman shall prepare and submit in writing a Construction Budget including data from Trade Contractors for approval by Owner. As Construction Documents may not be completed at the time Construction Budget is prepared, Hoffman shall provide in Construction Budget for further development of Construction Documents consistent with the then-current Construction Documents. Hoffman shall meet with Owner to review Construction Budget at the completion of Construction documents. In the event that Owner discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Hoffman, who shall make appropriate adjustments to Construction Budget. Owner shall review the amended Construction Budget, and give a prompt written response, and if acceptable prompt approval. In the event that cost estimates exceed Owner's budget, Hoffman shall work with Owner to identify cost reduction options. Owner shall then approve cost reduction options that result in a revised estimated cost that is within Owner's budget.

**3.2.4 TEMPORARY FACILITIES** Hoffman shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Trade Contractors.

**3.2.5 LONG-LEAD-TIME ITEMS** Hoffman shall recommend to Owner a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet Construction Schedule. Hoffman shall help expedite the delivery of long-lead-time items.

**3.2.6 DIVISION OF THE WORK** Hoffman shall make recommendations regarding the division of the Work into Trade Contractor bid packages.

**3.2.7 SOLICITATION OF TRADE CONTRACTORS AND SUPPLIERS** Hoffman shall make recommendations regarding the method to be used for selection of Trade Contractors and award of Trade Contracts, adhering to the requirements of Owner's Board Policy 6320. Hoffman shall seek to develop Trade Contractor interest in the Project and shall furnish to Owner a list of possible Trade Contractors from which proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Hoffman if Owner knows of any objection to a listed Trade Contractor. Owner may designate specific persons or entities from whom Hoffman shall solicit bids.

**3.2.8 AWARD OF TRADE CONTRACTOR AGREEMENTS** Hoffman shall solicit bids from Trade Contractors, adhering to the requirements of Owner's Board Policy 6320, analyze the bids, adhering to the requirements of Owner's Board Policy 6320, and deliver the bids to Owner. Owner shall then determine, with the advice of Hoffman and pursuant to Owner's Board Policy 6320, which bids to accept for subsequent award of Trade Contracts as required to construct the Project. Owner shall not contract with any Trade Contractor with whom Hoffman has a reasonable objection.

**3.2.9 CONSULTANTS** Hoffman shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

**3.2.10 PERMITS** Hoffman shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Trade Contractors.



### 3.3 CONSTRUCTION PHASE SERVICES

#### 3.3.1 ADMINISTRATION

3.3.1.1 Hoffman shall assist Owner in preparing, negotiating, and entering into Trade Contracts, and advise Owner on the acceptability of Subcontractors and Suppliers proposed by Trade Contractors. All Trade Contracts shall be between Owner and the Trade Contractors. The terms and conditions of the Trade Contracts shall be acceptable to Hoffman, acceptance shall not be unreasonably withheld. Hoffman shall assist with the following as directed by the Owner:

- 3.3.1.1.1 Ensuring the withholding of retainages to Trade Contractors as required at Section 66.0901(9) of the Wisconsin Statutes
- 3.3.1.1.2 Requiring Trade Contractors to comply with to Section 779.14(1e)(b) of the Wisconsin Statutes, to maintain a list of all subcontractors and suppliers performing labor or furnishing materials under the Agreement
- 3.3.1.1.3 Requiring Trade Contractors to obtain and maintain payment and performance bonds as required under Section 779.14(1m)(d)3 of the Wisconsin Statutes during the course of contract payment and performance.

3.3.1.2 Hoffman shall establish an onsite organization and lines of authority to administer the Project. Hoffman shall schedule and conduct weekly meetings at which Owner, Hoffman and appropriate Trade Contractors can discuss the status of the Work. Hoffman shall prepare and promptly distribute meeting minutes.

3.3.1.3 Hoffman shall provide weekly written reports to Owner on the progress of the entire Work. Hoffman shall maintain a daily log containing a record of weather, Trade Contractors working on the Worksite, Work accomplished, problems encountered, and other similar relevant data as Owner may reasonably require. The log shall be available to Owner.

3.3.1.4 Hoffman shall maintain on a current basis at the Worksite records of all Trade Contracts, Construction Documents, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. Hoffman shall obtain data from Trade Contractors and maintain a current set of record drawings, specifications, and operating manuals and, at the completion of the Project, deliver all such records to Owner.

3.3.1.5 Hoffman shall monitor and coordinate the Trade Contractors, and if necessary, shall have the right to change the time, order, and priority in which the various portions of the Work are to be performed.

3.3.2 CONSTRUCTION SCHEDULE Utilizing Construction schedules or other information provided by the Trade Contractors, Hoffman shall update Construction Schedule incorporating the activities of the Trade Contractors on the Project. If Construction schedules or other information provided by the Trade Contractors indicate that milestone dates contained in prior Construction Schedules will not be met, Hoffman shall immediately notify and make recommendations to Owner. Hoffman shall (a) monitor the performance of the Trade Contractors as it relates to Construction Schedule, (b) update Construction Schedule and (c) if required, recommend corrective alternatives or adjustments to Owner or Trade Contractors.

