

Board of Education Regular Meeting

June 25, 2024 6:00 PM

City Hall Council Chambers

I. CALL TO ORDER Procedural Item	Chair Butch Campbell
A. Pledge of Allegiance Procedural Item The Pledge of Allegiance will be led by Assistant Superintendent Sheri Arnette.	
B. Moment of Silence Procedural Item	
II. APPROVAL OF AGENDA Action Item	Chair Butch Campbell
III. COMMUNICATIONS Information Item	Mrs. Lisa Trail
A. The Best of MCS-Discovery Students attended the National Beta Convention Rohan Scott-5th Place in Science Margaret Stewart-4th Place in Poetry Sponsor-Beth Warren Procedural Item	Dr. Trey Duke
B. Public Comment Procedural Item	Chair Butch Campbell
IV. CONSENT ITEMS Consent Agenda	Chair Butch Campbell
A. Approval of 6-11-24 Board Minutes Consent Item	
B. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 1.1041, Board Compensation and Benefits, on Second Reading Consent Item	
ii. Approval of Board Policy 1.403, Agendas, on Second Reading Consent Item	
iii. Approval of Board Policy 1.8012, Extended School Program, on Second Reading Consent Item	
iv. Approval of Board Policy 3.201, Safety, on Second Reading Consent Item	
v. Approval of Board Policy 3.4031, Vehicle Accidents on School Property, on Second Reading Consent Item	
vi. Approval of Board Policy 4.100, Instructional Program, on Second Reading Consent Item	
vii. Approval of Board Policy 4.205, Magnet Schools, on Second Reading Consent Item	
viii. Approval of Board Policy 4.206, Homebound Instruction, on Second Reading Consent Item	

ix. Approval of Retirement of Board Policy 4.212, Virtual Education Program, on Second Reading Consent Item	
x. Approval of Board Policy 4.608, Transcript Alterations, on Second Reading Consent Item	
xi. Approval of Board Policy 6.205, Assignment of Students to Schools and Classes, on Second Reading Consent Item	
C. Approval of Contract-Central Technologies Consent Item	
D. Approval of Contract-Zearn Consent Item	
E. Approval of Contract-Studies Weekly Consent Item	
F. Approval of Contract-Palmer Hamilton Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of Board Policy 1.501 Visitor Code of Conduct, on First Reading Action Item	Ms. Lauren Bush
B. Approval of Board Policy 3.202, Emergency Preparedness Plan, on First Reading Action Item	Ms. Lauren Bush
C. Approval of Board Policy 3.400, Student Transportation, on First Reading Action Item	Ms. Lauren Bush
D. Approval of Board Policy 4.214, Use of Artificial Intelligence Programs, on First Reading Action Item	Ms. Lauren Bush
E. Approval of Board Policy 4.301, Interscholastic Athletics, on First Reading Action Item	Ms. Lauren Bush
F. Approval of Board Policy 4.403, Library Materials, on First Reading Action Item	Ms. Lauren Bush
G. Approval of Board Policy 4.603, Promotion and Retention, on First Reading Action Item	Ms. Lauren Bush
H. Approval of Board Policy 5.307, Physical Assault Leave, on First Reading Action Item	Ms. Lauren Bush
I. Approval of Board Policy 5.602, Staff Time Schedules, on First Reading Action Item	Ms. Lauren Bush
J. Approval of Board Policy 6.309, Zero Tolerance Offenses, on First Reading Action Item	Ms. Lauren Bush
K. Approval of Budget Amendment-General Purpose Fund 141 & ESP Fund 146 Action Item	Dr. Trey Duke
L. Approval of Construction Contract-Reeves Rogers Administrative Addition Awarded to Romach, Inc. Action Item	Dr. Trey Duke

M. Approval of Resolution-CBG Nutrition Action Item	Dr. Trey Duke
N. Approval of Contract-Curriculum and Instruction Agreements Action Item	Dr. Trey Duke
O. Approval of Contract-Genesis Academy Action Item	Dr. Trey Duke
P. Approval of Resolution-Cooperatives Action Item	Dr. Trey Duke
VI. REPORTS AND INFORMATION Information Item	Chair Butch Campbell
A. Update on Summer Construction Projects Information Item	Mr. Don Bartch
B. Director's Update Information Item	Dr. Trey Duke
VII. OTHER BUSINESS Information Item	Chair Butch Campbell
VIII. ADJOURNMENT Action Item	Chair Butch Campbell

MINUTES

Board of Education Regular Meeting

June 11, 2024 6:00 PM

MCS Administrative Offices

<p>I. CALL TO ORDER Procedural Item Present: Mr. Wesley Ballard, Mr. Butch Campbell, Ms. Karen Dodd, Ms. Barbara Long, Ms. Amanda Moore, Mr. Jimmy Richardson III, Mr. David Settles.</p> <p>In attendance: Dr. Trey Duke, Ken Rocha, Maria Johnson, Angela Fairchild, Daniel Owens, Cynthia Hopkins, Andy Taylor, Sandy Scheele, Jeremy Lewis, Mrs. Sheila Bratton (Rutherford County)</p> <p>Assistant City Attorney Lauren Bush. City Liaison Bill Shacklett was absent.</p>	Chair Butch Campbell
<p>A. Pledge of Allegiance Procedural Item The Pledge of Allegiance was led by Board Member Karen Dodd.</p>	
<p>B. Moment of Silence Procedural Item</p>	
<p>II. Welcome Board Evaluator-Mrs. Sheila Bratton from Rutherford County Procedural Item Chair Campbell introduced Mrs. Shelia Bratton from Rutherford County and thanked her for attending the meeting and for evaluating the Board for the upcoming Board of Distinction status.</p> <p>Mrs. Bratton thanked the Board for the support shown the Rutherford County School System during the loss of Dr. Sullivan's son.</p> <p>Mr. Campbell presented Mr. Richardson a gift from the Board on the birth of his daughter tomorrow.</p>	Chair Butch Campbell
<p>III. APPROVAL OF AGENDA Action Item Motion to approve the agenda. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	Chair Butch Campbell
<p>IV. COMMUNICATIONS Information Item</p>	Chair Butch Campbell
<p>A. Spotlight on Education-Summer School Procedural Item Mrs. Arnette gave the Board an update on the summer school program.</p> <p>She said that there are 99 classrooms for summer school and 30 of those are at Scales. She said that Fridays are 3rd grade makeup days. She told the Board that the Instruction department is in all buildings each morning and that Dr. Bullard has been a fabulous summer school coordinator.</p> <p>Mrs. Arnette shared a video with the Board and invited them out for the last couple of weeks.</p>	Ms. Sheri Arnette
<p>B. Public Comment Procedural Item</p>	Chair Butch Campbell
<p>V. CONSENT ITEMS Consent Agenda</p>	Chair Butch Campbell

Motion to approve consent agenda.. This motion, made by Ms. Amanda Moore and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0	
A. Approval of 5-28-24 Board Minutes Consent Item	
B. Approval of Public Official Bond for Director of Schools Consent Item	
C. Additional Special Education Resource Position for FY25 Consent Item	
D. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 4.603 Promotion and Retention on Second Reading Consent Item	
ii. Approval of Board Policy 5.305 Family and Medical Leave on Second Reading Consent Item	
iii. Approval of Board Policy 6.203 School Admissions on Second Reading Consent Item	
iv. Approval of Board Policy 6.316 Suspension, Expulsion, Remandment on Second Reading Consent Item	
v. Approval of Board Policy 6.506 Students from Military Families on Second Reading Consent Item	
VI. ACTION ITEMS Action Item	Chair Butch Campbell
A. Patterson Park/Bradley Academy Parks and Recreation Agreement Action Item Motion to approve the Patterson Park/Bradley Academy Parks and Recreation Agreement. This motion, made by Mr. David Settles and seconded by Mr. Jimmy Richardson III, passed. Yea: 7, Nay: 0 Dr. Gernelle Jenkins and Mr. Nate Williams was in attendance to share the plans for the land between Patterson Park and Bradley Academy. They said that they have plans to open the new splash pad next summer, but there should be no interruption to school due to construction. Principal of Bradley Academy, Dr. Jeremy Lewis, was in attendance and commented that he was looking forward to the additions. Mr. Richardson asked about security with the addition of parking spaces, and Mr. Williams said that they have already had discussions with MPD and there will be increased security cameras that will go straight to the MPD in real time.	Mr. Nate Williams
B. Approval of the 2024-2025 Board Annual Agenda Action Item Motion to approve the 2024-2025 Board Annual Agenda. This motion, made by Ms. Karen Dodd and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0	Dr. Trey Duke
C. Approval of Board Attendance at Conventions and Other Educational Meetings as per Board Policy 2.804 Action Item Motion to approve Board Attendance at Conventions and Other Educational Meetings as per Board Policy 2.804. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0	Dr. Trey Duke
D. Approval of Board Policy 1.1041, Board Compensation and Benefits, on First Reading	Ms. Lauren Bush

<p>Action Item Motion to approve Board Policy 1.1041, Board Compensation and Benefits, on First Reading. This motion, made by Ms. Amanda Moore and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	
<p>E. Approval of Board Policy 1.403, Agendas, on First Reading Action Item Motion to approve Board Policy 1.403, Agendas, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>F. Approval of Board Policy 1.8012, Extended School Program, on First Reading Action Item Motion to approve Board Policy 1.8012, Extended School Program, on First Reading. This motion, made by Ms. Barbara Long and seconded by Ms. Amanda Moore, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>G. Approval of Board Policy 3.201, Safety, on First Reading Action Item Motion to approve Board Policy 3.201, Safety, on First Reading. This motion, made by Ms. Karen Dodd and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>H. Approval of Board Policy 3.204, Threat Assessment Team, on First Reading Action Item Motion to approve Board Policy 3.204, Threat Assessment Team, on First Reading (on quarterly basis). This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, failed. Yea: 3, Nay: 4 Mr. Richardson said that he doesn't love changing this policy so that the Board would only receive the report quarterly. He asked if there was a Solomon approach where more serious concerns can be relayed to the board on a more timely basis. Dr. Duke said that if the Board wants to see this report every month, they can say no to this policy change. He told the Board that Mr. Rocha meets every time there's an incident. Mr. Settles said that this is just a report and that there is nothing that the Board would do if they were informed any sooner because central office admin handle the situation. Ms. Moore added that the Board doesn't take action on any of the threats anyway. Mr. Rocha said that they are tracking these incidents and sharing them with the school involved. After much discussion, Mr. David Settles called for the question. Ms. Barbara Long seconded the motion.</p>	Ms. Lauren Bush
<p>I. Approval of Board Policy 3.4031, Vehicle Accidents on School Property, on First Reading Action Item Motion to approve Board Policy 3.4031, Vehicle Accidents on School Property, on First Reading. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>J. Approval of Board Policy 4.100, Instructional Program, on First Reading Action Item Motion to approve Board Policy 4.100, Instructional Program, on First Reading. This motion, made by Ms. Amanda Moore and seconded by Mr. Jimmy Richardson III, passed. Yea: 7, Nay: 0 Ms. Moore commented that she loved this policy and was very much in favor of it.</p>	Ms. Lauren Bush
<p>K. Approval of Board Policy 4.205, Magnet Schools, on First Reading Action Item</p>	Ms. Lauren Bush

<p>Motion to approve Board Policy 4.205, Magnet Schools, on First Reading. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. David Settles, passed. Yea: 7, Nay: 0</p>	
<p>L. Approval of Board Policy 4.206, Homebound Instruction, on First Reading Action Item Motion to approve Board Policy 4.206, Homebound Instruction, on First Reading. This motion, made by Mr. Wesley Ballard and seconded by Mr. Jimmy Richardson III, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>M. Approval of Retirement of Board Policy 4.212, Virtual Education Program, on First Reading Action Item Motion to approve Retirement of Board Policy 4.212, Virtual Education Program, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>N. Approval of Board Policy 4.608, Transcript Alterations, on First Reading Action Item Motion to approve Board Policy 4.608, Transcript Alterations, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>O. Approval of Board Policy 6.205, Assignment of Students to Schools and Classes, on First Reading Action Item Motion to approve Board Policy 6.205, Assignment of Students to Schools and Classes, on First Reading. This motion, made by Ms. Barbara Long and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>P. Approval of Contract-Instruction Partners Services Agreement for the 2024-2025 School Year Action Item Motion to approve Contract-Instruction Partners Services Agreement for the 2024-2025 School Year. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0 Ms. Moore asked if we have used this company before and Mrs. Arnette said yes, for math implementation and math adoption and they are extremely beneficial. Mr. Ballard asked what services Instruction Partners provide. Mrs. Arnette explained that they provide coaching and work with coordinators in the Instructional Department.</p>	Dr. Trey Duke
<p>Q. Approval of Contract-Palmer Hamilton for Redesign of Cafeterias for the following schools: Cason Lane Academy, Discovery School, Overall Creek Elementary, and Mitchell Neilson Elementary Action Item Motion to approve Contract-Palmer Hamilton for Redesign of Cafeterias for the following schools: Cason Lane Academy, Discovery School, Overall Creek Elementary, and Mitchell Neilson Elementary. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. David Settles, passed. Yea: 7, Nay: 0 Ms. Long commented that she had seen several of the cafeteria redesigns and they look fabulous.</p>	Dr. Trey Duke
<p>R. Approval of School Nutrition Program Bid Renewals for the 2024-2025 School Year Action Item Motion to approve School Nutrition Program Bid Renewals for the 2024-2025 School Year. This motion, made by Ms. Karen Dodd and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	Dr. Trey Duke
<p>S. Approval of Budget Amendment-General Purpose School Fund 141</p>	Dr. Trey Duke

<p>Action Item Motion to approve Budget Amendment-General Purpose School Fund 141. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. David Settles, passed. Yea: 7, Nay: 0</p>	
<p>VII. REPORTS AND INFORMATION Information Item</p>	Chair Butch Campbell
<p>A. Enrollment (PTR) Report Information Item</p>	Mr. Ken Rocha
<p>B. Bullying Report Information Item</p>	Mr. Ken Rocha
<p>C. Tentative Assignment Lists Information Item</p>	Dr. Trey Duke
<p>D. Personnel Report Information Item Dr. Duke told the Board that they would receive a full report at the August Board workshop.</p>	Ms. Maria Johnson
<p>E. Director's Update Information Item Dr. Duke gave the Board some updates on summer construction projects. He invited the Board to go see the new MNE playground. He said that they are resurfacing the tennis courts at Discovery School with plans to do MNE and Reeves Rogers courts in July. He also told the Board that they will be working on the HVAC units at Reeves Rogers as well as Hobgood ceilings. Dr. Duke told the Board that Mr. Bartch was at a conference but would give them more details at the June 25th meeting. Dr. Duke said that he was thrilled to announce that Ms. M'Lisa Miffleton is the new principal at Northfield Elementary. He said that it was a great interview process with the top two candidates being interviewed by four Northfield staff members, and the overwhelming consensus was Ms. Miffleton. He said that the press release will go out on Thursday. Dr. Duke wished former principal, Ms. Campbell, the best. Dr. Duke told the Board that one of our teachers, Heather Eskridge, from Northfield is going to be on the Kelly Clarkson Show on July 17 and they have made a donation to Northfield.</p>	Dr. Trey Duke
<p>VIII. OTHER BUSINESS Information Item Chair Campbell asked if someone from the CO staff develop a letter that the Board can sign to send to city council thanking them for the pay increase and for passing the budget. Dr. Duke agreed that was a wonderful idea.</p>	Chair Butch Campbell
<p>IX. ADJOURNMENT Action Item Motion to adjourn. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0 The meeting adjourned at 7:31 p.m.</p>	Chair Butch Campbell

Director of Schools

Minutes
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June 11, 2024
Recorded by L. VanCleave

MISSION STATEMENT: To assure academic and personal success for each child.

Murfreesboro City School Board

Monitoring: Review: Annually, in July	Descriptor Term: Board Compensation and Benefits	Descriptor Code: 1.1041	Issued Date: Click here to enter a date.
		Rescinds: 1.1041	Issued:

1 Compensation of members of the Board shall be fixed by the City of Murfreesboro City Council.¹ That
2 compensation shall be established in the annual budget. Payment shall be made quarterly.

3 **GUIDELINES FOR RECEIPT OF HEALTH BENEFITS BY SCHOOL BOARD MEMBERS**

4 For insurance purposes only, Board Members will be considered as full-time employees and as such,
5 shall be eligible to receive medical insurance benefits through the health plan of the State of
6 Tennessee.²

7 For budgeting purposes, Murfreesboro City Schools will fund the administration, claims and any
8 related fees associated with the benefits coverage of Board members who elect to enroll in insurance.
9 Each board member choosing to enroll in coverage under this part will contribute to premium
10 payments on the same basis as regular, benefit-eligible employees of the school district.

11 Any premiums not paid in a timely manner will be grounds for termination of coverage. Guidelines
12 shall be developed by the Board Attorney to ensure equitable non-discriminatory administration of the
13 policy.

Legal References

1. Murfreesboro, Tennessee, City Code Article I, § 25-1; Murfreesboro, Tennessee, 24-O-19
2. TCA 8-27-303(a)(3)

Murfreesboro City School Board

Monitoring: Review: Annually, in September	Descriptor Term: Agendas	Descriptor Code: 1.403	Issued Date: 06/13/16
		Rescinds: BO 7	Issued: 04/79; 09/93; 02/00; 02/01; 07/08; 02/09; 02/11

1 AGENDA FORMAT

2 The meeting shall be conducted under an agenda developed by the Director and the Chair. The
3 following is the agenda format which customarily will be used:

- 4 1. Call to Order
- 5 2. Pledge of Allegiance
- 6 ~~3.~~ 3. Moment of Silence
- 7 ~~3-4.~~ 3-4. **Public Comment**
- 8 ~~4-5.~~ 4-5. Approval of Agenda
- 9 ~~5-6.~~ 5-6. Communications
- 10 ~~6-7.~~ 6-7. Consent Items
- 11 ~~7-8.~~ 7-8. Action Items
- 12 ~~8-9.~~ 8-9. Reports/Information
- 13 ~~9-10.~~ 9-10. Other Business
- 14 ~~10-11.~~ 10-11. Adjournment

15 AGENDA PREPARATION

16 The Director of Schools shall prepare all agendas for meetings of the Board. In doing so, the Director
17 shall consult with the Board Chair and appropriate members of the Director's administrative staff.
18 Items of business also may be suggested by any Board member. The agenda shall identify which Board
19 member requested the item. The Director, Board Chair or Board Counsel may add or remove items to
20 the agenda at any time before the approval of the agenda.