#### 3.3.3 MONITORING CONSTRUCTION BUDGET

3.3.3.1 Hoffman shall develop and implement a detailed system of cost monitoring that will provide Owner with timely information as to the anticipated total cost of the Project including changes in the Work or Services. The cost monitoring system shall track Construction Budget as it is updated from time to time, and compare it with the actual cost for Work in progress and estimates for uncompleted Work including proposed changes. This information shall be reported to Owner in writing at mutually agreeable intervals. Hoffman shall advise Owner whenever estimated costs exceed budgeted amounts and recommend corrective alternatives or adjustments.





3.3.3.2 Hoffman shall maintain cost accounting records on Work performed under unit costs, actual costs for labor and materials, or other similar methods; afford Owner access to these records; and preserve them for a period of three (3) years after final payment.

3.3.3.3 Hoffman shall: a) develop and implement a procedure for the preparation, review, and processing of change orders to the Trade Contracts; b) recommend to Owner necessary or desirable changes to the Trade Contracts; c) review, evaluate, and make recommendations regarding Trade Contractor claims and requests for changes; d) assist in preparing, negotiating, and documenting Trade Contract Change Orders, and e) authorize and execute Trade Contract Change Orders acting as an agent of the Owner.

3.3.4 PAYMENT PROCEDURES Hoffman shall develop and implement a procedure for the review and processing of monthly applications by Trade Contractors for progress and final payments, including the receipt of appropriate lien and claim waivers from Trade Contractors, if applicable. Based on Hoffman's onsite observations of the Work and review of the Trade Contractors' payment applications, Hoffman shall recommend amounts due the respective Trade Contractors. The recommendation for payment of a Trade Contractor's application for payment shall not be a representation that Hoffman has: a) made exhaustive inspection of the quality of the Work; b) reviewed construction means, methods, techniques, sequences, or procedures for the Trade Contractor's Work; or c) ascertained how or for what purpose the Trade Contractor has used money previously paid. Hoffman shall be entitled to rely on the Trade Contractor's certification as to the application of money previously paid.

### 3.3.5 REVIEW OF TRADE CONTRACTORS' WORK

3.3.5.1 Hoffman shall determine in general whether the Work is being performed in accordance with the requirements of the respective Trade Contracts and Construction Documents, endeavoring to guard Owner against defects and deficiencies in the Work. As appropriate, Hoffman shall have authority, upon authorization from Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Trade Contracts, whether or not such Work is fabricated, installed, or completed. Hoffman, in consultation with Owner, may reject Defective Work.

3.3.5.2 Hoffman shall not have control over or charge of acts or omissions of the Trade Contractors or their Subcontractors, agents, or employees, or any other persons performing portions of the Work not directly employed by Hoffman. Hoffman shall not be responsible for construction means, methods, techniques, sequences, or procedures. Hoffman shall not be responsible for a Trade Contractor's failure to carry out the Work in accordance with Construction Documents.

3.3.6 REVIEW OF SAFETY PROGRAMS Hoffman shall review the safety programs developed by each of the Trade Contractors for purposes of coordinating the safety programs with those of the other Trade Contractors. However, Hoffman is not responsible, but rather the Trade Contractors are solely responsible for their safety precautions and programs in connection with the Work. Hoffman's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Trade Contractors, or the subcontractors, agents, or employees of the Trade Contractors or any other persons performing portions of the Work and not directly employed by Hoffman, nor shall it relieve the Trade Contractor of its obligations, duties, and responsibilities for safety. Notwithstanding the foregoing, if Hoffman deems any part of the Work or Worksite unsafe, Hoffman, without assuming responsibility for the Trade Contractor's safety program, may require the Trade Contractor to stop performance of the Work or take corrective measures satisfactory to Hoffman.

3.3.7 SHOP DRAWINGS AND SAMPLES Hoffman shall establish and implement procedures for expediting the processing and approval of shop drawings and samples.

### 3.3.8 PROJECT CLOSEOUT



3.3.8.1 Hoffman shall advise Owner as to when the Date of Substantial Completion of the Work or designated portions thereof is achieved and prepare a list of incomplete or unsatisfactory items and a proposed schedule for their completion.

3.3.8.2 Hoffman, with Owner's maintenance personnel, shall direct the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up testing by the Trade Contractors.

3.3.8.3 Hoffman shall advise Owner as to when the Final Completion of the Work is achieved and provide written notice to Owner that the Work is ready for final inspection.

3.3.8.4 Hoffman shall collect and deliver to Owner the guarantees, affidavits, releases, bonds, and waivers from Trade Contractors and any keys, manuals, record drawings, and maintenance stocks Hoffman receives from the Trade Contractors.

3.3.9 GENERAL CONDITIONS ITEMS Hoffman shall provide the General Conditions Items required for the Project.

3.3.10 CORRECTION PERIOD SERVICES Hoffman shall be available during the Trade Contractors' one-year correction period to assist Owner in evaluating the need for corrective measures as requested.

3.4 ADDITIONAL SERVICES The following services shall be provided by Hoffman as Additional Services if they are authorized by Owner and are not included as Basic Services. Such written authorization shall be provided in writing and shall include the amount and manner of compensation for such Additional Services.

3.4.1 Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.4.2 Surveys, site evaluations, legal descriptions and aerial photographs.