21 The inclusion of items suggested by staff members, students, or citizens shall be at the discretion of the
22 Director.

23 Public participation in Board meetings is subject to rules set forth in 1.401—Public Participation in
24 Board Meetings.

25 If possible, the agenda and supporting materials shall be distributed to Board members sufficiently
26 prior to the board meeting so that members may have time to give careful consideration to items of
27 business. Provision of laptops to Board members will allow distribution of the agenda and supporting
28 documents electronically.

1 AGENDA APPROVAL

2 The first action item on the agenda shall be the approval of the agenda. Before the Board approves the
3 agenda, a Board member may only make a motion to approve the agenda as written, to rearrange the
4 order of the agenda items, or to remove an item from the agenda. After the Board has approved the
5 agenda, no discussion or action shall be taken by the Board except on the subjects covered by the
6 approved agenda.

7 CONSENT AGENDA

8 While developing the agenda, the Chair and Director of Schools shall identify routine or
9 noncontroversial items to be placed on the consent agenda, which shall become a part of the regular
10 agenda. If any member objects to including an item on the consent agenda, that item shall be moved to
11 the regular agenda as an action item requiring discussion. The remaining consent items may be adopted
12 in a single vote without discussion.

13 ANNUAL CALENDAR

14 At the beginning of each fiscal year, the Board shall adopt an annual planning calendar, stating month-
15 by-month actions required by law and those required to carry out the Board's annual goals and
16 objectives, as well as policy monitoring review dates and the State Board of Education's performance
17 standards.

18 OTHER BUSINESS

19 "Other Business" is for the sole purpose of a Board member or the Director to discuss an item or issue
20 not included on the regular agenda that needs to be discussed prior to the next regularly scheduled
21 meeting.

22 During "Other Business," a Board member may move that such item or issue not be discussed or
23 considered until additional information is obtained.

24 SPECIAL MEETING AGENDAS

25 In the event of a special meeting, the Director shall furnish notice and an agenda of such meeting to
26 Board members. Other than the Director or Board Counsel bringing emergency items requiring action
27 prior to the next meeting, no other items shall be added to the agenda of a special meeting.

Murfreesboro City School Board

Monitoring: Review: Annually, in August	Descriptor Term: Extended School Program	Descriptor Code: 1.8012	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 The Board must authorize the establishment and operation of Extended School Day/Year Programs in
2 any of its schools to be conducted before and after the regular school day and during summer months
3 and other times when school is not in session. Emphasis should be placed upon extended education
4 services for children even though fees are collected for school-age childcare. **No TISA funds, or**
5 **required TISA matching local funds, may be used to support childcare provisions of the program. The**
6 **Board shall annually determine fees to be charged for attending the program.**¹

7 **The Board authorizes the use of student teachers² and eligible professional educators as employees**
8 **within the program. Within the Extended School Day / Year program, if extended contract funds are**
9 **used, they must be used for tutorial or enrichment instruction. Such instruction shall be available to all**
10 **of the students in need of such instruction regardless of whether or not they participate in the Extended**
11 **School Day/Year Program. The Director of Schools shall establish procedures for the daily operation**
12 **of the extended school program.**

13 **OBJECTIVES**

14 Program Objectives

- 15 1. To provide an enriching and flexible curriculum
- 16
- 17 2. To provide for the safety and health of students
- 18
- 19 3. To effectively use school facilities

20 Educational Objectives

- 21 1. More guidance and increased learning time
- 22
- 23 2. Quality homework time
- 24
- 25 3. Quantitative data information

26 **ELIGIBILITY**

The only requirement for eligibility is that the student must be enrolled in the school where the extended care program is located. Exceptions to this requirement may be granted by the Director of Schools.

1 PERSONNEL

2 Each extended school program shall have an appointed site director, who shall report to the district's
3 ESP Coordinator. Each extended school program site shall employ additional personnel as necessary to
4 comply with adult:child ratios as established by the State Board of Education.³

5 USE OF FACILITIES

6 Common areas in each school will be used by the program including the gymnasium, cafeteria, library,
7 and hallways. The principal shall work with the Site Director to identify classroom spaces for the daily
8 operation of ESP. The identification of classrooms shall be in the best interest of both the ESP program
9 and the traditional school program.

10 Instruction equipment shall be made available for the program with approval by the principal.

11 FUND MANAGEMENT

12 Extended School Day/Year Programs must be self-supporting. Payments for services are to be
13 collected by the Extended School Program.

14 MATERIAL SUPPLY FEES

15 The Board authorizes the Director of Schools to determine the amount of any material/supply fees to
16 be charged for participation in any before or after school program activities. This fee would be applied
17 to the cost of instructional supplies and materials that would be used for the purpose of implementation
18 of the activity. Charges will be established in advance and be made known to the program participants
19 and their parents.

Legal References

1. TCA 49-2-203(b)(11)
2. TCA 49-5-403(c)
3. TRR/MS 0520-12-01

Murfreesboro City School Board

Monitoring: Review: Annually, in October	Safety	Descriptor Code: 3.201	Issued Date: 10/22/19 REVISED 10/12/21
		Rescinds: SS 5	Issued: 09/01/12

1 In accordance with board policy, the principal of each school shall develop procedures for keeping
 2 school facilities safe and free from hazards.¹ Each school principal shall establish traffic safety and
 3 parking controls on school grounds, including designating staff members to direct vehicles within a
 4 marked school zone.²

5 All staff members shall report current and potential hazards to their immediate supervisor(s).

6 Each principal is responsible for including safety as part of the instructional program of the school as
 7 required by law. The safety program shall include:

- 8 • Fire prevention
- 9 • Accident prevention
- 10 • Warning systems
- 11 • Emergency drills
- 12 • Emergency closings
- 13 • Traffic safety
- 14 • Safety inspections
- 15 • First aid
- 16 • Disaster preparation

17 Only students assigned to the school, the staff of the school, parents of students, and other persons with
 18 lawful and valid business shall enter onto the grounds or into the buildings of a school during the hours
 19 of student instruction. All staff members shall report all persons appearing to be improperly on school
 20 premises to the principal/designee.⁺³

21 The principal shall secure assistance from law enforcement officials when the principal deems it
 22 necessary in order to maintain order or security. In addition, the Director of Schools or designee shall
 23 provide the local law enforcement agency with all safety and security plans.²⁴

Legal References

- 1. TCA 49-6-804(a)
- 2. Public Acts of 2024, Public Chapter 948
- ~~3.~~ TCA 49-6-2008(a)-(b)
- ~~4.~~ TCA 49-6-804(c)

Cross References

- Visitors to the School 1.501
- Care of School Property 6.311

Murfreesboro City Board of Education

Monitoring: Review: Annually, in October	Descriptor Term: Vehicle Accidents on School Property	Descriptor Code: 3.4031	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 *General*

2 Any time there is a vehicle accident on school property, those involved in the accident shall notify the
3 principal or their designee immediately. The principal or their designee shall notify the Director of
4 Schools or the district's Safety Supervisor. The individuals involved in the vehicle accident shall fill
5 out an accident report and follow all legal procedures. Requests by third parties to review school
6 surveillance video shall be directed to the district's Safety Supervisor.

7 *Students*

8 If a vehicle accident occurs on school property involving a student, the Principal or their designee shall
9 be responsible for the following:

- 10 1. Call 911 if bodily injury or an emergency situation;
- 11 12
- 13 2. Contact the student's parent(s)/guardian(s). The principal or their designee shall exhaust all
14 options to contact a parent/guardian until someone is reached;
- 15
- 16 3. If no bodily injury, the principal or their designee shall contact law enforcement for a property
17 damage report; and
- 18
- 19 4. Accompany the student to the emergency room if necessary.

20 *Staff*

21 If a vehicle accident occurs on school property involving a staff member, the principal or their
22 designee shall do the following:

- 23 1. Call 911 if bodily injury or emergency situation;
- 24
- 25 2. Contact the staff member's emergency contact. The principal or his/her designee shall attempt
26 to contact the emergency contact until they are reached; and
- 27
- 28 3. In the event of only property damage, the staff member involved in the vehicle accident shall
29 notify the principal immediately;
- 30

1 4. The principal or their designee shall contact law enforcement for a property damage report.

2 *Parents and Other Visitors*

3 If a vehicle accident occurs on school property involving a parent or other visitor, the Principal or their
4 designee shall be responsible for the following:

5 1. Call 911 if bodily injury or an emergency situation;

6 2. If no bodily injury, the principal or their designee shall contact law enforcement for a property
7 damage report; and

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Instructional Program	Descriptor Code: 4.100	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 *General*

2 The Board shall not discriminate on the basis of race, color, religion, sex, national origin, genetic
3 information, or disability in its instructional program or activities.¹

4 **GOALS**

5 The Board approves the following instructional goals for students:

- 6 1. To acquire the knowledge and attitude necessary to achieve and maintain good physical and
7 mental health;
- 8 2. To develop the skills necessary to function as a self-directed person;
- 9 3. To develop the capacity to cope with change through an understanding of the arts, humanities,
10 and scientific processes;
- 11 4. To know the principles involved in making moral and ethical choices;
- 12 5. To develop the basic skills of reading, writing, computation, spelling, speaking, and problem
13 solving;
- 14 6. To develop a positive attitude toward the lifelong endeavor of learning;
- 15 7. To learn to identify personal talents and interests, make appropriate career choices, and develop
16 career skills;
- 17 8. To acquire knowledge and to develop skills in the management of personal and public
18 resources necessary for meeting obligations to self, family, and society;
- 19 9. To learn to act in a responsible manner;
- 20 10. To learn of the rights and responsibilities of citizens of the community, state, nation, and world;
21 and
- 22 11. To learn to understand, respect, and interact with people of different cultures, generations, and
23 races.

Legal References

1. 42 USCA § 200e *et seq.*

Cross References

School District Planning 1.701

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Magnet Schools	Descriptor Code: 4.205	Issued Date: 02/13/24
		Rescinds:	Issued:

1 Murfreesboro City Schools will maintain open-zoned, schools of choice for the purpose of providing
2 challenging curriculum that is innovative, theme-based and may emphasize certain subjects or adopt
3 distinct instructional models.¹ Student enrollment in magnet schools will be based on application and
4 selection criteria.

5 The Director of Schools shall establish written standards for the application, qualification, selection, and
6 enrollment of students in magnet schools. These standards shall be objective and take into account
7 multiple criteria that best predict a student’s potential for success in the school or program.

8 Students residing outside of Murfreesboro City, but within Rutherford County, may apply for entrance
9 to magnet schools operated by Murfreesboro City, however priority will be given to students residing
10 within the Murfreesboro City school district. Students who move out of the corporate city limits may be
11 allowed to remain enrolled in the magnet school for the next grade and future grades on a year-to-year
12 basis in the event there is no City of Murfreesboro students on a wait list for that grade level. Fifth-grade
13 students who move out of the City of Murfreesboro before starting sixth grade may be allowed to
14 complete their elementary education at the magnet school based on available seats.
15

Legal References

1. 34 CFR 280.4(b)

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Homebound Instruction	Descriptor Code: 4.206	Issued Date: 08/24/21
		Rescinds:	Issued:

Medical Homebound Qualification and Placement

1 The homebound instruction program is for students who, because of a medical condition, are unable to
2 attend the regular instructional program.¹ To qualify for the homebound program, a student must have a
3 "medical condition" defined as a physical or mental condition, illness, or disorder that prevents a student
4 from attending regular classes and is certified in writing by the student's treating physician.² A student
5 is prevented from attending regular classes if the student will miss more than ten (10) consecutive
6 instructional days over the period of the school year due to the medical condition.³

- 7 a. Review Committee: Requests for homebound instruction shall be reviewed and approved by a
8 Review Committee. The Review Committee shall consist of members of school or District staff
9 who are familiar with the health and educational needs of the student for whom homebound
10 instruction is being requested, including the student's IEP or 504 Team, if applicable. The
11 Review Committee shall consider the student's grade level, academic status, physical abilities,
12 individual academic needs, period of homebound instruction, and similar factors when
13 determining the amount of instruction time. The student's physician may recommend, in writing,
14 the period for which the student is eligible for homebound instruction; however, the
15 determination of the initial homebound instruction period shall be made by the Review
16 Committee.⁴
- 17 b. All initial homebound instruction shall be for the period certified by the Review Committee. In
18 order for a student to be recertified for homebound instruction to continue beyond the initial
19 certification period, the student must receive another certification in writing from his or her
20 treating physician stating that the student has a physical or mental condition that, in the treating
21 physician's judgment, prevents the student from returning to regular classes.⁵
- 22 c. In the event that the Review Committee denies a request for homebound instruction, the Review
23 Committee shall communicate the denial to the parent/guardian or eligible student within twenty-
24 four (24) hours from the Review Committee meeting. The response shall include information
25 about why the request was denied and provide information on resubmission of a request for
26 homebound instruction. If a request is resubmitted to the Review Committee, the Review
27 Committee must meet to review the request within seven (7) business days of receipt.
- 28 d. The Director of Schools will develop and implement procedures to effectuate approval of
29 requests for homebound instruction by the Review Committee.

30 Homebound Instruction⁶

31 A medical homebound instruction program shall consist of a minimum of three (3) hours of instruction
32 per week while school is in session for the homebound instruction period determined by the student's
33 review team. For students receiving special education and related services, the frequency and duration
34 of instruction necessary to provide a free appropriate public education for a student with a disability

1 during a medical homebound instruction program placement shall be determined by the student’s IEP
2 team, but shall not be less than the minimum of three (3) hours per week. Homebound instruction shall
3 be provided by a teacher holding a valid Tennessee teacher license. Students receiving homebound
4 instruction are not eligible to participate in field trips, interscholastic athletics or afterschool programs,
5 or be on their school campus, during the period of homebound instruction, unless otherwise approved
6 by the school principal in coordination with the Review Committee.

7 The student’s review team shall consider the student’s grade level, academic status, physical abilities,
8 individual academic needs, homebound instruction period, and similar factors when determining the
9 amount of instructional time per week provided to the student under a medical homebound instruction
10 program. Homebound instruction is measured by the amount of time that the student and the homebound
11 teacher are working together. Homebound services may be provided in-person or virtually, with the
12 review team determining the most appropriate method for delivery of services. If the instruction is
13 provided virtually, the Review Team shall verify that the student has all the necessary equipment, access,
14 and training for virtual instruction at no additional cost to the student.

15 Prior to the expiration of the period of homebound instruction and return to school, the Review
16 Committee shall develop a transition plan and strategy for the student’s reentry into the school
17 environment.⁷

18 **Homebound Program for Students with Disabilities⁸**

19 A student with a disability may be eligible for a homebound placement if the student qualifies under the
20 Individuals with Disabilities Education Act (IDEA) and State Board rules and regulations. An
21 educational homebound placement for students with disabilities is made by an IEP team when
22 considering the full continuum of placement options made available pursuant to IDEA. The IEP team
23 must document that a homebound placement is necessary, temporary and consistent with requirements
24 for the provision of a free appropriate public education. Educational homebound instruction is
25 appropriate if the child’s IEP team determines that the student cannot receive an educational benefit in
26 a less restrictive setting, including as a result of the student’s behavior. All educational homebound
27 placements shall be temporary. A homebound placement for a student with a disability shall be
28 temporary, and shall not exceed thirty (30) school days. The student’s IEP shall contain a goal of
29 returning the child to a less restrictive environment within the school year. The student’s IEP shall also
30 be reviewed by the IEP team every thirty (30) school days to ensure the continued appropriateness of
31 instruction and of the homebound placement.

Legal References

1. TRR 0520-01-02-.10; T.C.A. 49-10-110
2. TRR 0520-01-02-.10(1)(c)
3. TRR 0520-01-02-.10(2)(a)
4. TRR 0520-01-02-.10(2)(b)
5. TRR 0520-01-02-.10(4)
6. TRR 0520-01-02-.10(3)
7. TRR 0520-01-02-.10(5)
8. TRR 0520-01-09-.07

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Virtual Education Program	Descriptor Code: 4.212	Issued Date: 08/24/21
		Rescinds:	Issued:

1 *RECOMMENDED FOR RETIREMENT*

2

3 *General*

4 ~~Murfreesboro City Schools' virtual education program is an educational program designed to ensure~~
5 ~~the continuity of educational opportunities through the use of technology. Utilizing this program is~~
6 ~~temporary and shall not replace a student's regular instructional program.¹~~

7 ~~Class size ratios for the virtual education program shall comply with the requirements as outlined in~~
8 ~~state law.²~~

9 **ELIGIBILITY**

10 ~~Virtual education programs³ shall be made available to students for the following purposes:~~

11 ~~1. Continuity of educational service for students who are homebound;⁴ and~~

12 ~~2. Continuity of educational service for students who are quarantining;⁵~~

13 **ATTENDANCE**

14 ~~Student attendance in the virtual education program shall adhere to the general requirements of board~~
15 ~~policy 6.200 and any relevant administrative procedures.~~

16 ~~Methods of confirming student attendance shall include either~~

17 ~~1. Students participating in synchronous virtual instruction;~~

18 ~~Or two or more of the following:~~

19 ~~1. Students participating in a phone call with a teacher, with parent/guardian support as~~
20 ~~appropriate for the age of the student;~~

21 ~~2. Students participating in asynchronous virtual instruction; or~~

22 ~~3. Students submitting work via hard copy or virtual formats.~~

1 ~~VIRTUAL EDUCATION PROGRAM REQUIREMENTS~~

- 2 1. ~~Students are expected to stay in good standing with school in regard to absences and~~
3 ~~completion of assigned classwork.~~
- 4 2. ~~Students and the person supervising the student shall adhere the school's code of conduct~~
5 ~~during virtual education including, but not limited to, not being disruptive or distracting to the~~
6 ~~virtual learning environment.~~
- 7 3. ~~ESP is not available for students utilizing the virtual education program.~~

8 ~~REMOVAL FROM VIRTUAL EDUCATION PROGRAM~~

9 ~~A student will be removed from the virtual education program and returned to their regular~~
10 ~~instructional program at the completion of the homebound or quarantine period.~~

11 ~~DEVICE AGREEMENT~~

12 ~~Parents of students who require a loaned device from Murfreesboro City Schools shall complete the~~
13 ~~Device Agreement.~~

Legal References

1. ~~TRR/MS 0520-01-03-.05(2)~~
2. ~~TCA 49-1-104(4)~~
3. ~~TCA 49-16-101; TRR/MS 0520-01-03-.05(2)(a)~~
4. ~~TRR/MS 0520-01-02-.10; TRR/MS 0520-01-09.07~~
5. ~~TRR/MS 0520-01-13-.01(1)(d)(1)~~

Cross References

~~Homebound Instruction 4.206~~
~~Credit Recovery 4.210~~
~~Alternative Education 6.319~~

Murfreesboro City School Board

Monitoring: Review: Annually, in December	Descriptor Term: <h2 style="margin: 0;">Transcript Alterations</h2>	Descriptor Code: 4.608	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

- 1 Any student transcript alteration shall be supported by documentation.¹ This documentation shall
- 2 include the reason for the transcript alteration and evidence that the student earned the grade reflected
- 3 in the altered transcript.

- 4 Murfreesboro City Schools shall not retaliate against an employee who brings unauthorized transcript
- 5 alterations to the attention of school officials.¹

- 6 The Director of Schools shall develop administrative procedures to implement this policy.

Legal References

1. TCA 49-50-1101

Cross References

- Grading System 4.600

Murfreesboro City School Board

Monitoring: Review: Annually, in September	Descriptor Term: Assignment of Students to Schools and Classes	Descriptor Code: 6.205	Issued Date: 02/28/23
		Rescinds: STU 5	Issued: 04/79; 07/01; 05/12; 04/14; 06/16; 09/18

1 **SCHOOL ASSIGNMENT¹**

2 Pupils entering the Murfreesboro City School System will be assigned to the school which services their
 3 respective school zone unless the student has been accepted for attendance at a “controlled choice” or
 4 open- zoned school.¹ The boundaries of these zones may be adjusted from year to year. An exception
 5 made to the above is: Students living outside the city limits may be assigned to schools where space is
 6 available pursuant to Board Policy 6.203.

7 “Controlled choice” or open-zoned school includes a school with a designated zone but other students
 8 may attend if space is deemed available.

9 Each year, the Director of Schools/designee shall review the number of spaces available in each school
 10 by grade, class, and program levels. This information shall be posted on the district’s website along with
 11 the dates of the district’s open enrollment period. The open enrollment period shall last for thirty (30)
 12 days and information about the number of seats available shall be posted for at least fourteen (14) days
 13 prior. The Director of Schools/designee shall reserve a reasonable number of enrollment spaces at each
 14 school to account for the enrollment of zoned students, siblings of students, and students who have a
 15 parent/guardian employed at the school.²

16 During the district’s open enrollment period each year, a parent/guardian may request that his/her child
 17 attend a school within the district other than the one to which the child is zoned. The Director of
 18 Schools/designee shall review such requests, and if adequate space is available, grant such transfers. If
 19 the number of requests exceeds the number of available spaces, the Director of Schools/designee shall
 20 implement a lottery to fill the available spaces.

21 The open enrollment process shall be completed before other nonresident transfers are approved.

22 Once accepted, the student shall provide his/her own transportation to and from the school. The student
 23 must maintain satisfactory attendance, behavior, and effort to remain in the new school.

24 **APPEALS**

25 Parents who are dissatisfied with the assignment of their children may, within ten (10) days after the
 26 assignment make application to the Board for a hearing requesting a transfer to another school.³ Any
 27 appeal **shall be held within a reasonable time** for exception to this policy or determination of the proper
 28 application of the policy shall be reviewed by a **special committee**, including at least one (1) Board

29 member, appointed by the Board. The committee shall consider appeals based on a student's specific
30 curricular and/or documented needs. Principals shall review all specific curricular exceptions annually;
31 when the conditions upon which the exception was granted are not adhered to, the out-of-zone approval
32 shall be revoked. The decision of the ~~special committee~~ the Board regarding appeals is final and shall
33 issue a written order either granting or denying the protest. A copy of the order and findings of the Board
34 shall be mailed to all parties at the hearing at their last known mailing address within five (5) days from
35 the date of the order.

36 ZONE WAIVERS

37 Applications for waivers on school zone requirements must be submitted in writing to the Director of
38 Schools or designee. Zone waiver applications must be completed on a **yearly annual** basis and are
39 applicable to one school year only depending on school enrollment and capacity. The Director of
40 Schools or designee may, in hardship cases, grant waivers on school zone requirements. Students on
41 zone waivers cannot be sent back to their zoned school without approval of the Director of Schools or
42 the Director's designee.

43 In the event the Board decides to close a school's zone where a student has been attending as a zoned or
44 a zone waived student, the student's right to attend the school will be forfeited if the student resides
45 outside of the designated school zone or if the student moves to a new residence not listed on the zone
46 waiver form.

47 Should the Board need to rezone the district or a school for any reason, the newly designated school
48 zones supersede any zone waiver(s) from prior years.

49 TRANSFERS WITHIN SYSTEM¹

50 After a student has enrolled in one (1) school within the system, they shall not be permitted to transfer
51 to another school other than their zoned school unless there is a change in residence of the student's
52 parent(s) or guardian(s) outside the area in which the student enrolled. Any exception to this policy must
53 be brought before the Director of Schools for evaluation and decision. Students whose families transfer
54 their residence to another school area after the first month of school may complete the school year at
55 their former school.

56 Students who present evidence that they will move during the school year and who desire to enroll in a
57 new school in the new area may do so with prior written request for a change of school area. The Director
58 of Schools or designee may grant other exceptions to this policy for good and sufficient reasons.

59 OPEN ZONING¹

60 Upon recommendation of the Director, each year the Board will approve which schools will be available
61 for open zoning.³ That decision will be based on current and future available space for students, principal
62 recommendation, and any other appropriate consideration needed at that time. If the transfer is granted,
63 the parents or guardians are responsible for transportation of the student to the new school. The student
64 shall maintain satisfactory attendance, behavior and effort to remain in the new school. All out-of-zone
65 transfer requests must be completed on an annual basis and submitted for approval by May 15th.

66 Approval to attend an open-zoned school is valid for one year and is based on school capacity and the
67 information submitted with the open zone application.

68 **CLASSROOM ASSIGNMENT**

69 Principals have the authority and responsibility for assigning students to the individual classrooms within
70 the school. Pupil-teacher ratios shall not exceed the averages outlined in state law. Further, class sizes
71 shall not exceed the maximum allowed by state law.⁴

72 Students who enter the system from another school system are to be placed by the principal in the grade
73 and/or level as indicated by records from the former school. If the student's placement is inappropriate
74 in the grade or level assigned, the student may be reassigned by the principal to another grade level.
75 Parents shall be kept advised.

76 The principal shall separate an alleged victim of child sexual abuse from an alleged perpetrator if the
77 abuse allegedly occurred while the child was under the supervision or care of the school. If available
78 and appropriate, a child shall be reassigned if a request is made by the child's parent or custodian and
79 the perpetrator has been (1) substantiated by the department of children's services; (2) adjudicated by a
80 juvenile court to have committed the child sexual abuse; or (3) criminally charged.⁵

Legal References

1. TCA 49-2-128
2. TCA 49-6-3113
3. TCA 49-6-3201
4. TCA 49-1-104; TRR/MS 0520-01-02-.31(4)
5. TCA 49-6-3102(h), (i)

Cross References

Student Assignments 6.205
Homeless Students 6.503
Students in Foster Care 6.505

Agenda Item Title: Approval of Contracts Exceeding \$25,000, but less than \$50,000

Board Meeting Date: June 25, 2024

Department: Technology

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) at the regularly scheduled Board meeting immediately following approval of the contract or agreement. The contract with Central Technologies, Inc. for the purchase of multisensor cameras is submitted for the Board's approval.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

The cost of the contract is \$43,919.75 and is being funded by the technology general purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



We have prepared a quote for you

Avigilon - Multisensor Cameras

Quote # 022654
Version 1

Prepared for:

Murfreesboro City Schools

April Zavis
april.zavis@cityschools.net



Products

Description	Price	Qty	Ext. Price
32C-H5A-4MH 4X8MP; WDR; 360 degree max field of view; Lightcatcher; 3.3-5.7MM; Camera Only	\$2,216.20	1	\$2,216.20
24C-H5A-3MH 3X8MP; WDR; 270 degree max field of view; Lightcatcher; 3.3-5.7MM; Camera Only	\$1,855.70	17	\$31,546.90
H5AMH-AD-PEND1 Outdoor pendant mount adapter. For use with the Avigilon H5A Multisensor	\$139.50	17	\$2,371.50
H5AMH-DO-COVR1 Dome bubble and cover; for outdoor surface mount or pendant mount; clear. For use with the Avigilon H5A Multisensor	\$139.50	17	\$2,371.50
WLMT-1001 Wall Mount for large pendant camera	\$84.92	17	\$1,443.64
ACC7-ENT-BUNDLE-1YR ACC7 Enterprise camera channel w/ Smart Plan; 1Yr	\$233.53	17	\$3,970.01

Subtotal: \$43,919.75

Purchasing Vehicle

Description	Qty
TIPS-USA CONTRACT - 240101 TIPS-USA CONTRACT - 240101 - Technology Solutions	1



Avigilon - Multisensor Cameras

Prepared by:

Knoxville HQ

Jordan Walker
843-425-2265
jwalker@centralinc.com

Prepared for:

Murfreesboro City Schools

2552 South Church Street
Murfreesboro, TN 37127
April Zavis
(615) 893-2313
april.zavis@cityschools.net

Quote Information:


Quote #: 022654

Version: 1
Delivery Date: 05/29/2024
Expiration Date: 08/27/2024

Quote Summary

Description	Amount
Products	\$43,919.75
Total: \$43,919.75	

Knoxville HQ

Signature: 
Name: Jordan Walker
Title: Senior Account Manager
Date: 05/29/2024

Murfreesboro City Schools

Signature: _____
Name: April Zavis
Date: _____

Agenda Item Title: Approval of Contracts Exceeding \$25,000, but less than \$50,000

Board Meeting Date: June 25, 2024

Department: Instruction

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) at the regularly scheduled Board meeting immediately following approval of the contract or agreement. The contract with Zearn for instructional materials is submitted for the Board's approval.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

Cost of the contract is \$32,500.00, and it will be funded with remaining ESSER 3.0 funds.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Zearn Master Service Agreement

This Master Services Agreement (the "Agreement") is between Zearn and MURFREESBORO CITY SCHOOL DIST ("Account Holder") in Tennessee for the 2024-2025 school year. The Agreement sets out the terms and conditions with respect to the Services that the Account Holder may receive throughout the school year, as defined below, and incorporates Zearn’s Terms of Use (<https://www.zearn.org/termsfuse>) and Privacy Policy (<http://www.zearn.org/privacy>).

1. Covered Schools and Services

Zearn will provide the following Services to the district/school(s) listed below (“Covered Schools”):

District / School Name	Services
BLACK FOX ELEMENTARY SCHOOL	School Account
BRADLEY ACADEMY OF ARTS	School Account
CASON LANE ACADEMY	School Account
DISCOVERY SCHOOL	School Account
ERMA SIEGEL ELEMENTARY SCHOOL	School Account
HOBGOOD ELEMENTARY SCHOOL	School Account
JOHN PITTARD ELEMENTARY SCHOOL	School Account
MITCHELL NEILSON ELEM SCHOOL	School Account
NORTHFIELD ELEMENTARY SCHOOL	School Account
OVERALL CREEK ELEMENTARY SCH	School Account
REEVES-ROGERS ELEMENTARY SCH	School Account
SALEM ELEMENTARY SCHOOL	School Account
SCALES ELEMENTARY SCHOOL	School Account

2. Fees and Payment

The combined fee associated with the Services above is \$32,500.00 (the “Fee”). The Fee does not include state taxes that may be applicable. Once this Agreement is signed, the Account Holder is responsible for full payment. Zearn will provide Account Holder an invoice with payment due within 30 days of the invoice date. Account Holders who purchase Zearn School Account(s) and On-Demand Professional Development will receive an invoice at the earliest in July 2024 unless an invoice is requested sooner. Account Holders who purchase a live Professional Learning offering will receive an invoice following Zearn’s delivery of Professional Learning Services. Payments are non-refundable.

3. Zearn School Account and On-Demand Professional Development Terms

For Account Holders who purchase a Zearn School Account and On-Demand Professional Development for the 2024-2025 school year, the following terms apply.

3.1. Zearn School Account License Period

Account Holder’s Zearn School Account license begins on the day this Agreement is signed, or if purchased later, on the purchase date, and runs through June 30, 2025. When noted in Section 1 above, “Legacy” refers to customers who piloted Zearn Math in the 2016-17 school year.

3.2. Authorization

By purchasing a Zearn School Account and On-Demand Professional Development license, Account Holder represents and warrants that it is an authorized representative of the Covered Schools with permission to enter into this Agreement on behalf of the Covered Schools, inclusive of staff members and students who will utilize the Services. Account Holder understands and acknowledges that a Zearn School Account is for the use of students and school staff only, and that Zearn does not authorize third parties to access Zearn School Accounts.



Zearn Master Service Agreement

Account Holder further represents and warrants that it has read, understands and accepts the terms of this Agreement on behalf of Covered School. Account Holder further acknowledges and agrees that it or its designated representatives has the right to share student personal, performance and other information with Zearn for the purpose of Zearn providing the Services to the Covered Schools and as further described in the Privacy Policy, in accordance with the terms of this Agreement.

3.3. Privacy

Zearn and Account Holder agree to comply with all applicable federal, state and local laws. In the event Account Holder, or its Covered Schools, are subject to the Family Educational Rights and Privacy Act (FERPA), Zearn and Account Holder agree as follows:

(A) Account Holder appoints Zearn as a "school official" as that term is used in FERPA Regulation 34 C.F.R §99.31 (a)(1)(i) and 34 C.F.R Part 99 et seq., with a "legitimate educational interest" to carry out its responsibilities under the Agreement.

(B) Account Holder represents and warrants that it, or its Covered Schools, has received all necessary signed and dated written consents from the parents/legal guardians of students to provide student data for the purpose of receiving the Services, as required under FERPA.

Zearn agrees to support Account Holder's compliance with FERPA, including operating under the direct control of Account Holder with respect to its use of student information provided by Account Holder or its Covered Schools, teachers or students.

3.4. Data Retention

Upon termination of the Zearn School Account services under this Agreement or other account inactivation, Zearn will retain account and student information provided by Account Holder and its Covered Schools for a period of 180 days for Account Holder's convenience in the event of renewal or reactivation. Account Holder or its Covered Schools may request deletion of account information at any time by providing a written request to Zearn through schoolaccounts@zearn.org.

3.5. Data Security

Zearn maintains reasonable security standards appropriate to the type of data collected. This includes multiple safeguards to help protect against loss, misuse or alteration of information, including encryption of data in transit and at rest, use of two-factor authentication to access the system, regular software security updates and industry best practices for network and physical security.

3.6. Account Holder Privacy Obligations

Account Holder and its Covered Schools are responsible for managing the privacy and security of student, teacher and administrator account credentials affiliated with Zearn School Accounts. As such, log-in and password information should not be shared or used by more than one individual in order to access content including On-Demand Professional Development material; to knowingly share account information is a violation of Zearn's Privacy Policy and this Agreement. Account Holder agrees to notify Zearn immediately if it knows or suspects there has been unauthorized access to accounts or any other breach of security. Zearn will comply with all applicable laws concerning sending appropriate notifications in the event of an unauthorized disclosure of personal identifying information.

3.7. On-Demand Professional Development License

Account Holder may receive from Zearn a non-exclusive, non-transferable, revocable license to access and use the On-Demand Professional Development materials for non-commercial, professional development purposes. As part of this Agreement, teachers and administrators with access to the On-Demand Professional Development materials agree not to share, redistribute, or otherwise make available the Zearn Professional Development materials to individuals or entities who are not affiliated with the Account Holder. Zearn retains



Zearn Master Service Agreement

ownership of the On-Demand Professional materials and retains all intellectual property rights in these materials. Zearn is the sole provider of these Professional Development materials; any commercial use or distribution of them is strictly prohibited.

4. Professional Learning Sessions

If Account Holder who purchases Professional Learning sessions ("Professional Learning"), the following terms apply.

4.1. Scope

The purpose of Professional Learning is to provide comprehensive training to support district and school-based educators and leaders with launching and growing Zearn Math implementation at the classroom, school, and district level. Professional Learning sessions are provided live either on-site or virtually. Professional Learning sessions include all instructional materials needed to fully participate in the training program.