3.4.3 Zoning or land use approvals required for the project including but not limited to rezoning, conditional use permits, special use permits or land use plan amendments.

3.4.4 Appraisals of existing equipment, existing facilities, new equipment and developed properties.

3.4.5 Soils, subsurface and environmental studies, reports and investigations, wetland delineations, archaeological surveys and other similar requirements for submission to governmental authorities or others having jurisdiction over the Project.

3.4.6 Investigating or making measured drawings of existing conditions or the verification of Owner-provided drawings and information.

3.4.7 Artistic renderings, models and mockups of the Project or any part of the Project.

3.4.8 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Project.

3.4.9 Interior design and related Services, including procurement and placement of furniture, furnishings, artwork and decorations.

3.4.10 Civil engineering, technology design, LEED certification or energy modeling services.

3.4.11 Making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner, and which are due to causes beyond the control of the Design Professional.

3.4.12 Design, coordination, management, expediting and other Services supporting the procurement of materials to be obtained or work to be performed by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

3.4.13 Estimates, proposals, appraisals, consultations, negotiations and Services in connection with the repair or replacement of an insured loss.

3.4.14 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup.

3.4.15 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which Design Professional is not a party.

3.4.16 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes made during the Construction Phase.



- 3.4.17 Providing services relating to Hazardous Material discovered at the Worksite.
- 3.4.18 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.
- 3.4.19 Out-of-town travel by Design Professional in connection with the Work, except between Design Professional's office, Owner's office and the Worksite.
- 3.4.20 Services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.
- 3.4.21 Selection, oversight or management of Owner procured consultant services.
- 3.4.22 Retaining consultants for pre-referendum planning services, food service design, theatrical lighting and rigging design, pool consultant services,
- 3.4.23 Engineering or architectural review of existing facilities or equipment.
- 3.4.24 Repairing, replacing, correcting, or completing Defective Work or incomplete Work that Hoffman has undertaken in place of a Trade Contractor.

3.5 HOFFMAN'S REPRESENTATIVE Hoffman's authorized representative is Jody Andres. Hoffman's representative shall possess full authority to receive instructions from Owner and to act on those instructions.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **4.1 INFORMATION AND SERVICES**

4.1.1 FULL INFORMATION Any information or services to be provided by Owner shall be fulfilled at the Owner's expense, with reasonable promptness, and so as not to delay Hoffman. Hoffman shall be entitled to rely on the completeness and accuracy of the information and services provided by Owner.

4.1.2 WORKSITE INFORMATION With Hoffman's assistance, Owner shall locate and provide the following Worksite information to the Project participants. If such information does not exist and is required for the completion of the Work, Owner shall pay and retain any consultants necessary to create such information at its own expense:

4.1.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent Worksite conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite, and adjacent and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work;

4.1.2.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by Construction Documents or by Law; and

4.1.2.3 any other information or services requested in writing by Hoffman and under Owner's control. The information required shall be provided in reasonable detail.

4.1.3 Owner shall promptly report to Hoffman errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve Hoffman of responsibility for its own errors, inconsistencies and omissions. Approvals by Owner shall not be deemed to be an assumption of responsibility by Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by Hoffman, its employees, agents or consultants. Owner shall provide all approvals required under this Agreement in a timely manner.



4.2 OWNER'S REPRESENTATIVE Owner's representative is Melanie Oppor. The representative shall be fully acquainted with the Project; shall furnish the information and services required of Owner so as not to delay Hoffman's Services or the Work; and shall have authority to bind Owner in all matters relating to this Agreement including, without limitation, all matters requiring Owner's approval, authorization, or written notice provided; however, Owner's representative may be constrained to seek approval from Owner's Board concerning any matter involving an expenditure in which the total amount thereof exceeds \$50,000.00. If Owner changes its representative as listed above, Owner shall notify Hoffman in advance in writing.

4.3 SPECIAL REQUIREMENTS .Owner shall determine and advise Hoffman of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. Owner shall furnish such legal services as are necessary to provide the information and services required under Section 4.1 and to support the Project.

#### 4.4 ADDITIONAL REQUIREMENTS

4.4.1 APPROVALS Owner shall secure and pay for necessary approvals, easements, rights of way, assessments, and charges required for Construction, use or occupancy of the Project.

4.4.2 COMMUNICATIONS Owner shall endeavor to communicate to all Trade Contractors through Hoffman. If Owner communicates directly with a Trade Contractor, Owner shall notify Hoffman of such communication.

4.4.3 PERMITS With Hoffman's assistance, Owner shall obtain all permits and licenses which are necessary for the performance of the Work and the Services, except where such permits or licenses are the express responsibility of the Trade Contractors.

4.4.4 COORDINATION OF OWNER WORK Owner shall provide interface with and coordination of all work which is being performed by Owner or separate contractors. This does not include Work performed by Trade Contractors.

4.4.5 REVIEW AND APPROVAL Owner shall promptly furnish all required reviews and approvals or other appropriate action with respect to all samples, estimates, schedules, budgets, shop drawings, Trade Contracts, purchase orders, contracts, and other items submitted or proposed by Hoffman.