4.2. Rescheduling and Fee Policy

Account Holder may reschedule its training date provided Account Holder gives Zearn written notice at least two (2) weeks prior to the date of on-site training or training sessions over four (4) hours in duration, or five (5) days prior to the date of virtual training under four (4) hours in duration ("Reschedule Window").

Zearn's training team incurs expenses in preparation for Professional Learning sessions and is not able to absorb these expenses if Account Holder cancels or reschedules outside of the Reschedule Window. For this reason, requests to reschedule made closer to the training date cannot be accommodated by Zearn, and in the event of a cancellation, Account Holder understands and agrees that it remains responsible for the full training fee.

4.3. Intellectual Property Disclaimer

Zearn has developed intellectual property, including content, tools, and materials that are included in its training sessions. Zearn maintains all ownership rights and interests in and to all training content, tools, and materials. The delivery of and payment for training sessions does not imply a transfer of any ownership rights or interests, and does not allow for Account Holder to claim ownership or interests in any of Zearn's intellectual property. Account Holder agrees to use the training materials solely for its own personal and non-commercial purposes and in compliance with this Agreement and Zearn's Terms of Use.

4.4. Suggestions and Feedback

During the training, Account Holder may provide Zearn with certain suggestions or feedback regarding Zearn Math, including curriculum or content development recommendations (collectively, "Suggestions"). Account Holder agrees that Zearn shall own all such Suggestions, including all copyrights therein.

5. Purchasing Add-on Services

At the time of signing this Agreement and/or throughout its term, Account Holder may request services in addition to those listed in Section 1 ("Add-on Services"). Zearn will deliver to Account Holder Add-on Services following Zearn's receipt of a Purchase Order from Account Holder. Each Purchase Order, once received by Zearn, constitutes a separate binding contract between the Parties which incorporates and is subject to the terms and conditions of this Agreement.



Zearn Master Service Agreement

5.1. Zearn School Account and On-Demand Professional Development

If Account Holder orders additional license(s) for Zearn School Accounts or On-Demand Professional Development, Account Holder will provide Zearn a Purchase Order confirming the Covered Schools and relevant fees.

5.2. Zearn Printed Materials

If Account Holder orders Zearn Printed Materials, Account Holder will provide Zearn a Purchase Order and Order Form for the number of books, delivery details (location and recipient), and the relevant fees, including whether Account Holder is exempt from state taxes.

5.3. Professional Learning Sessions

If Account Holder orders Professional Learning, Account Holder will provide Zearn a Purchase Order confirming the training type, date(s), number of session(s), and the relevant fees.

6. Miscellaneous

6.1. Conflicting Provisions

In the event of a conflict between the terms and conditions of this Agreement and any other written agreement entered into between Zearn and Account Holder, the terms and conditions of this Agreement will control.

6.2. Modifications

Modifications to this Agreement are effective only if confirmed in writing between Zearn and an authorized representative of Account Holder.

6.3. Signature Authorization

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures received by PDF file or other electronic format are agreed to be acceptable as original signatures.



Zearn Master Service Agreement

By signing the below, the Account Holder and Zearn agree to the terms of this Agreement.

For Account Holder:

Name _____

Title _____

Signature _____

Date _____

For Zearn:

Name Shalinee Sharma

Title Chief Executive Officer

Signature 

Date 04/02/2024



<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00
<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00
<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00
<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00
<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00
<p>School Account</p> <p>School Account services through June 30, 2025. Includes an unlimited number of staff, student, and administrator accounts within the school.</p>	\$2,500.00	1	\$2,500.00

Tax* \$ 0.00

Total \$ 32,500.00

Tax is **not included in the above quote. Tax will be added to your invoice, if applicable. If your school or district is tax-exempt, please [upload a copy of your tax exemption certificate](#) in order to receive a tax-free invoice.*

To Order Zearn Printed Materials:

- Please email printedmaterials@zearn.org, with:
 - (1) a completed Order Form (Google Sheets link) detailing the exact products being purchased and shipping/delivery information
 - (2) a Purchase Order made out to Zearn (including a shipping fee equal to 10% or \$25, whichever is higher; and applicable sales tax, *if your school or district is **not** tax-exempt*)

By submitting a Purchase Order for Zearn Printed Materials, you acknowledge and accept that all purchases for the Product(s) listed above are final and are not eligible for returns and/or refunds. Once your Purchase Order is received, your order will be processed. An invoice will be issued, and payment will be due within 30 days.

To Order Zearn School Account(s) and/or Professional Development:

- Please email your Zearn contact to request a Purchase Agreement, with:
 - (1) the quote number referenced above; and the name, title and email of the person who will be signing the agreement
- Your Zearn contact will send a Purchase Agreement for you (or the specified person) to sign
- Create a Purchase Order and return it directly to our Billing team at billing@zearn.org

By submitting a signed Purchase Agreement for Zearn School Account(s) and/or Professional Development, you acknowledge and accept that all purchases for the Product(s) listed above are final and are not eligible for returns and/or refunds. Once your signed Purchase Agreement is received, your Zearn contact will follow up to finalize your order.

Please note: Account Holders who purchase Zearn School Account(s) and/or On-Demand Professional Development will receive an invoice at the earliest in July unless an invoice is requested sooner. Account Holders who purchase a live Professional Learning offering will receive an invoice following Zearn's delivery of Professional Learning Services.

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer
Identification Number and Certification**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

**Give Form to the
requester. Do not
send to the IRS.**

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Zearn

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Other (see instructions) ▶ **501 c(3) NONPROFIT Organization**

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
PO Box 20
6 City, state, and ZIP code
New York, NY 10116

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
____ - ____ - _____

or
Employer identification number
3 7 - 1 6 6 5 7 4 5

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ Date ▶ **3/15/2023**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Agenda Item Title: Approval of Contracts Exceeding \$25,000, but less than \$50,000

Board Meeting Date: June 25, 2024

Department: Instruction

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) at the regularly scheduled Board meeting immediately following approval of the contract or agreement. The contract with Studies Weekly for instructional materials is submitted for the Board's approval.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

Cost of the contract is \$48,026.70 and was included in the FY25 general purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

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Licensing

Each educator must have their own Studies Weekly Online (SWO) account and ensure that usernames and passwords are not shared. Each Teacher Account is valid for one annual subscription. Teachers can create as many classrooms as needed, but the number of student accounts between all created classrooms should not exceed the purchased number of annual subscriptions. You may not resell, distribute, or otherwise share logins or printed materials. You must always have an active subscription to use downloaded, copyrighted materials.



Registration

To use SWO, each user must register their name, email address, and other details. Information collected about educators is not shared or sold, but may be used to communicate product and service updates.

How do we protect your information?

We use a secure server. All sensitive/credit information is transmitted via Secure Socket Layer (SSL) technology and encrypted into our payment gateway provider's database. This information is only accessible by those authorized with special access rights to such systems. We do not store private information (credit cards, social security numbers, financials, etc.) after a transaction.

Do we use cookies?

Yes. Cookies are small files that a site or its service provider transfers to a computer's hard drive through your web browser to recognize the browser, capture, and remember certain information.

We use cookies to process the items in the shopping cart, save user preferences for future visits, and compile aggregate data about site traffic to improve the site experience. We may contract with third-party service providers but these service providers may only use the information to help us conduct and improve your experience. No identifiable information is shared with third-party service providers.

Do we disclose any information to

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confidential. We may also release information when such release is appropriate to comply with the law, enforce site policies, or protect ours or others rights, property, or safety.

What data information do we collect?

We only have access to information that you voluntarily provide. We do not sell or share this information. Data provided by you or your organization (either through automated rostering or by interaction with user accounts) is and shall remain the property of the provider.

All data released is in compliance with the Family Education Rights and Privacy Act (FERPA) and Studies Weekly policies as set forth in this document, for managing student education records and other confidential information.

In becoming a Studies Weekly customer, each customer is agreeing to grant Studies Weekly license to use such data for:

- Communication
- Shipping
- Creating accounts
- Identifying user access to their data
- Creating aggregate reports

Data will not be divulged to unauthorized third parties or used in any way that would violate FERPA.

Your Access to and Control Over Information

We may send emails to educators about promotions, new products, and services, but they may unsubscribe at any time. Although one may unsubscribe

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- Ask us to delete their data
- Express concern about use of their data

Security

We take precautions to protect information. When a customer submits sensitive information via the website, their information is protected both online and offline. We will notify them by email or phone within 48 hours should we ever discover a data breach.

When we collect sensitive information (such as credit card data), that information is encrypted and securely transmitted. To verify, check the closed lock icon at the bottom of your web browser, or for “https” at the beginning of the web page address.

We also protect your information offline. Only employees that need the information to perform a specific job (e.g., billing or customer service) are granted access to personally identifiable information. The computers and servers which store personally identifiable information are kept in a secure environment.

If you have concerns about how we comply with this privacy policy, please contact us at (866) 311-8734 or email support@studiesweekly.com.

Legal Compliance

We maintain strict compliance with FERPA (Family Educational Rights and Privacy Act), COPPA (Children’s Online Privacy Protection Act), and state privacy laws. If you have a specific question about adherence to your state laws, please email contracts@studiesweekly.com.

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or sell. If you have any questions or need special permissions, please email contracts@studiesweekly.com.

Intellectual Property

All online and print materials are copyright protected and intended to be used solely by the purchaser and the properly licensed customers. Further use, duplication, or distribution to persons not covered by your license is a copyright infringement. This includes, but is not limited to, derivative works to be sold or given to third parties.

We are sometimes asked if content, samples or excerpts can be used in articles, papers, or other projects. Regrettably, we are unable to allow such use to unauthorized third parties due to our commitment to safeguarding our intellectual property. We strictly adhere to policies and guidelines governing the utilization of our materials for external purposes. Apart from copyright protection, we are bound by legal restrictions and pre-existing agreements that prohibit us from sharing any content, examples, or direct references for publication. Our dedication to maintaining the integrity and exclusivity of our content is of utmost importance to us.

Your Consent

By using our site, you consent to our privacy policy.

Changes to our Legal and Privacy Policy

If we change any policy, we will post changes here.

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ADA Compliance (508 Compliance) provides accessibility for digitally published material.

Studies Weekly is committed to providing access to our online curriculum for all students, regardless of ability, by complying with the guidelines set forth by the Americans with Disabilities Act. Below, we've outlined the different ways that our site meets web accessibility best practices:

- Web Content Accessibility Guidelines compliant
- Article narration with variable speed
- Audio reader can read assessment questions to a student
- Article narration highlighting tool is color blind accessible
- The application is screen-reader software compliant
- Digital versions of all articles, images, and related media
- Annotation features and highlighting (code text for improved comprehension and retention)
- Many videos include closed captioning
- Large-print

Updates

Studies Weekly strives to keep its product up-to-date and culturally relevant. As such we reserve the right to make updates and edits. Occasionally, we replace products in order to improve standards coverage. In such cases, if you have a long term adoption, we will offer to let you receive your remaining newspapers or magazines, or switch to the replacement at no additional cost.

Uptime Guarantee

We use cookies to improve your experience. Please read our [Privacy Policy](#) or click



Service Availability Guarantee

Our commitment is to provide a service that is available 99% of the time. We strive to maintain uninterrupted access to our platform and its features for our users.

Compensation for Downtime

In the event of unplanned downtime, we will compensate our users with credits based on the duration of the downtime, according to the following schedule:

- Downtime of less than 1 hour: No credit will be given.
- Downtime of 1 hour to 24 hours: We will provide 1 hour of credit for every hour of downtime.
- Downtime of more than 24 hours: We will provide 2 hours of credit for every hour of downtime.

Credit Request Process

To be eligible for credit, users must submit a request to our support team within 7 days of the downtime occurrence. Our dedicated support team will investigate the reported downtime and determine its eligibility for credit.

Credit Application

If credit is awarded, it will be applied to the user's account within 10 days of the credit request being approved.

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is always 30 days from the incident. For example, if there were a 2-hour outage on March 1st, we would calculate the uptime from January 31st through March 1st. In this scenario, it would be 99.72% uptime.

Exclusions

The uptime guarantee does not cover downtime caused by factors beyond our control, including but not limited to:

- a) Natural disasters or power outages.
- b) Actions or limitations imposed by third-party providers, such as the customer's Internet Service Provider (ISP), Single Sign-On (SSO) services, and rostering services.

While we strive to work closely with these providers to maintain seamless service, any downtime resulting from their actions or limitations falls outside the scope of our uptime guarantee. We will, however, do our best to assist and collaborate with our users in resolving any issues arising from such situations.

This policy provides a clear and fair framework for compensating our users for unplanned downtime. If you have any questions or require further clarification, please don't hesitate to contact our support team. We appreciate your understanding and remain dedicated to delivering the best possible service.

Ordering, Shipping, and Returns

Studies Weekly Payment Terms

We use cookies to improve your experience. Please read our [Privacy Policy](#) or click .



Duplicate Orders

Studies Weekly is not responsible for duplicate orders. Duplicates may occur when an order is sent in separately from a PO, creating the appearance of two unique orders. To avoid such confusion, please send your order and PO together. If you notice that your order has been duplicated, please contact Customer Service at (866) 311-8734 to cancel the duplicate order and arrange for a return, if necessary. Please see our return policy for further details.

Studies Weekly Return Policy

Orders can be canceled prior to shipment by contacting our Customer Support department as soon as possible. For any orders that have shipped, the items must be received back with an included RMA (Return Material Authorization) and the return must be processed by a Studies Weekly agent before a refund can be provided.

Studies Weekly will gladly accept a return under the following conditions:

- Contact the Customer Support department to request a Return Material Authorization (RMA) within a valid return window.
 - Pre-orders have until Oct. 31st.
 - Standard order have 60 days from the date of purchase.
- RMAs are valid for 30 days and the return must be received within the 30 day window.
 - No RMAs will be issued after January 30th of the current school year.
 - No refunds will be given for orders received after the RMA expires.
- The customer is responsible for all return shipping costs.
- Products must be returned unused, unseparated, undamaged, and in their original condition

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- If there is not a refundable amount, the customer is still responsible for the restocking fee.
- Refunds are only available up to 60 days after the date of purchase or before October 31 of the order year.

Studies Weekly Shipping Policy

Shipping for the new school year begins in April, and product is shipped within a mutually agreed upon shipping window, based on customer availability to receive and sign for delivery. Please note:

- The shipping carrier is typically FedEx or Freight and is determined by order details.
- Products can be expected to arrive within 14 days of shipping.
- Studies Weekly is not responsible for delayed delivery of product due to backorder, acts of nature, carrier problems or other unforeseeable issues.
- Publications that are delivered damaged or lost in shipment will be replaced at no additional cost.
- Please allow 3-4 weeks for shipping to Hawaii and Alaska.

Also of Interest

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[Curriculum Evaluation Rubric for School Board Members](#)

[Using Inquiry-Based Learning in Science](#)

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REQUIRED FOR SHIPPING

All fields required. Orders require a purchase order before shipping. Orders begin shipping in April for the next school year. Orders default to partial shipping in mid-August unless specified otherwise. Someone must be present to sign for delivery.

Billing Name, Phone, Email (Billing contact if different than listed)

Billing PO #

Shipping Name, Phone, Email

Shipping Address (if different from listed)

REQUIRED: When are you NOT available to receive the materials?

No shipping restrictions _____
Exclusion Dates for receiving

REQUIRED: Would you like to receive your materials as they become available or would you like us to hold your order until all can be shipped together?

Partial Ship Whole Ship

Authorized Signature Date

To cancel an order, contact Customer Service BEFORE your order is shipped. Returns and refunds must be in original, unused condition and returned within 30 days. The customer pays return shipping and a \$10 restocking fee per classroom box.

By signing this quote, you agree to all terms and conditions at <http://studiesweekly.com/legal>

Please submit this quote with your purchase order.

Occasionally, due to weather or other unforeseen circumstances, delivery may take longer than expected. However, you will have online access to your curriculum before that, depending on the time of year and if you roster your students.

QUOTE #88005

Quote Issued: 02/06/2024
Expiration: 05/06/2024
School Year: 2024-2025
Referral: Sales Rep
School Start Date: 08/17

REQUESTER

LEA BARTCH
MURFREESBORO CITY SCHOOL DIST
2552 S CHURCH ST
MURFREESBORO, TN 37127
lea.bartch@cityschools.net
(615)893-2313

CONTACT US

1140 N 1430 W Orem, UT 84057
Phone: 866-311-8734 | Fax: 866-531-5589
Email: orders@studiesweekly.com

REGIONAL MANAGER

Devin Hall
devin.hall@studiesweekly.com
801-913-4718

ACCOUNT MANAGER

Ranae Neely
ranae.neely@studiesweekly.com
801-505-1187

TERMS AND CONDITIONS

Please visit <http://www.studiesweekly.com/legal/> to learn more about our legal terms.

Grade	SKU	Title	Class	Unit Price	Qty	Cost
Social Studies						
0	TN0	Tennessee Studies Weekly - The World Around Us	56	\$7.65	1377	\$10,534.05
1	TN1	Tennessee Studies Weekly - Our Place in the United St	50	\$7.65	1250	\$9,562.50
2	TN2	Tennessee Studies Weekly - Life in the United States	36	\$7.65	890	\$6,808.50
3	TN3	TN Studies Weekly - Geography, Economics & Early hi	33	\$7.65	825	\$6,311.25
4	TN4	TN US History Studies Weekly - Colonization to Reconstruction	34	\$7.65	830	\$6,349.50
5	TN5	TN US History Studies Weekly - Industrialization to the Civil Rights Movement	45	\$7.65	1106	\$8,460.90
Total						\$48026.7

Services						
F	PDQF2F	Qualified Face-to-Face Training Session (up to 6 hrs)	1	\$0.00	1	\$0.00
Total						\$0

Sub Total:	\$48,026.70
Tax:	\$0.00
Shipping:	\$0.00
Total:	\$48,026.70

Thank you.

for your interest in Studies Weekly. If you are ready to purchase, please provide the information above and submit your order.

Agenda Item Title: Approve agreement with Palmer Hamilton for redesign of cafeteria for Mitchell Neilson Primary

Board Meeting Date: June 25, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Palmer Hamilton will provide new furniture and tailored graphics and designs pursuant to the specifications provided. These goods and services will be provided under the same terms and the same price as provided in Sourcewell Contract #040121-PHL.

Staff Recommendation

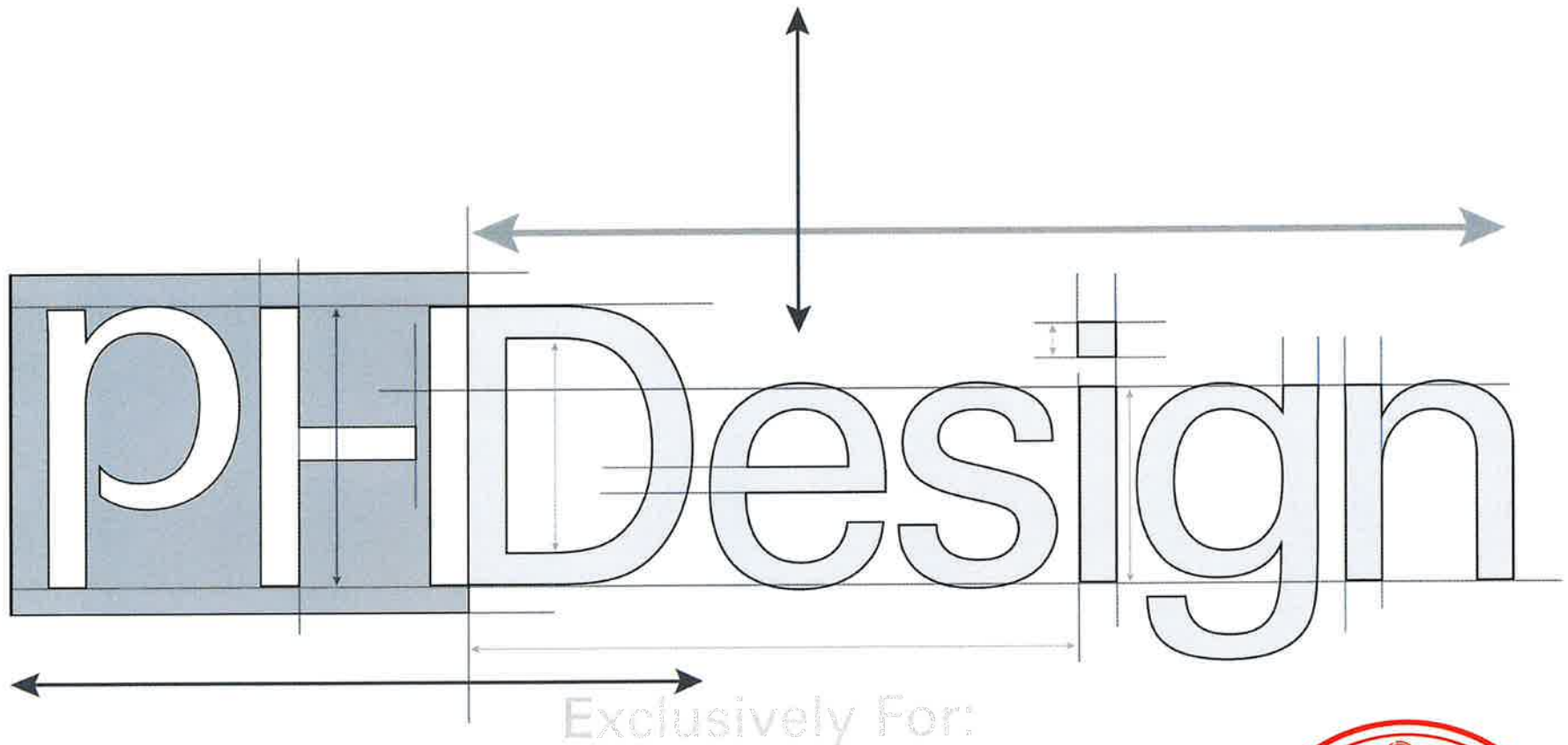
Approve agreement with Palmer Hamilton for redesign of cafeteria for Mitchell Neilson Primary

Fiscal Impact

The total cost of this project is \$31,667.50. The funding source for this project is the School Nutrition budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



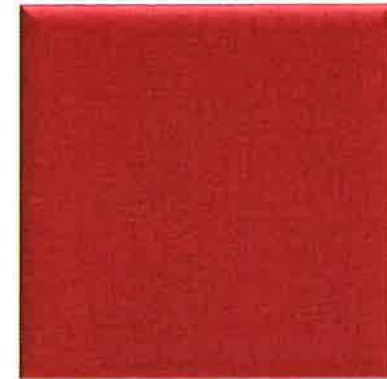
Exclusively For:
**Mitchell Neilson
Primary School**





59T ELONGATED MOBILE TABLE

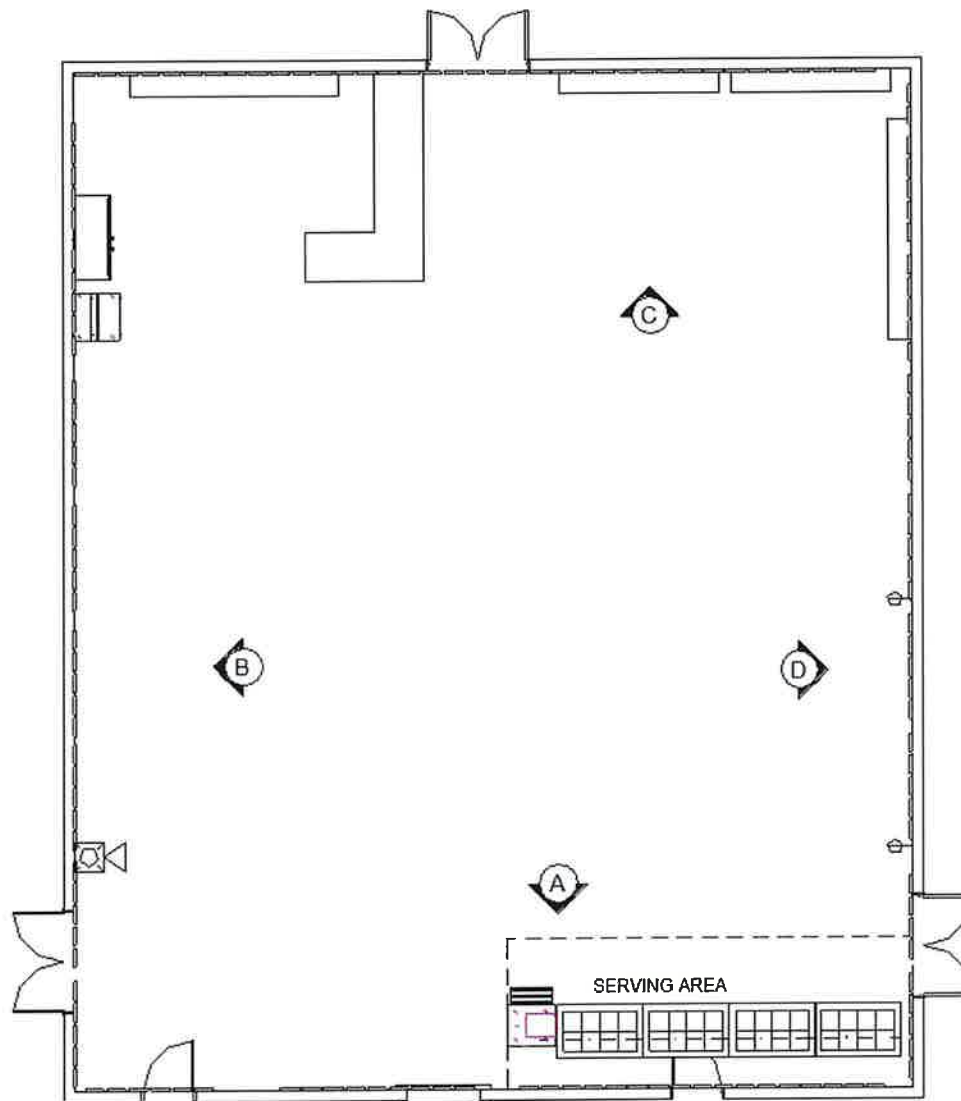
Laminate Top: Candy Apple
Stools: Black
EdgeGuard: Black
Frame: Black
QTY: 1



LAMINATE #1
WA Candy Apple
13096-60



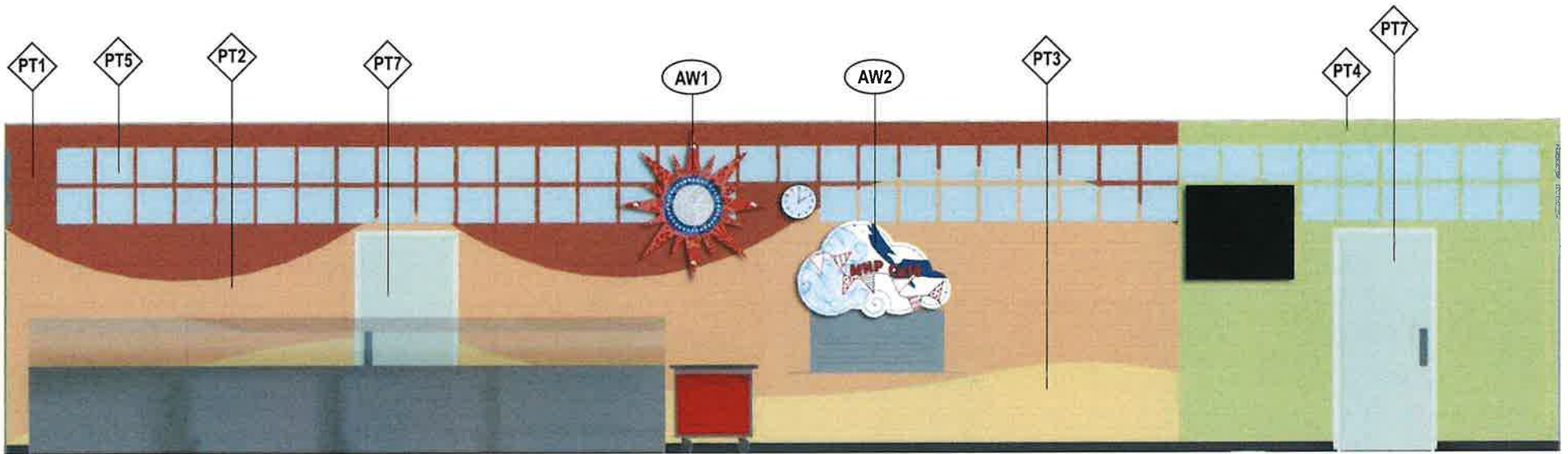
STOOL #1
Black



ELEVATION PLAN

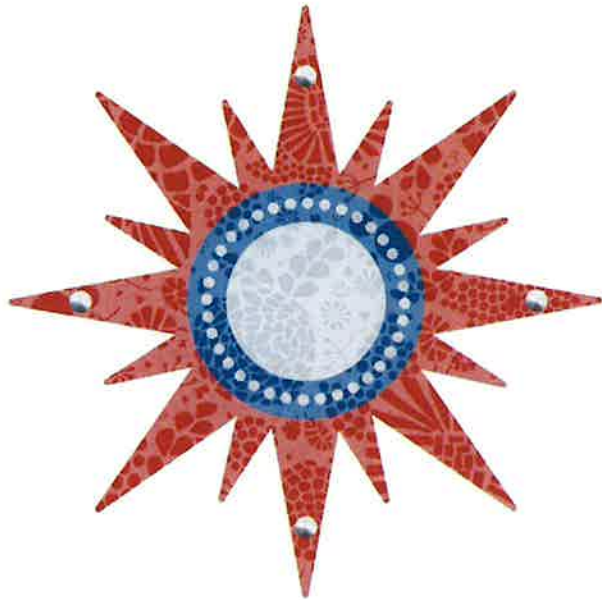
NOTE: Elevation C is paint only, no art.





A INTERIOR ELEVATION A
MITCHELL NEILSON PRIMARY SCHOOL

NOTE: School is responsible to remove unwanted wall-hung items and patch walls prior to painting.



AW1

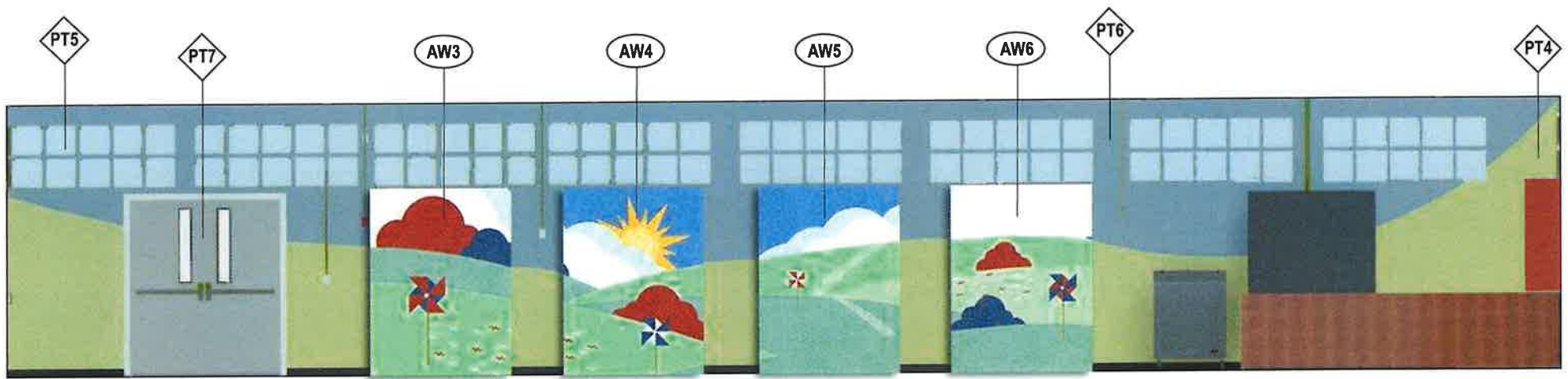
Direct print on 6mm Black PVC
Cut to shape
Wall mounted with snap caps
Overall Size: 59" diameter



AW2

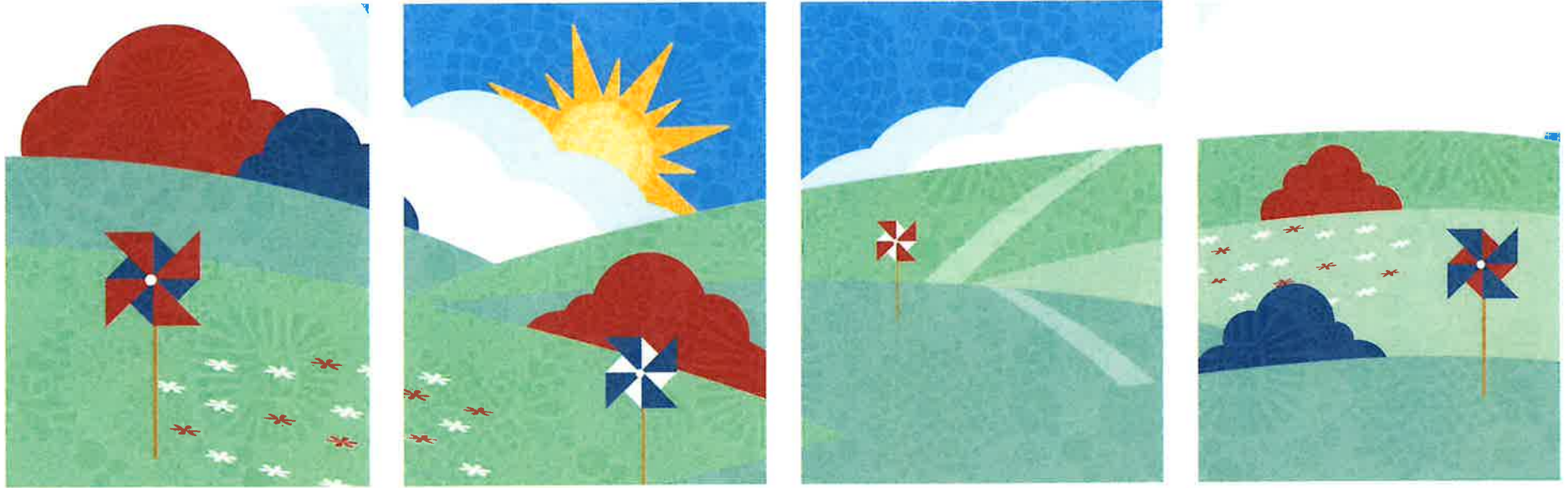
Second surface on 3mm clear acrylic
Cut to shape
Wall mounted with 1" Standoffs
Overall Size: 59"W x 30"H





B INTERIOR ELEVATION B
MITCHELL NEILSON PRIMARY SCHOOL

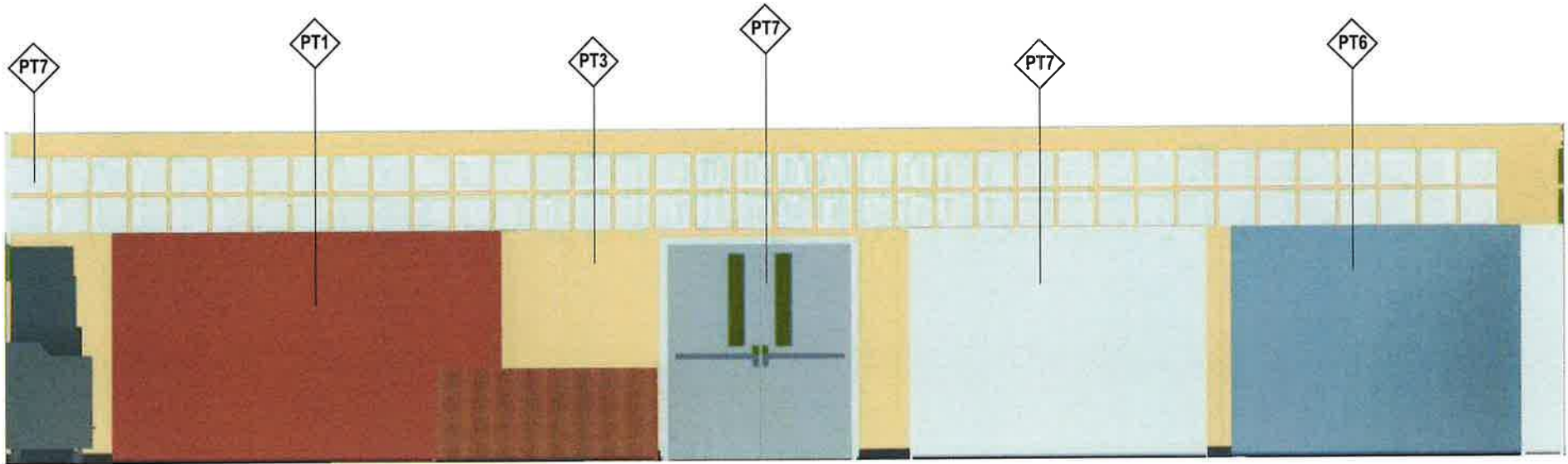
NOTE: School is responsible to remove unwanted wall-hung items and patch walls prior to painting.