#### 4.5 HAZARDOUS MATERIALS

4.5.1 NOTIFICATION If at any time prior to the commencement of or during the progress of the Work, Owner is aware of the presence of any Hazardous Material at the Worksite, it shall promptly notify Hoffman in writing of the presence, location, and composition of the Hazardous Material.

4.5.2 DISCOVERY If any known or suspected Hazardous Material is discovered at the Worksite, Hoffman shall immediately direct Trade Contractors to stop Work in the immediate area of the condition and Hoffman shall report the condition to Owner.

4.5.3 REMEDIATION Owner shall be solely responsible for corrective measures or remedial action. Should Owner elect to engage the support of Hoffman, the time and costs associated with corrective measures or remedial action shall be an Additional Service. If engaged for such support, Hoffman shall coordinate as necessary to retain survey consultants and Trade Contractors necessary to abate the Hazardous Condition. Work in the affected area shall not be resumed prior to receipt of certification by a mutually agreeable independent laboratory and approval by the appropriate government authority that the Hazardous Material has been removed or rendered harmless.



## ARTICLE 5 TRADE CONTRACTS

5.1 TRADE CONTRACTS Hoffman shall draft the Trade Contracts for Owner approval based on ConsensusDocs 850 Standard Form of Agreement Between Owner and Trade Contractor, and any supplementary conditions. Owner shall advise Hoffman of any special requirements or conditions to be included in the Trade Contracts including, but not limited to, insurance, warranty, performance, financing or statutory requirements. Owner shall provide Hoffman with copies of all executed Trade Contracts. Owner shall ensure that each Trade Contract:

5.1.1 requires the Trade Contractors to cause their insurers to waive all rights of subrogation against Owner, Hoffman, their agents, employees, consultants, and assigns, for all damages covered by any required property insurance in connection with the Project except such rights as they may have to the proceeds of such insurance held by Owner or Hoffman as trustees;

5.1.2 contains the indemnification obligation specified in subsection 10.1.3;

5.1.3 provides that Hoffman is in all cases acting solely on behalf of and as the agent for Owner in soliciting, awarding, and administering the Trade Contracts;

5.1.4 makes Hoffman a third-party beneficiary of the Trade Contractor agreements entitled to enforce any rights thereunder for its own benefit; and,

5.1.5 requires Trade Contractor to name Hoffman as an additional insured under the Trade Contractor's commercial general liability coverage, with such coverage being primary and non-contributing with any other insurance available to Hoffman.

5.2 EXTENT OF TRADE CONTRACTS Trade Contracts shall be directly between Owner and the Trade Contractors. Hoffman shall not have any liability for or responsibility under any Trade Contract executed by Owner, or by Hoffman acting as Owner's agent; and Hoffman's activities as set forth in this Agreement shall imply no such liability or responsibility. Trade Contractors and their Subcontractors and Suppliers are not intended to be and shall not be third-party beneficiaries of this Agreement.

## ARTICLE 6 TIME

6.1 TIME FOR SERVICES Hoffman shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by Owner.

6.2 DELAYS BY OWNER If Hoffman is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Hoffman's control, or by a delay authorized by Owner pending dispute resolution, then the time allotted in the Project Schedule for Hoffman's Services shall be extended for the period of such delay and Hoffman's compensation shall be equitably adjusted. Hoffman shall provide prompt written notice to Owner of such delay after Hoffman first recognizes such delay.

## ARTICLE 7 HOFFMAN'S COMPENSATION

### 7.1 COMPENSATION FOR DESIGN PHASE SERVICES

7.1.1 For Basic Services, Owner shall compensate Hoffman on the following basis: 5% of the Cost of Work as defined in Article 2 plus Design Phase Reimbursable Expenses. Compensation for Design Phase Services includes a) architectural services, b) structural, plumbing, mechanical and electrical engineering services and landscape design, and c) fire protection scope of work documents. Fire protection engineering will be included in the trade contractor scope of work. Civil engineering and any other services not specified in this Article 7 are Additional Services.

7.1.2 Hoffman shall be compensated for Additional Services as mutually agreed by the parties at such time as Additional Services are authorized.





7.1.3 Hoffman shall be compensated for Design Phase Reimbursable Expenses including reasonable transportation costs, and other travel incidental expenses, reproduction costs, photographs, facsimile transmissions, long distance and wireless communication charges, postage and express delivery charges. Reimbursable expenses shall be invoiced at cost. Travel time shall be reimbursed at the rates in Exhibit A.

7.1.4 If necessary, Hoffman shall hire a Landscape Architect for the purpose of designing finish grades and location/specification of groundcover, shrubs, trees and other site amenities and materials. Hoffman shall provide locations only for telecommunications and data device junction boxes. Hoffman will not specify devices, cable, terminations, testing, racks or rack-mounted equipment, which shall be by Others.

## 7.2 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7.2.1 FEE For services performed during Construction phase, Owner shall pay Hoffman a Fee of 3.5% of the Cost of the Work. Fee shall be paid monthly, in amounts which are proportionate to the ratio the monthly payment for the cost of the Work bears to the total estimated Cost of the Work.

7.2.2 REIMBURSABLE COSTS During Construction phase, Owner shall pay Hoffman the Reimbursable Costs set forth in ARTICLE 8. Such Reimbursable Costs are in addition to the Fee.

7.3 ADJUSTMENTS Hoffman's compensation including any limitation on the amount shall be equitably adjusted in the event of changes that alter the cost of or time required for performance of Services such as changes to the Project, the Project Schedule, or any other event or circumstance beyond the reasonable control of Hoffman, including but not limited to force majeure, or Owner suspension, delay, or interruption. Equitable adjustments shall be memorialized in writing and executed by the Parties.

## ARTICLE 8 COSTS

REIMBURSABLE COST ITEMS Reimbursable Costs include the following labor and other charges reasonably incurred to perform the Work or properly allocated to the Project.

8.1 STAFF Actual labor hours worked by persons in the direct employ of Hoffman in the performance of the Work and for project management and project administration functions in the performance of the Work, including Additional Services, at the rates in Exhibit A subject to annual adjustment of other similarly situated individuals in the direct employ of Hoffman (not to exceed Three Percent (3%)) to reflect reasonable cost increases.

8.2 MATERIALS AND SUPPLIES Cost or fair rental value of all materials, supplies, tools, temporary facilities, and equipment used in performing the Services including costs of transportation, storage, loading, unloading, operation, use, repair, and maintenance. Owner shall be afforded the opportunity to purchase all materials having a purchase price of more than \$5,000.00, except in case of emergency.

8.3 TRAVEL The proportion of reasonable transportation, travel time, moving, food, lodging, meals and other incidental expenses of Hoffman or of its officers or employees incurred in performance of the Services.

8.4 MISCELLANEOUS Reproduction costs, photographs, fax transmissions, long-distance and wireless communication changes, postage, express delivery changes, data transmission, telephone service, and technology-related costs at the Worksite, to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.5 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Hoffman or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs.

8.6 INSURANCE Cost of all insurance and bonds which Hoffman is required to procure by this Agreement or is deemed necessary by Hoffman at cost or at agreed upon rates. Losses, expenses or damages to the extent not compensated by insurance or otherwise provided such did not arise from the sole negligence of Hoffman.



8.7 TAXES Sales, use, gross receipts, or other similar taxes, tariffs, or duties related to the Project, or the Services for which Hoffman is liable to the extent said are not tax exempt. Taxes related to provision of General Conditions Items shall be included in the General Conditions Items Amount and not as a Reimbursable Expense.

8.8 PERMITS AND LICENSES Permit fees, licenses, tests, royalties, damages for infringement of patents, and costs of defending claims therefor.

8.9 EMERGENCY Cost incurred due to an emergency affecting the safety of persons or property.

8.10 CLEAN UP Cost of cleanup and removal of non-hazardous substances, debris and waste.

8.11 OTHER COSTS All other costs and expenses not covered under the Fee.

## ARTICLE 9 PAYMENTS

9.1 DESIGN PHASE PAYMENTS Hoffman shall submit to Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail at the percentages below at each phase of the design. Owner shall pay approved amounts no later than thirty (30) days after Hoffman has submitted its applications for payment. Payments for Basic Services shall not exceed the following percentages:

Schematic Design Documents	20%
Design Development Documents	35%
Construction Documents	30%
Bidding or Negotiation Assistance	5%
Construction Phase	10%

9.2 CONSTRUCTION PHASE STATEMENTS Hoffman shall submit a monthly statement to Owner, sworn to if required, listing all compensation then due to Hoffman. Payment by Owner to Hoffman of the statement amount shall be made within thirty (30) days after it is submitted.

9.3 FINAL PAYMENT Final payment including any unpaid balance of Hoffman's compensation shall be due and payable when the Services are complete.

9.4 SUSPENSION If Owner should fail to pay Hoffman within five (5) days after the time the payment of any amount becomes due, then Hoffman may, upon seven (7) additional days' written notice to Owner, stop performing Services until payment of the amount owing has been received.

9.5 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate prevailing at the place of the Project.

## ARTICLE 10 INDEMNITY, INSURANCE AND WAIVERS

### 10.1 INDEMNITY

10.1.1 HOFFMAN'S INDEMNITY To the fullest extent permitted by law, Hoffman shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents and employees, Trade Contractors, subcontractors and Others (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs and expenses, for bodily injury, sickness or death, and property damage (other than to the Work itself), that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of Hoffman, Hoffman's consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Hoffman shall be entitled to reimbursement of any defense costs paid above Hoffman's percentage of liability for the underlying claim to the extent provided for under Section 10.1.2. Nothing in this indemnity shall be construed to limit the insurance obligations agreed to herein.



10.1.2 OWNER'S INDEMNITY To the fullest extent permitted by law, Owner shall indemnify and hold harmless Hoffman, its officers, directors, members, consultants, agents, and employees, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Section 10.4, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the negligent acts or omissions of Owner or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under Section 10.1.1.

10.1.3 TRADE CONTRACTOR INDEMNITY Owner shall cause all Trade Contractors to agree to indemnify and hold harmless Owner and Hoffman from all claims for bodily injury and property damage, other than to the Work itself and other property insured under section 10.4, that may arise from that Trade Contractor's Work, but only to the extent that such claims result from the negligent acts or omissions of the Trade Contractor or anyone for whose acts or omissions the Trade Contractor is liable.