AW3-6

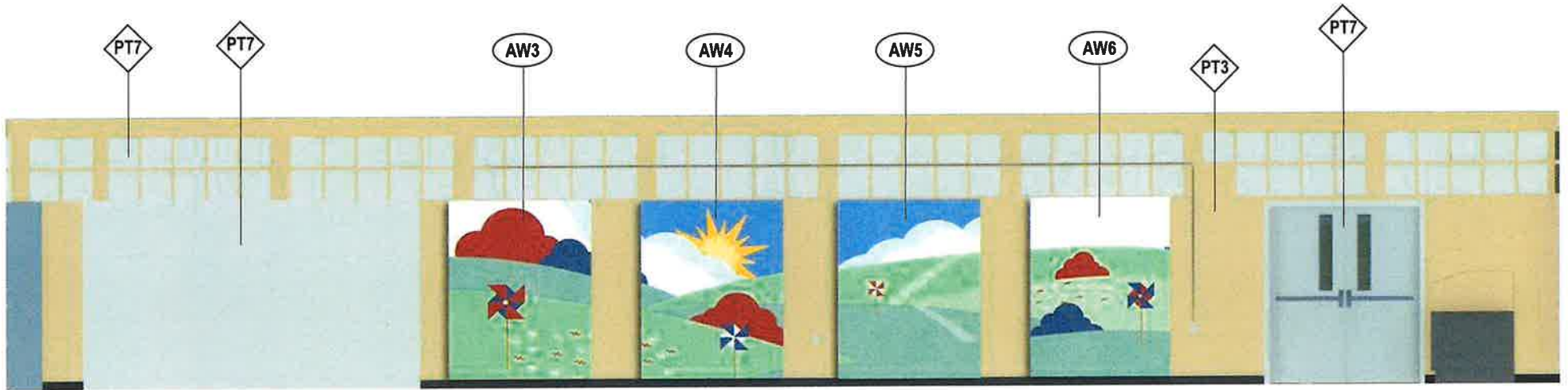
Direct print on 6mm White PVC
 Wall mounted over existing recessed wall
 pockets with 1" Standoffs
 Overall Size: 66"W x 88"H
 *Note: will have visible seams





 INTERIOR ELEVATION C
MITCHELL NEILSON PRIMARY SCHOOL

NOTE: School is responsible to remove unwanted wall-hung items and patch walls prior to painting.
NOTE: Paint only, no art.



D INTERIOR ELEVATION D
MITCHELL NEILSON PRIMARY SCHOOL

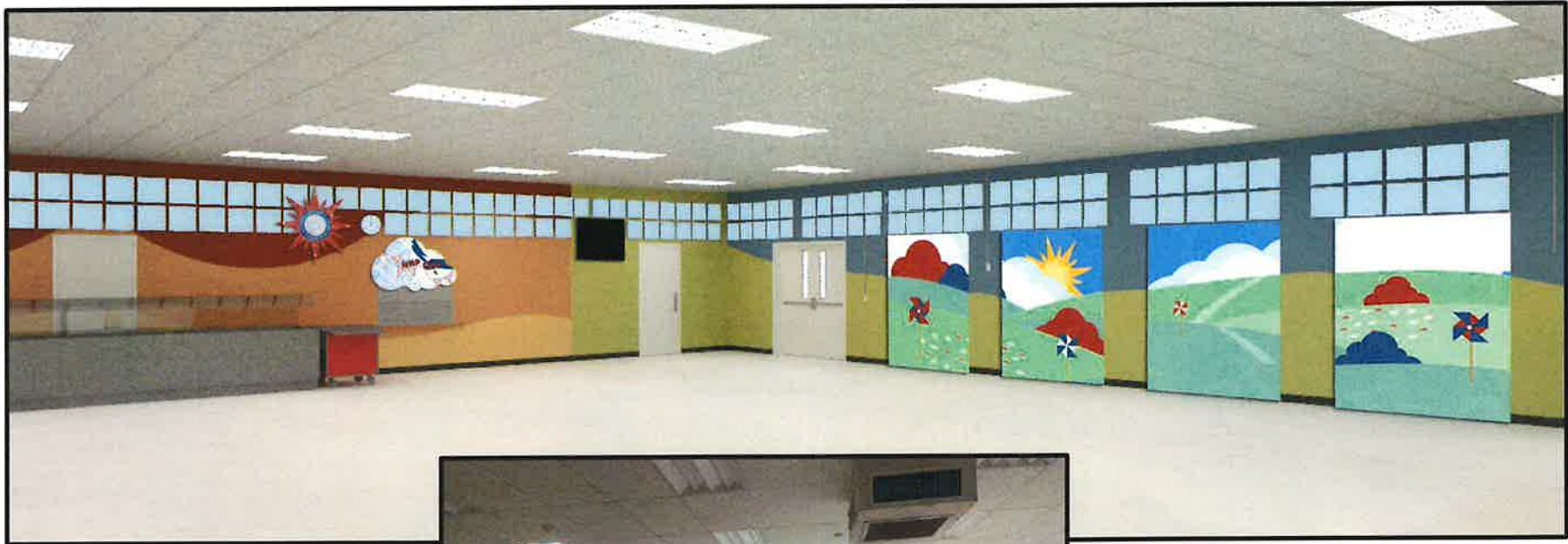
NOTE: School is responsible to remove unwanted wall-hung items and patch walls prior to painting.

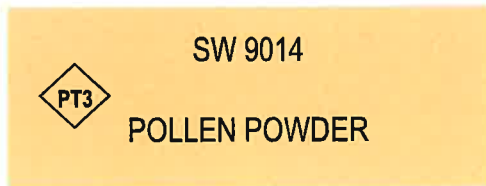
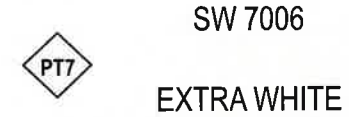
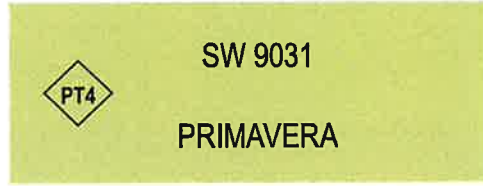
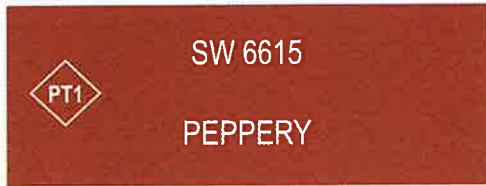


AW3-6

Direct print on 6mm White PVC
Wall mounted over existing recessed wall
pockets with 1" Standoffs
Overall Size: 66"W x 88"H
**Note: will have visible seams*







School is responsible for materials and labor

PH is responsible for materials and labor

PREPARATION

Walls need to be properly prepped and sanded for proper paint adhesion. We then recommend one light coat of XIM Peel Bond Primer to be applied. After that primer is applied, two coats of Precoat Epoxy will be applied over the Peel Bond. Paint needs to cure at least 2 weeks prior to installation.

SHEEN

Satin sheen is recommended for easy cleanability. If a different sheen is desired, please let the designer know.



PROJECT HISTORY

PRELIM DATE: 04.27.23

REVISION 1: 05.01.23

- Added laminates per notes

REVISION 2: 03.13.24

- Art only – added art per notes
- Client using existing furniture

REVISION 3: 03.19.24

- Removed AW7-10 from Elevation D
- Replaced with AW3-6

REVISION 4: 04.04.24

- Added 1 59T Elongated table with Candy Apple laminate

FINAL BOOK APPROVAL

*Signing below indicates all project furniture quantities, colors, laminates, paint, graphic content & all other design elements have been reviewed and will receive no additional revisions. Any revisions requested beyond final book approval will incur additional charges and extended lead times.

**Client indicates an understanding that materials, colors, and artwork in this book are digital representations only and there may be variation in appearance due to screen calibration and/or color print anomalies.

Print Name: _____ Title: _____

Signature: _____ Date: _____



*images for visual reference only, actual appearance may vary.
**Surface finishes and upholsteries are digital representations only and may not match actual samples due to screen calibration or color print/scan anomalies.

PROJECT NAME: Mitchell Neilson Primary School
LOCATION: Murfreesboro, TN
DATE: 04.04.24–LG/G

#9186



13

TERMS & CONDITIONS

TRASH REMOVAL

Dumpsters and trash haul away are not part of any provided installation pricing. Any waste, dunnage or packaging materials from delivery and installation will be compacted and neatly left on site. If dumpsters are required, special arrangements will be made with costs included on quote.

NEW or REMODEL PROJECTS

Palmer Hamilton is NOT responsible for site verifications unless they have entered into a design agreement contract with the customer. Dealer/end-user takes full responsibility of ensuring furniture and décor will fit. Please *verify* room dimensions prior to ordering. If drawing was scaled, traced or copied, please field verify all room dimensions for accuracy. If field dimensions can not be obtained, late shipments may occur. Do not scale off these plans. If scaled plans are needed, please contact the project manager. Palmer Hamilton is not responsible for changes, or deletions not reviewed and approved in advanced by Palmer Hamilton. If half-walls or furnishings are to be clipped-down to floor, the Dealer/End-user is responsible to inform Palmer Hamilton of the locations. Palmer Hamilton is not responsible or liable for any electrical or plumbing that may be in the floors. Please advise Palmer Hamilton if there is Asbestos in or around the location of the installation.

ADA COMPLIANT SEATING

A minimum of 5% but not less than one table shall be placed for wheelchair compliance. Palmer Hamilton is not responsible if the client has requested to provide less than this number in their facility. It is the responsibility of the end user to meet the compliancy standards. It is also the responsibility of the end user to know their fire code capacity limits.

ELECTRICAL

Palmer Hamilton will suggest and supply the light fixtures if requested by the customer. Palmer Hamilton installers do not install light fixtures as our installers are not electrical contractors and do not hold local licenses. School is responsible for all wiring and hooking up of the light fixtures. Palmer Hamilton will supply a lighting fixture plan of requested locations for the Schools electrician to use for placement of lighting fixtures

WINDOWS

School is responsible for any/all repair of window glass, trim and window caulking if necessary, prior to the installation. School is responsible for cleaning of windows for window cling installation. If windows are not cleaned prior to installation, Palmer Hamilton will assess an additional charge for cleaning. School is responsible for removing any window treatments that are not staying in new design.

WALLS

School is responsible for cleaning walls of any and all hooks, bulletin boards not remaining in design, loose wiring, removable clocks, conduit if not necessary. Repair/Patching of any broken drywall and cracks in CMU, prior to installation. Any newly constructed walls must be primed and painted prior to installation. Any painting that is not supplied by Palmer Hamilton needs to be completed fourteen (14) days prior to our installation to properly cure.

CEILING

Palmer Hamilton does not sell or install standard ceiling tiles. Palmer Hamilton will remove or replace tiles if it is part of a décor item only. Our installers will only install any décor that might be attached to the ceiling and not to the tile grid for safety reasons as required.

FLOORING

Palmer Hamilton may specify a suggested flooring, but takes no liability in regard to floor performance, installation, and/or upkeep. Any new flooring must be completed fourteen (14) days prior to installation to allow ample curing time of adhesives, and cleaning of flooring must also be completed prior to Palmer Hamilton installers being onsite for installation. If Nonstandard glides are needed, it is the responsibility of the end-user to inform Palmer Hamilton of the type needed and cost will be added to the quote. Vinyl Base trim must be completed prior to Palmer Hamilton furniture installation, unless the decision was made during the design phase by the client to have Palmer Hamilton installers install the base trim.

EXISTING EQUIPMENT AND FURNITURE

Please remove all equipment and furniture that is not to be in the new design plan prior to Palmer Hamilton's arrival.

I agree to terms & conditions

Signature _____

Date: _____



*images for visual reference only, actual appearance may vary.
**Surface finishes and upholsteries are digital representations only and may not match actual samples due to screen calibration or color print/scan anomalies.

PROJECT NAME: Mitchell Neilson Primary School
LOCATION: Murfreesboro, TN
DATE: 04.04.24-LG/G

#9186



14

Agenda Item Title: Approve changes to Board Policy 1.501 on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

State law now requires school districts to adopt a visitor code of conduct for each facility within the school district. This code must be placed where visitors can see it and must also contain the name and the board of professional responsibility number of the attorney who reviewed it. We have updated our policy to reflect the new requirements.

Staff Recommendation

Approve changes to Board Policy 1.501 on first reading

Fiscal Impact

The cost of reproducing Visitor Code of Conduct signs for each school is to be determined.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in August	Descriptor Term: Visitors to the Schools	Descriptor Code: 1.501	Issued Date: 09/24/14
		Rescinds: BO 29	Issued:

1 *General*

2 A visitor is defined as any individual other than the enrolled students in the school and school
3 employees or officials. Except on occasions such as school programs, athletic events, open house, and
4 similar public events, all visitors will report to the school office when entering the school and shall
5 sign a log book. In addition, the principal or principal's designee shall have the discretion to require an
6 adult visitor to present photo identification at the time of registration. Authorization to visit elsewhere
7 in the building or on the school campus will be determined by the principal/designee. Guest passes
8 shall be issued for all persons other than students and employees of the school.¹ Visitors shall return to
9 the school's office before leaving the building and record their time of departure in the school's visitor
10 log.

11 In order to maintain the conditions and atmosphere suitable for learning, no other person shall enter
12 onto the grounds or into the school buildings during the hours of student instruction except students
13 assigned to that school, the staff of the school, parents of students, and other persons with lawful and
14 valid business on the school premises.² Parent observations of classroom activities must be
15 preapproved by the principal and Director of Schools to ensure there is no disruption to the learning
16 environment and student privacy is protected.

17 **VISITOR CONDUCT**

18 Persons who come onto school property shall be under the jurisdiction of the school
19 administrator/designee. Individuals who come onto school property or who contact employees on
20 school or district business are expected to behave accordingly. **The Director of Schools shall develop a
21 visitor code of conduct to be presented to the Board Attorney, and then, approved by the Board.³ This
22 code shall prohibit the following:**

- 23 1. **Cursing and use of obscenities;**
- 24 2. **Disrupting or threatening to disrupt school or office operations;**
- 25 3. **Acting in an unsafe manner that could threaten the health or safety of others;**
- 26 4. **Verbal or written statements or gestures indicating intent to harm an individual or property; and**
- 27 5. **Physical attacks intended to harm an individual or substantially damage property.**

28 **The visitor code of conduct shall be posted on the district's website as well as the school's website,
29 and copies of the code shall be provided to all teachers, counselors, administrative staff, and other
30 school employees. In addition, each school entrance shall have the visitor code of conduct posted**

1 prominently along with the phone number of someone in the school's administration who can answer
2 questions about the code.

3 Annually, parent(s)/guardian(s) shall be provided with a printed copy of the code of conduct, along
4 with the phone number of someone in the school's administration who can answer questions about the
5 code. Parent(s)/guardian(s) shall sign a statement acknowledging that they have read and understood
6 the code of conduct.

7 CONSEQUENCES FOR CODE OF CONDUCT VIOLATION

8 The principal/designee has the authority to exclude from the school premises any persons disrupting
9 the educational programs in the classroom or in the school, disturbing the teachers or students on the
10 premises, or on the premises for the purpose of committing an illegal act.²

11 The principal shall contact law enforcement officials when he/she believes the situation warrants such
12 measures.

13 CENTRAL OFFICE AND ALL OTHER NON-SCHOOL FACILITIES

14 Except on occasions such as special programs, public meetings, open houses, and similar public
15 events, all visitors shall use the appropriate entrance and report to the reception desk or designated area
16 when entering the facility and must sign the visitors' log during normal office hours. Guest passes shall
17 be issued for all visitors.

18 Authorization to visit elsewhere in the facility shall be determined by the Director of Schools or the
19 Director's designee.