10.1.4 NO LIMITATION ON LIABILITY In any and all claims against the indemnitees by any employee of the indemnitors, anyone directly or indirectly employed by the indemnitors or anyone for whose acts indemnitors may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnitors under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

## 10.2 HOFFMAN'S INSURANCE

10.2.1 Before commencing its Services and as a condition of payment, Hoffman shall purchase and maintain such insurance at the limits set forth in Exhibit B as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by Hoffman or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

10.2.2 Hoffman shall maintain in effect all insurance coverage with companies lawfully authorized to do business in the jurisdiction in which the Project is located until one year after Substantial Completion. Owner shall be named as an additional insured on Hoffman's Commercial General Liability Insurance, for operations and completed operations, but only with respect to liability for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of Hoffman, or those acting on Hoffman's behalf, in the performance of Hoffman's Work for Owner at the Worksite.

10.2.3 PROFESSIONAL LIABILITY INSURANCE Hoffman shall obtain and maintain professional liability insurance with a company satisfactory to Owner for claims arising from the negligent performance of professional services under this Agreement, written for not less than \$1,000,000 per claim and \$5,000,000.00 in the aggregate. The Professional Liability insurance shall include prior acts coverage sufficient to cover all services rendered by Hoffman and shall continue in effect for one (1) year after the Date of Substantial Completion.

10.2.4 Any documented additional cost in the form of a surcharge associated with procuring the coverage in accordance with this subsection shall be reimbursed by Owner to Hoffman. Prior to commencement of the Work, Hoffman shall obtain and furnish to Owner a certificate evidencing that the additional liability coverages have been procured.

10.3 OWNER'S LIABILITY INSURANCE Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses, and expenses arising out of Hoffman's errors and omissions.

## 10.4 PROPERTY INSURANCE



10.4.1 Before the start of the Work, Hoffman shall obtain and maintain a Builder's Risk Policy with a minimum coverage limit equal to the full cost of replacement at the time of loss. This insurance shall also name Owner, Trade Contractors, and all Subcontractors and Suppliers as insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and to the extent commercially available, shall insure at least against the perils of fire, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, water damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship, or material, and material or equipment stored offsite, onsite, or in transit. Premium costs and deductible amounts shall be a Reimbursable Cost. This policy shall provide for a waiver of subrogation in favor of Owner, Trade Contractors, their Subcontractors and Suppliers. This insurance shall remain in effect until the Substantial Completion of the Work, final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection.

10.4.2 POLICIES Prior to commencement of the Work, Hoffman shall provide Owner with a copy of all policies including all endorsements.

## 10.5 WAIVERS

10.5.1 PROPERTY DAMAGE Owner and Hoffman waive all claims and other rights they may have against each other for loss of or damage to (a) the Project, (b) all materials, machinery, equipment and other items used in accomplishing the Work or Services or to be incorporated into the Project, while the same are in transit, at the Worksite, during erection, and otherwise, and (c) all property owned by or in the custody of Owner and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such insurance held by Owner as trustee. If Owner is not the sole owner of the Worksite and all property at and adjacent, Owner shall obtain an undertaking from the other owners thereof sufficient to provide to Hoffman the same protection from liability for loss or damage as would be afforded to Hoffman under this Agreement if Owner were the sole owner.

10.5.2 WAIVER OF SUBROGATION Owner shall have its insurers waive all rights of subrogation they may have against Hoffman, Trade Contractors, and their Subcontractors and Suppliers on all policies carried by Owner on the Project and adjacent properties, including, after final payment, those policies to be provided on the completed Project not intended to insure the Project during construction.

10.5.3 ENDORSEMENT If the policies of insurance referred to in this section require an endorsement to provide for continued coverage where there is a waiver of subrogation, Owner will cause them to be so endorsed.

## 10.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

10.6.1 Owner and Hoffman waive claims against each other for consequential damages arising out of or relating to this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability, or otherwise, including but not limited to losses of use, profits, business, reputation, or financing, except for those specific items of damages excluded from this waiver, as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation. Hoffman agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation.



10.6.2 The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. Owner and Hoffman shall require similar waivers in contracts with their consultants retained for the Project.

10.7 Nothing contained in this Section 10 is intended to be a waiver or estoppel of Owner or its insurer to rely upon the limitations, defenses and immunities contained in Wis. Stat. §§ 345.05 and 893.80. To the extent that indemnification is available and enforceable, Owner or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability of municipal claims under Wisconsin law.

## **ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

### **11.1 SUSPENSION BY OWNER FOR CONVENIENCE**

11.1.1 **SUSPENSION** Owner may order Hoffman in writing to suspend, delay, or interrupt all or any part of the Services without cause for such period of time as Owner may determine to be appropriate for its convenience.

11.1.2 **ADJUSTMENT** In the event of any such suspension, delay, or interruption, Hoffman's Compensation shall be equitably adjusted. No adjustment shall be made if Hoffman is or otherwise would have been responsible for the suspension, delay, or interruption of the Services, or if another provision of this Agreement is applied to render an equitable adjustment.

### **11.2 TERMINATION FOR CAUSE**

11.2.1 **NOTICE TO CURE** If Hoffman persistently fails to perform any of its obligations under this Agreement, Owner may, after seven (7) days' written notice, during which period Hoffman fails to either perform such obligation or to commence and continue reasonable remedial measures, undertake to perform such obligations. Hoffman's Compensation shall be reduced by the additional cost to Owner, if any, of performing such obligation.

11.2.2 **TERMINATION BY OWNER FOR CAUSE** Upon seven (7) days' written notice to Hoffman, Owner may terminate this Agreement for any of the following reasons if, during such seven (7) Day period Hoffman fails to either cure or commence and continue reasonable remedial measures:

11.2.2.1 Hoffman persistently fails to abide by the orders, regulations, rules, ordinances, or laws of governmental authorities having jurisdiction; or

11.2.2.2 Hoffman persistently fails to perform required Services in a timely manner; or

11.2.2.3 Hoffman otherwise materially breaches this Agreement. Upon such termination, Owner may take possession of the Worksite and complete the Services utilizing any reasonable means. In this event, Owner shall pay Hoffman for all Services properly performed through the date of termination and neither Party shall have any further liability to the other.

11.2.3 **BANKRUPTCY** If Hoffman files a petition under the Bankruptcy Code, this Agreement shall terminate if Hoffman or Hoffman's trustee rejects the Agreement, or if there has been a default and Hoffman is unable to give adequate assurance that Hoffman will perform as required by this Agreement or if Hoffman is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.2.4 **ACCOUNTING** In the event Owner exercises its rights under subsection 11.2.1 or 11.2.2, upon the request of Hoffman Owner shall provide a detailed accounting of the cost incurred by Owner.

11.3 **TERMINATION BY OWNER FOR CONVENIENCE** If the Owner terminates this Agreement other than as set forth in section 11.2 for causes referenced above, Hoffman shall be paid an amount calculated as set forth below:





11.3.1 If Owner terminates this Agreement prior to commencement of Construction phase, Hoffman shall be paid for the Services performed to date, and any proven loss, cost, or expense in connection with the Services, including those resulting from the termination, and a premium of 15% of the remaining Fee.

11.3.2 If Owner terminates this Agreement after commencement of Construction phase, Hoffman shall be paid for the actual cost of Services performed and for any actual costs and expenses provided to Owner in connection with the Services, plus demobilization costs, if any, and a premium of 10% of the remaining fee.

11.3.3 Owner shall also pay to Hoffman fair compensation, either by purchase or rental at the election of Owner, for any equipment, materials, or other property retained. Owner shall assume and become liable for obligations, commitments, and unsettled claims that Hoffman has previously undertaken or incurred in good faith in connection with the Services or as a result of the termination of the Agreement. As a condition of receiving the payments provided under this ARTICLE 11, Hoffman shall cooperate with Owner by taking all steps necessary to accomplish the legal assignment of Hoffman's rights and benefits to Owner, including the execution and delivery of reasonably required documents.

#### 11.4 TERMINATION OR SUSPENSION BY HOFFMAN

11.4.1 TERMINATION Upon seven (7) days' written notice to Owner, Hoffman may, in addition to any other rights or remedies it has, elect to either suspend or terminate this Agreement for any of the following reasons, if, during such seven (7) Day period Owner fails to either cure or commence and continue reasonable remedial measures:

11.4.1.1 if the Work has been stopped for a thirty (30) Day period

- a) under court order or order of other governmental authorities having jurisdiction;
- b) as a result of the declaration of a national emergency or other governmental act which renders the pursuit of the Project impracticable; or
- c) because of Owner's failure to pay Hoffman or a Trade Contractor;

11.4.1.2 if the Work is suspended by Owner for sixty (60) days;

11.4.1.3 if Owner materially delays Hoffman in the performance of its Services;

11.4.1.4 if Owner otherwise materially breaches this Agreement; or

11.4.1.5 if Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project.

11.4.2 PAYMENT Upon suspension or termination by Hoffman in accordance with subsection 11.4.1, Hoffman shall be entitled to recover from Owner payment for all Services performed and for any proven loss, cost, or expense in connection with the Services, plus all demobilization costs. In addition, Hoffman shall be paid an amount calculated as set forth either in subsection 11.3.1 or 11.3.2, depending on when the termination occurs, and subsection 11.3.3.

11.5 In the event Owner suspends or terminates this Agreement after the commencement of the Construction Phase to resolve litigation with Scherrer Construction Co., Inc., Hoffman shall be entitled to recover from Owner payment for the actual cost of all Construction Phase Services performed and any provable unrecoverable costs or expenses incurred as of the effective date of termination.

### ARTICLE 12 DISPUTE RESOLUTION

12.1 MEDIATION If the Parties cannot reach resolution on a matter relating to or arising from this Agreement, the Parties shall endeavor to resolve the matter by mediation. The rules and administration of the mediation shall be as mutually agreed by the Parties. Either Party may terminate the mediation at any time after the first session by



written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

**12.2 BINDING DISPUTE RESOLUTION** If the matter remains unresolved after submission of the matter to mediation, the Parties may submit the matter to Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project. The costs of any binding dispute resolution processes shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

**12.3 MULTIPARTY PROCEEDING** All parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the consolidation of such dispute resolution procedures.