20 The Director of Schools, supervisors, and their designees shall have the authority to exclude from the
21 premises any persons disrupting the work environment at a facility, disturbing the employees in the
22 facility, or committing an illegal act in the facility. The Director of Schools, supervisors, or designees
23 shall contact law enforcement officials when the situation warrants such measures.

Legal References

1. [TCA 49-2-303\(b\)\(4\)](#)
2. [TCA 49-6-2008](#); [TCA 39-14-406](#)
3. [Public Acts of 2024, Chapter No. 810](#)

Cross References

Board-Community Relations 1.500
Section 504 and ADA Grievance Procedures 1.802
Vendor Relations 2.809
Safety 3.201
Security 3.205
School Volunteers 4.501
Care of School Property 6.311

Agenda Item Title: Approve changes to Board Policy 3.202, Emergency Preparedness Plan, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

State law now requires school districts to develop procedures on how staff will determine the cause of fire alarm activation including the potential for an active shooter event. This recommended policy change includes a provision on this requirement. MCS will work with local law enforcement and the local fire department to develop the specifics of individual procedures. This new law will also require updates to the district's safety plan.

Staff Recommendation

Approve changes to Board Policy 3.202, Emergency Preparedness Plan, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School District

Monitoring: Review: Annually, in October	Descriptor Term: Emergency Preparedness Plan	Descriptor Code: 3.202	Revised: Click here to enter a date.
		Rescinds: 3.202	Issued: 09/13/22

1 The Director of Schools shall be responsible for developing, maintaining, and acquiring Board
2 approval of the district Multi-Hazard Operations Plan,¹ which shall include, but not be limited to,
3 procedures for nuclear or bomb threats, civil disturbances, armed intruders, earthquakes, fires,
4 tornadoes or other severe weather, and medical emergencies.

5 The principal of each school shall develop and implement emergency preparedness drills which shall
6 be approved by the Director of Schools. When appropriate, such drills shall be held in conjunction with
7 emergency response agencies. These procedures shall be in written form and distributed to all staff,
8 students, and parents.

9 FIRE AND SAFETY DRILLS

10 The principal shall ensure that one fire drill requiring full evacuation is given every thirty (30) school
11 days, with two (2) fire drills occurring during the first thirty (30) full days of the school year.
12 Additionally, he/she shall ensure that four (4) fire safety educational announcements are conducted
13 throughout the year.²

14 The principal shall ensure that three (3) additional safety drills are given during the school year. These
15 drills may cover inclement weather, earthquakes, armed intruders, or other emergency drills that do not
16 require full evacuation. A record of all fire or safety drills, including the time and date, shall be kept in
17 each school's office.³

18 The principal shall regularly check the quantity, locations, and conditions of fire extinguishers and
19 shall give all school personnel instructions on how to properly use fire extinguishers.

20 **The district shall work with local law enforcement and the local fire department to develop a procedure**
21 **for identifying the cause of fire alarm activation. This procedure must be in place by January 1, 2025,**
22 **and shall be reviewed and updated annually thereafter.**⁴

23 ANNUAL DRILLS⁵

24 The Director of Schools or designee shall ensure that each school safety team conducts each of the
25 following type of drills annually:

- 26
- 27 1. At least one (1) armed intruder drill annually in coordination with local law enforcement.
- 28
- 29 2. An incident command drill; and

30 3. An emergency safety bus drill.

31 **AED DRILLS⁶**

32 All schools shall conduct a CPR and AED drill for school personnel to practice the use of these life
33 saving devices and to evaluate the school's preparedness in the event of a medical emergency. The
34 principal shall be responsible for ensuring the drill occurs.

35 All schools shall establish a program for the use of an AED in compliance with TCA 68-140-404 and
36 conduct an annual AED training with expected users. The Director of Schools shall develop the
37 necessary administrative procedures on AED and CPR training, planning, notification, and
38 maintenance to comply with state law.

39 **MEDICAL EMERGENCIES/PANDEMIC FLU⁷**

40 In the event of medical emergencies, such as a pandemic flu outbreak, school officials shall cooperate
41 and consult with the local and state health departments and other local emergency or healthcare
42 providers in protecting students and the community from further infection. The Director of Schools
43 shall develop procedures for health emergencies in accordance with state law and regulations.

44 **REMOTE LEARNING DRILLS⁸**

45 At least once each school year, a remote learning drill shall be conducted. The drill shall accurately
46 reflect how students will transition to remote learning in the event of a disruption to school operations.
47 Students shall not be asked or required to transition to remote learning at any time during the drill.

Legal References

1. [TRR/MS 0520-01-02-.30\(2\)](#); [TCA 49-6-804](#); [TCA 49-6-805\(8\)](#)
2. [TCA 68-102-137\(b\)](#)
3. [TCA 68-102-137\(f\)](#)
4. [Public Acts of 2024, Chapter No. 563](#)
5. [TCA 49-6-807](#)
6. [TCA 49-2-122](#); [TCA 49-6-1208](#); [Public Acts of 2024, Chapter No. 625](#)
7. [TCA 49-6-3004\(a\), \(e\)](#); [TCA 49-5-404](#)
8. [TCA 49-2-139](#)

Cross References

Emergency Closings 1.8011
Safety 3.201
Community Use of School Facilities 3.206

Agenda Item Title: Approve changes to Board Policy 3.400, Student Transportation, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

A change from the 2023 legislative session, Public Chapter 122, goes into effect July 1, 2024. This new state law requires Boards to issue certificates to bus drivers. These certificates may be revoked if the bus driver is no longer fit to operate a school bus. In addition, Public Chapter 548 requires notices to be posted on buses stating that only authorized individuals may enter. We have updated our policy to include these additional requirements.

Staff Recommendation

Approve changes to Board Policy 3.400, Student Transportation, on first reading

Fiscal Impact

The cost of creating notices for each school bus is to be determined.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in October	Descriptor Term: Student Transportation Management	Descriptor Code: 3.400	Issued Date: Click here to enter a date.
		Rescinds: 3.400	Issued: 10/22/16

1 The safety and welfare of student riders shall be the first consideration in all matters pertaining to
2 transportation. School buses shall be maintained and operated in accordance with state law and in
3 accordance with the specifications developed by the Department of Education and approved by the
4 Department of Safety. ~~School buses shall be maintained and operated in accordance with state law and~~
5 ~~State Board Rules and Regulations.~~¹

6 Each bus shall be equipped with the phone number for reporting safety complaints. This number shall
7 appear on the rear bumper.² Buses shall also include notice in a conspicuous place that only authorized
8 persons shall enter the bus. This notice shall include appropriate contact information in case of an issue
9 on the bus.³

10 To avoid the financial burden of replacing an aging bus fleet at any one time, the Board shall attempt to
11 replace a certain number of buses each year on a rotating basis.

12 All accidents, regardless of the damage involved, must be reported to the Transportation Supervisor,
13 including, but not limited to, incidents in which any part of the bus contacts any other object or vehicle.
14 The Transportation Supervisor shall be responsible for submitting all records and required reports to the
15 Tennessee Risk Management Trust and state and local agencies.

16 The Director of Schools shall develop procedures to ensure compliance with the statutory and
17 regulatory requirements for the transportation program.

18 SCHOOL BUS DRIVERS

19 Each school bus driver shall receive a certificate from the Board prior to operating a school bus for the
20 school district. The issuance of a certificate to a school bus driver shall be based on the qualifications
21 of school bus drivers as determined by the Director of Schools.⁴ Annually, the Board shall require
22 each school bus driver to have a physical and mental examination. The Board shall revoke the
23 certificate of any school bus driver found to be physically, mentally, or morally unfit to operate a
24 school bus. Additionally, a certificate shall be revoked if the school bus driver is convicted of driving
25 under the influence, vehicular assault, vehicular homicide, aggravated vehicular homicide, or the
26 manufacture, delivery, sale, or possession of a controlled substance or analogue.⁵

27 TRANSPORTATION SUPERVISOR³SUPERVISOR⁶

28 The Director of Schools shall appoint a Transportation Supervisor for the district. The Supervisor shall
29 be responsible for monitoring and oversight of transportation services for the district.

30 The Transportation Supervisor shall complete a student transportation management training program
31 upon appointment. The Transportation Supervisor shall complete a minimum of four (4) hours of
32 training annually.

33 The Director of Schools shall ensure that training is completed and shall provide the State Department
34 of Education with appropriate documentation.

35 **COMPLAINT ~~PROCESS~~⁴PROCESS⁷**

36 The following procedure will govern how students, teachers, staff, and community members shall
37 submit bus safety complaints:

- 38 1. All complaints shall be submitted to the Transportation Supervisor on forms designated by the
39 district.
- 40 2. Forms may be submitted in person, via mail or email. The forms designated by the district will
41 be located on the district website.
- 42 3. The Transportation Supervisor shall begin an investigation of all safety complaints within
43 twenty-four (24) hours of receipt.
- 44 4. Within forty-eight (48) hours of receipt of the initial complaint, the Transportation Supervisor
45 shall submit a preliminary report to the Director of Schools. This report shall include:
 - 46 a. The time and date the complaint was received;
 - 47 b. The name of the bus driver;
 - 48 c. A copy or summary of the complaint; and
 - 49 d. Any prior complaints or disciplinary actions taken against the driver.

50 Within sixty (60) school days of receiving the initial complaint, the Transportation Supervisor shall
51 submit a final written report to the Director of Schools that details the investigation's findings as well
52 as the action taken in response to the complaint.

53 An annual notice of this complaint process shall be provided to parents and students. This information
54 shall be made available in the student handbook.

55 **~~RECORDKEEPING~~⁵RECORDKEEPING⁸**

56 The Transportation Supervisor shall be responsible for the collection and maintenance of the following
57 records:

- 58 1. Bus maintenance and inspection forms;
- 59 2. Bus driver credentials, including required background checks, health records, and performance
60 reviews;
- 61 3. Driver training records; and
- 62 4. Complaints received and any records related to the investigation and complaints.

63 FIELD TRIPS

64 School buses are available for use when the trip is directly related to the planned instructional program.
65 However, use of the bus during the school day must not interfere with the regular transportation
66 program.

67 Annually, the Transportation Supervisor will provide information related to costs, procedures in
68 arranging for use of buses, and other pertinent information.

Legal References

1. [TCA 49-6-2109; TRR/MS 0520-01-05; Public Acts of 2023, Chapter No. 122](#)
2. [TCA 49-6-2116\(d\)\(3\)](#)
3. [Public Acts of 2024, Chapter No. 548](#)
4. [TCA 49-6-2107](#)
5. [TCA 49-6-2107\(e\)\(1\); Public Acts of 2023, Chapter No. 122](#)
6. [TCA 49-6-2116\(a\)-\(c\)](#)
7. [TCA 49-6-2116\(d\)\(1\)-\(2\)](#)
8. [TCA 49-6-2116\(d\)\(5\)](#)
 1. ~~TCA 49-6-2109; TRR/MS 0520-01-05~~
 2. ~~TCA 49-6-2116(d)(3)~~
 3. ~~TCA 49-6-2116(a)-(c)~~
 4. ~~TCA 49-6-2116(d)(1)-(2)~~
 5. ~~TCA 49-6-2116(d)(5)~~

Agenda Item Title: Approve Board Policy 4.214, Use of Artificial Intelligence Programs, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Public Chapter 550 requires all Boards to adopt a policy on the use of artificial intelligence for instructional and assignment purposes. MCS has drafted a policy that addresses this law and its requirements. This is a new policy.

Staff Recommendation

Approve Board Policy 4.214, Use of Artificial Intelligence Programs, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Use of Artificial Intelligence Programs	Descriptor Code: 4.214	Issued Date:
		Rescinds:	Issued:

1 *General*

2 Artificial Intelligence (AI) programs as defined by state law may be used by staff and students in the
3 district.¹

4 Only approved AI programs may be utilized in student instruction or in completing student work. The
5 Director of Schools shall develop a procedure for staff to submit additional programs for approval.

6 District technology staff and district instructional technology staff are tasked with overseeing the
7 implementation of AI programs. These staff members will review artificial intelligence programs to
8 ensure compliance with district policies as well as state and federal student data privacy laws and
9 present recommendations to the Director of Schools for approval. Any approved programs shall be
10 accessible to all students.

11 Employees shall not place personally identifiable information, financial information, intellectual
12 property, or other confidential information into an AI system.

13 The Director of Schools shall provide training programs on AI into professional development for
14 district staff. This training shall focus on responsible use of AI and best practices for use in school
15 settings and include instruction regarding personally identifiable information and the need to comply
16 with state and federal data privacy laws. Emphasis shall be placed on the importance of securing and
17 properly storing any data that is collected by the district in compliance with state and federal law.

18 **STAFF USE**

19 Staff may use AI in the completion of their own work. This may include, but not be limited to, drafting
20 communications, notes, images, and the development of content for instructional or administrative
21 purposes, as well as analyzing data and information. The following requirements shall be adhered to
22 when using AI in the completion of work:

- 23 1. Employees shall disclose their use of a generative AI tool if failure to do so would:
24 a. Violate the terms of the use of the AI tool;
25 b. Would mislead a supervisor or others as to the nature of the work; or
26 c. Would be inconsistent with the teacher code of ethic;²
- 27 2. Employees shall take all reasonable precautions to ensure the security of private student data
28 when utilizing AI programs;
- 29 3. Outputs from AI programs shall be verified by reliable sources and reviewed prior to use in
order to reduce the risk of errors and inaccuracies;

1 4. Outputs shall not be incorporated into proprietary content or works.

2 **STUDENT USE**

3 Teachers may allow students to use approved AI programs for instructional purposes. Any such use
4 shall align with approved instructional standards and curriculum. Prior to using AI, teachers shall
5 ensure students are provided with appropriate instruction on the responsible use of AI.

6 **ACADEMIC INTEGRITY**

7 Prior to allowing students to use AI programs, they shall be instructed on responsible use standards
8 including but not limited to the following:

- 9 1. Effective use of generative AI;
- 10 2. When it is appropriate to use AI in assignments;
- 11 3. How to determine whether AI responses are accurate;
- 12 4. Users assume responsibility for incorporating AI content responsibly; and
- 13 5. The difference between cheating and seeking support.

14 **NOTICE TO PARENTS**

15 The Director of Schools shall provide notice to parent(s)/guardian(s) about the use of AI programs
16 used by students in the district. An approved list of AI programs will be provided by posted the
17 approved programs on the official school district website.

18 **REPORTING**

19 The Director of Schools shall submit a copy of this policy and any related administrative directives to
20 the State Department of Education by July 1st on an annual basis.

Legal References

1. [Public Acts of 2024, Chapter No. 550](#)
2. [TCA 49-5-1001](#)

Cross References

Use of the Internet 4.406

Agenda Item Title: Approve changes to Board Policy 4.301, Interscholastic Athletics, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Public Chapter 639 now allows home school students to participate in interscholastic athletics offered by public schools, subject to the same requirements as other student participants. Policy 4.301 has been updated to reflect this change.

Staff Recommendation

Approve changes to Board Policy 4.301, Interscholastic Athletics, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Interscholastic Athletics	Descriptor Code: 4.301	Issued Date: Click here to enter a date.
		Rescinds: STU 58	Issued: 03/25/14

1 No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be
2 treated differently from another person or otherwise be discriminated against in any athletic program of
3 the school. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes
4 shall only be allowed to participate in athletic activities or events that align with the student's sex
5 indicated on his/her original birth certificate.² The Director of Schools/designee shall require the
6 parent/guardian to provide the student's original birth certificate prior to participation in any
7 interscholastic athletics. If the original birth certificate is not available or does not indicate the
8 student's sex at the time of birth, the parent/guardian shall provide medical documentation showing
9 evidence of the student's sex at birth.

10 Interscholastic athletics shall be administered as a part of the regular school program and shall be the
11 principal's responsibility. Principals shall ensure that school regulations regarding participation in a
12 sport are reasonable. The principal or designee must accompany an athletic team on trips.

13 ~~Only students currently enrolled in Murfreesboro City Schools may participate in athletics. The~~
14 ~~Director of Schools shall develop a code of conduct for all coaches to follow in order to ensure the~~
15 ~~health and safety of athletes.~~³ Coaches, employees, and volunteers of the school district shall not
16 encourage, permit, condone or tolerate hazing activities.⁴

17 ~~Home school students that are zoned for the school shall be permitted to participate in interscholastic~~
18 ~~athletics to the same extent as other students.~~⁵

19 **INSURANCE & PHYSICAL EXAMINATIONS**

20 Prior to participation in interscholastic athletics, every student must complete an annual physical
21 examination.⁶ The parents/guardians of each student shall be responsible for covering the cost of the
22 examination, and these records shall be on file in the principal's office. It shall be the responsibility of
23 the parent(s) or guardian to provide health and hospitalization insurance for all students participating in
24 interscholastic athletics.

25 **SEVERE WEATHER⁷**

26 Severe weather is any type of weather that could impede the safety of any athlete by compromising the
27 playing conditions of the interscholastic sport. Severe weather includes, but is not limited to, thunder,
28 lightning, and extreme temperatures. When severe weather is forecasted, suspension of play shall be
29 discussed with all players, coaches, and officials, if applicable.

30 All coaches who oversee or participate in outdoor training, practice, or competition shall annually
31 complete a heat illness prevention course approved by the Tennessee Department of Health as well as
32 receive training on activity modifications based on environmental conditions.