**12.4 LIEN RIGHTS** Nothing in this ARTICLE 12 shall limit any rights or remedies not expressly waived by Hoffman that Hoffman may have under lien laws.

**12.5 VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

### **ARTICLE 13 MISCELLANEOUS**

**13.1 EXTENT OF AGREEMENT** This Agreement represents the entire integrated agreement between the Parties, and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement and each and every provision are for the exclusive benefit of Owner and Hoffman and not for the benefit of any third party except to the extent expressly provided in this Agreement.

**13.2 ASSIGNMENT** Except for the assignment of proceeds, neither party shall assign its interest in this Agreement without the written consent of the other party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

**13.3 GOVERNING LAW AND VENUE** This Agreement shall be governed by the law in effect at the location of the Project. The venue for any dispute resolution proceeding shall be the location of the Project unless the Parties agree otherwise.

**13.4 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**13.5 NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

**13.6 TITLES** The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

**13.7 JOINT DRAFTING** The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

**13.8 NOTICE** Notices required or permitted hereunder shall be in writing and shall be delivered, unless changed in writing, to a Party's address indicated in Article 1. Except for any notice of a material breach or of Agreement termination, written notice is effective upon transmission to Design Professional's representative or Owner's representative by any effective written means, including U.S. postal service and overnight delivery service. Any notice to Design Professional of a material breach or of Agreement termination shall be transmitted in writing and



delivered to the address stated in Article 1, addressed to Sam Statz, either by certified mail, return receipt requested, or by a nationally-recognized overnight courier, signature required for delivery..

13.9 ELECTRONIC EXECUTION Any counterpart or exhibit executed or transmitted by electronic mail, facsimile machine or other means of electronic execution and/or transmittal shall be treated in all manner and respects as an original document and the signature of any party upon a document so executed and/or transmitted shall be considered an original signature. Any Contract Document may be created, signed, exchanged and stored electronically.

13.10 COUNTERPARTS This Agreement may be executed (electronically or otherwise) in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed (electronically or otherwise) in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

**ARTICLE 14 CONTRACT DOCUMENTS**

14.1 CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement.
- (b) Owner’s Program.
- (c) Owner provided information.
- (d) The Schematic Design Documents upon Owner approval.
- (e) The Design Development Documents upon Owner approval.
- (f) The Construction Documents upon Owner approval

14.2 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) design documents approved by the Owner in order of the most recently approved; (d) information furnished by the Owner or designated as a Contract Document; (e) other documents listed in this Agreement. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

This Agreement entered into as of the date entered in ARTICLE 1. The persons signing this Agreement on behalf of the Owner and Hoffman certify that they have been granted the authority to execute this Agreement by their respective organizations.

OWNER SCHOOL DISTRICT OF MANAWA

BY: \_\_\_\_\_

PRINT NAME: Joanne Johnson                      PRINT TITLE: Board President

ATTEST: \_\_\_\_\_

PRINT NAME: BOBBI JO PETHKE                      PRINT TITLE: Board Clerk

HOFFMAN: HOFFMAN PLANNING, DESIGN & CONSTRUCTION, INC.

BY: \_\_\_\_\_

PRINT NAME: Sam Statz                                      PRINT TITLE: President

ATTEST: \_\_\_\_\_





**Students choosing to excel; realizing their strengths.**

To: Dr. Melanie Oppor  
Fr: Dan Wolfgram, Renee Behnke  
Date: 11/26/2018  
Re: Request for Unpaid Leave of Absence

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The purpose of this memo is to request an unpaid leave of absence for the purposes of maternity leave for special education paraprofessional Renee Behnke. Mrs. Behnke is currently utilizing leave under FMLA.

This leave request would start on November 26<sup>th</sup>, 2018, through and including June 6<sup>th</sup>, 2019. This memo is also requesting a return to work as a Little Wolf Jr./Sr. High School paraprofessional, should a position exist for the 2019-2020 school year.

According to School District of Manawa School Board Policy **4430 - LEAVES OF ABSENCE**

Any support staff member may request a discretionary voluntary leave of absence from the Board.

All requests for unpaid leaves of absence by support staff members shall be presented to the Board of Education for approval and shall state the reason for the leave and the expected duration of the leave. This policy governs leaves, in addition, to leave under Policy 4430.01 (FMLA); however, any leave under this policy that is also qualifying leave under Policy 4430.01 will be designated as such and count towards the employee's leave entitlement. Approved leave under this policy shall state the conditions applicable to the employee's return to work. Nothing in this policy shall serve as a guarantee of any job protection for leave beyond otherwise protected leave.

Any support staff member granted a leave of absence shall be considered to have terminated all work with the District until completion of the leave. Exceptions may be made by the District Administrator in cases where the best interests of the District might be served.

Because all staff receives their time off in July for the current year (SY1819), Mrs. Behnke received a full year's allotment in July. Mrs. Frazier has informed Mrs. Behnke that this time off will need to be prorated as she only worked fifteen days in September before her FMLA leave started. If this leave of absence is approved, it would result in Mrs. Behnke retaining one day of sick leave.