33 **SCHEDULING CONFLICTS**

34 No principal or teacher shall dismiss his/her school or any group of students for the purpose of attending
35 the practice of any interscholastic sport during the school day without written permission from the
36 Board.⁸ Students shall not be required to attend a school athletic event, or event related to participation
37 on a school athletic team, if the event is on an official school holiday, observed day of worship, or
38 religious holiday. The student's parent/guardian shall notify the coach in writing three (3) full school
39 days prior to the event.⁹

Legal References

1. 34 CFR § 106.41; 20 USCA § 1681 et seq.
2. TCA 49-6-310(a)
3. TCA 49-6-3601
4. TCA 49-2-120
5. Public Acts of 2024, Chapter No. 639
6. 20 USCA 1232h(c); TRR/MS 0520-01-13-.01(1)(a)
7. TCA 49-6-3601
8. TCA 49-6-1002(a)
9. TCA 49-6-1002(c)

Agenda Item Title: Approve changes to Board Policy 4.403, Library Materials, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Public Chapter 782 revises the "Age Appropriate Materials Act of 2022". These changes to state law establish standards for immediate removal of material if it contains content defined in TCA 39-17-901. Additionally, if the Board does not take action on feedback within sixty days, the student, parent/guardian, or employee who submitted the feedback may appeal to the State Textbook and Instructional Materials Quality Commission to evaluate the material. Changes are made to Board Policy 4.403 to align with this state law.

Staff Recommendation

Approve changes to Board Policy 4.403, Library Materials, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Library Materials	Descriptor Code: 4.403	Issued Date: 09/13/22
		Rescinds:	Issued:

1 *General*

2 The School Librarian shall be responsible for library collection development. Library materials shall be
3 reviewed to ensure the content aligns with state law.¹ The library collection shall adhere to the following
4 criteria²:

- 5 1. Materials shall be suitable for and consistent with the educational mission of the school;
- 6 2. Materials shall be appropriate for the age and maturity levels of the students who may access
7 them. The determining factor will be based on an assessment of any mature themes or content
8 (i.e., violence, sexual content, vulgar language, substance abuse);
- 9 3. Materials shall contain literary, historical, and/or artistic value and merit; and
- 10 4. The collection as a whole shall offer a variety of viewpoints.

11 The district's Literacy Coordinator shall be responsible for periodically reviewing the district's library
12 collection in line with these established standards.

13 **Any materials that meet the following criteria shall be removed and excluded from the district's library
14 collection:**

- 15 1. **Contains nudity, descriptions or depictions of sexual excitement, sexual conduct, excess
16 violence, or sadomasochistic abuse as defined in state law³;**
- 17 2. **Are patently offensive as defined in state law; or**
- 18 3. **Appeal to the prurient interest as defined in state law.**

19 **The Board shall be notified when any library materials are challenged or removed pursuant to this policy.**

20 **COMPLAINTS⁴**

21 **If a complaint is made by an employee, student, or parent/guardian, the person receiving the complaint
22 shall:**

- 23 1. **Inform the complainant of the selection procedures and make no commitments.**
- 24 2. **Request the complainant to submit a Request for Reconsideration of Library Materials form.**
- 25 3. **Inform the principal (and other appropriate personnel).**
- 26 4. **Keep challenged materials available for use during the reconsideration process.**

27 **Upon receipt of the completed form, the principal may notify the Director of Schools. The principal
28 may request review of the challenged materials by an ad hoc materials review committee within thirty**

1 (30) days. If the principal appoints a review committee, it should include certified library media
2 personnel, representatives from classroom teachers, and one or more parents.

3 After receiving the challenged materials, the following steps should occur:

- 4 1. Read, view, or listen to the contested material in its entirety;
- 5 2. Check general acceptance of the material by reading recognized and evaluative reviews;
- 6 3. Determine the extent to which the material is appropriate for the age and maturity levels of the
7 students who have access to the materials and whether the material is suitable for, and
8 consistent with, the educational mission of the school; and
- 9 4. Complete the appropriate Checklist for Reconsideration of Library Materials, judging the
10 material for its strength and value.

11 The principal shall present a recommendation to the Director of Schools. The Director of Schools shall
12 assess the findings along with the recommendation of the principal and present a recommendation to
13 the Board.

14 The Board shall evaluate the recommendations of the principal and the Director of Schools along with
15 the material to determine whether it is appropriate for the age and maturity levels of the students who
16 have access to the materials and whether the material is suitable for, and consistent with, the
17 educational mission of the school. The Board shall review the findings and affirm, overturn, or modify
18 the decision within sixty (60) days from which the feedback was received.

19 **REMOVAL OF LIBRARY MATERIALS**

20 If it is determined that the material is not appropriate for the age and maturity levels of the students
21 who have access to them or is not suitable for, and consistent with, the educational mission of the
22 school, the material shall be removed from the library collection.

Legal References

1. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 102 S. Ct. 2799 (1982); [TCA 49-6-3803](#)
2. [Public Acts of 2024, Chapter No. 782](#)
3. [TCA 39-17-901](#)
4. [TCA 49-6-3803](#)

Cross References

Textbooks and Instructional Materials 4.400
School and System Websites 4.407
Controversial Materials 4.801

Agenda Item Title: Approve changes to Board Policy 4.603, Promotion and Retention, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Public Chapter 829 allows parents/guardians to voluntarily retain their students in grades K-2 if the student has a documented academic or behavior delay and the parent/guardian believes retention may benefit the student. Policy 4.603 has been updated to reflect these changes.

Staff Recommendation

Approve changes to Board Policy 4.603, Promotion and Retention, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Promotion and Retention	Descriptor Code: 4.603	Issued Date: 12/13/22
		Rescinds: IS 14	Issued: 04/79; 11/98; 04/01; 09/05; 02/12

1 *General*

2 All promotion and retention decisions shall be made on a case-by-case basis and comply with state and
3 federal law. All decisions shall be made in consultation with a student's IEP and/or 504 team, if
4 applicable.¹

5 Students who have difficulty in achieving the requirements for promotion may be considered for
6 retention. Schools shall identify these students by February 1st. Factors used to identify students for
7 retention shall include:²

- 8 1. Ability to perform at the current grade level;
- 9 2. Results of local assessments, screening, or monitoring tools;
- 10 3. State assessments, as applicable;
- 11 4. Home Literacy Reports;³
- 12 5. Overall academic achievement of the student;
- 13 6. Likelihood of success with more difficult material if promoted to the next grade;
- 14 7. Attendance record; and
- 15 8. The student's maturity.

16 Students may be identified for retention after the February 1st deadline if the delay in identifying a
17 student is due to:⁴

- 18 1. Date of enrollment;
- 19 2. Additional information acquired after results of local assessment, screening, or monitoring are
20 released; or
- 21 3. Students do not make previously expected progress.

22 **PROMOTION PLANS⁵**

23 When a student is identified for retention, the student's parent(s)/guardian(s) shall be notified within
24 fifteen (15) calendar days, and an individualized promotion plan shall be developed to help the student
25 avoid retention. The plan shall be developed in coordination with the student's teachers, IEP or 504
26 team, if applicable, and may also include input from the student's parent(s)/guardian(s), school
27 counselor, or other appropriate school personnel.

28 Promotion plans shall incorporate evidence-based strategies, including expectations and measurements
29 that will verify whether a student has made sufficient progress to be promoted to the next grade level,
30 and be tailored to the student's learning needs. Promotion plans for students in third and fourth grade
31 will include additional requirements for promoting students in these grades. A copy of the plan will be

32 provided to the student's parent(s)/guardian(s), and the school shall offer the opportunity for a parent-
33 teacher conference to discuss the plan. If a student is not making progress on the promotion plan, then
34 the strategies shall be modified. Parent(s)/guardian(s) shall be provided with any changes to the
35 promotion plan.

36 A student who demonstrates sufficient academic progress according to his/her promotion plan shall be
37 promoted to the next grade level unless retention is required per additional requirements for students in
38 third and fourth grade.⁶

39 If a student has not demonstrated sufficient academic progress according to his/her promotion plan by
40 the end of the school year, the student shall be eligible to enroll in a summer reading or learning
41 program, if available. Parent(s)/guardian(s) shall be notified of a decision for retention at least ten (10)
42 calendar days prior to the start of the next school year if the student was enrolled in a summer program.
43 However, if the student wasn't enrolled in a summer program, the parent(s)/guardian(s) shall be
44 notified of a decision for retention at least thirty (30) calendar days prior to the start of the next school
45 year.⁷

46 **RETENTION⁶**

47 A student may be retained when such retention is in the best interests of the student or when retention
48 is required per additional requirements for students in third and fourth grade.

49 *Decision of Retention – General⁸*

50 If a student is retained, the Principal/designee shall develop an individualized academic remediation
51 plan within thirty (30) calendar days after the beginning of the next school year. A copy of the plan
52 shall be provided to the student's parent(s)/guardian(s) within ten (10) calendar days of its
53 development. The plan shall include at least one of the following strategies:

- 54 1. Adjustment to the current instructional strategies or materials;
- 55 2. Additional instructional time;
- 56 3. Individual tutoring;
- 57 4. Modification to the student's classroom assignment to ensure the student receives
58 instruction from a teacher with a level of overall effectiveness of above expectations (level
59 4) or significantly above expectations (level 5); or
- 60 5. Attendance or truancy interventions.

61 A student shall not be retained more than once in any grade. The progress of students who are retained
62 shall be closely monitored and reported to parent(s)/guardian(s) at least three (3) times during the
63 school year in which the student is retained. The Director of Schools shall develop procedures to
64 ensure appropriate recordkeeping of students who are retained.

65 *Decision of Retention – Students with Disabilities⁹*

66 Retention and promotion decisions shall be made on a case-by-case basis and in consultation with the
67 student's IEP and/or 504 team to determine whether the student's performance on the ELA portion of
68 TCAP was due to the student's disability. The school district shall not retain a student with a disability
69 or a suspected disability that impacts their ability to read.

70 **APPEALS**^{7,10}

71 When a student is identified for retention, the parent(s)/guardian(s) shall be notified about the decision
 72 to retain the student and provided with information on the right to appeal the decision. Appeals shall be
 73 made to a committee appointed by the principal within fourteen (14) days. The student and his/her
 74 parent(s)/guardian(s) shall be provided written or actual notice of the appeal hearing and shall be given
 75 the opportunity to address the committee. The committee shall conduct a hearing within thirty (30) days
 76 to determine if the student will be promoted and issue such decision within fourteen (14) days. Upon
 77 notification of the committee decision, the principal shall send written notification to the Director of
 78 Schools/designee and the parent(s)/guardian(s). The notification shall advise parent(s)/guardian(s) of
 79 their right to appeal such action within 7 days to the Director of Schools/designee.

80 The appeal shall be heard no later than ten (10) business days after the request for appeal is received. A
 81 decision shall be issued within seven (7) business days.

82 Within five (5) business days of the Director of Schools/designee rendering a decision, the student's
 83 parent(s)/guardian(s) may request a hearing by the Board, and the Board shall review the record.
 84 Following the review, the Board may affirm or overturn the decision of the Director of Schools/designee.
 85 The action of the Board shall be final.

86 **VOLUNTARY RETENTION**

87 **A parent/guardian of a student enrolled in kindergarten through second grade may choose to retain**
 88 **his/her student in the current grade level if:**

- 89 **1. The student has a documented academic or behavioral delay; and**
 90 **2. The parent/guardian believes that retention may benefit the student.¹¹**

 Legal References

1. 20 USCA § 1400 *et seq.*; 29 U.S.C. § 794 (Section 504); TRR/MS 0520-01-03-.16; TCA 49-6-3115
2. TRR/MS 0520-01-03-.16(5)
3. TCA 49-1-905(e)
4. TRR/MS 0520-01-03-.16(4)
5. TRR/MS 0520-01-03-.16(6)
6. TRR/MS 0520-01-03-.16(6)(f)
7. TRR/MS 0520-01-03-.16(6)(e)
8. TRR/MS 0520-01-03-.16(6)(g)
9. 29 U.S.C. § 794 (Section 504); 20 USCA § 1400 *et seq.*; TRR/MS 0520-01-03-.16(7)(e)
10. TRR/MS 0520-01-03-.16(3); TRR/MS 0520-01-02-.17(7); TCA 49-6-3102(e)(1)
11. **Public Acts of 2024, Chapter No. 829**

 Cross References

Credit Recovery 4.210
 Grading System 4.600
 Reporting Student Progress 4.601
 Attendance 6.200
 Student Assignments 6.205
 Homeless Students 6.503
 Student Records 6.600

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Physical Assault Leave	Descriptor Code: 5.307	Issued Date:
		Rescinds:	Issued: 03/22/22

1 *General*

2 Employees shall be notified of their right to report a physical assault to the appropriate law
3 enforcement agency.¹

4 An employee ~~A-teacher~~ who is absent from assigned duties as a result of personal injury caused by
5 physical assault or other violent criminal acts committed in the course of the ~~employee teacher's~~
6 employment duties shall receive his/her full salary and full benefits until the ~~employee teacher~~ is
7 released by his/her physician to return to work or his/her physician determines the ~~employee teacher~~ is
8 permanently unable to return to work. Hourly employees shall receive an amount representing the
9 average number of hours the employee works for the district per pay period along with their full
10 benefits, if available, until the employee is released by his/her physician to return to work or his/her
11 physician determines the employee is permanently unable to return to work. An hourly employee is not
12 eligible to receive the continued pay and benefits if he/she has been employed by the district for less
13 than one (1) full pay period.²

14 If the ~~employee teacher~~ receives workers' compensation or other similar benefits, the Board shall pay
15 the difference between that amount and the ~~teacher employee's~~ full salary or average pay, as
16 applicable.² The district shall pay the full salary or average salary, or the difference between the
17 employee's full salary or average pay, as applicable, and the workers' compensation or similar
18 benefits, if any, for up to one (1) year.

19 **PHYSICIAN STATEMENT**

20 A signed statement listing the cause of the absence shall be provided by the employee on forms
21 furnished by the Director of Schools and shall promptly be given to the immediate supervisor in
22 support of all claims. A certificate from the physician on forms furnished by the Director of Schools
23 may also be required to verify the extent of the injury.³

Legal References

1. [Public Acts of 2024, Chapter No. 915](#)
2. [TCA 49-5-714\(a\); Public Acts of 2024, Chapter No. 839](#)
3. [TRR/MS 0520-01-02-.04\(4\)\(b\)](#)

Cross References

- Worker's Compensation 3.602
- Sick Leave 5.302
- Long Term Leaves of Absence 5.304

Agenda Item Title: Approve changes to Board Policy 5.307, Physical Assault Leave, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Previously, physical assault leave was only available to teachers. Public Chapter 839 expands this type of leave to include any employee who is absent from assigned duties as a result of physical assault or other violent criminal acts committed in the course of their employment duties. This policy has been updated to reflect this change and now includes a notice requirement pursuant to Public Chapter 915.

Staff Recommendation

Approve changes to Board Policy 5.307, Physical Assault Leave, on first reading

Fiscal Impact

Any costs associated with required substitute teaching positions or additional coverage needed for employees on physical assault leave.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Agenda Item Title: Approve changes to Board Policy 5.602, Staff Time Schedules, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

The United State Department of Labor issued a final rule that makes changes to overtime exemptions under the federal Fair Labor Standards Act (FLSA). Murfreesboro City Schools is recommending revision to Board Policy 5.602 to clarify time schedules for full-time, non-exempt employees in preparation for these changes.

Staff Recommendation

Approve changes to Board Policy 5.602, Staff Time Schedules, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in March	Descriptor Term: Staff Time Schedules	Descriptor Code: 5.602	Issued Date: 03/22/22
		Rescinds: 5.602	Issued: 05/28/24

1 WORK SCHEDULES

2 The workday for full-time, ~~exempt licensed and professional~~ certified and classified staff will be a
3 minimum of seven hours and thirty minutes (450 minutes)¹ and will continue until professional
4 responsibilities to the ~~student and the school~~ district are completed. The workday for full-time, non-
5 exempt salaried and hourly certified and classified staff will be a minimum of seven hours (400
6 minutes).

7 Administrative meetings, curriculum development, student supervision, assigned duties, parent
8 conferences, group or individual planning and extra-curricular activities may require hours beyond the
9 stated minimum. When a school has activities beyond the school day and teacher participation is
10 needed, these hours will be distributed as equitably as possible among the faculty.

11 Teachers shall be allotted an individual duty-free planning period of two and one-half (2 1/2) hours
12 each traditional, five-day week to provide time for planning, preparation for effective teaching and
13 attention to major program improvement.² Work schedules for other employees will be defined by the
14 Director of Schools or their designee, consistent with the Fair Labor Standards Act and provisions of
15 this policy.

16 WORKWEEK DEFINED

17 Working hours for all employees not exempted under the Fair Labor Standards Act,³ including
18 secretaries, bus drivers, cafeteria, custodial and maintenance personnel, will conform to federal and
19 state regulations. The Director of Schools will ensure that job positions are classified as exempt or
20 non-exempt and that employees are made aware of such classifications. Supervisors will make every
21 effort to avoid circumstances which will require non-exempt employees to work more than forty (40)
22 hours each week. For purposes of compliance with the Fair Labor Standards Act, the workweek for
23 school district employees will be 12:00 a.m. Sunday until 11:59 p.m. Saturday.

24 OVERTIME AND COMPENSATORY TIME⁴

25 The Board discourages overtime work by non-exempt employees. A non-exempt employee shall not
26 work overtime without the express approval of their supervisor. All overtime work shall be expressly
27 approved in writing by the Director of Schools or their designee. All supervisory personnel shall
28 monitor overtime on a weekly basis and report such time to the Director of Schools/designee.
29 Principals and supervisors shall monitor employees' work, ensure that overtime provisions of this
30 policy and the Fair Labor Standards Act are followed, and ensure that all employees are compensated

31 for any overtime worked. Principals or supervisors may need to adjust daily schedules to prevent non-
32 exempt employees from working more than forty (40) hours in a workweek. Accurate and complete
33 time records of actual hours worked during the workweek will be recorded by each employee and
34 submitted to the Human Resources Director. The Director of Finance will review work records of
35 employees on a regular basis to make an assessment of overtime use.

36 In lieu of overtime compensation, non-exempt employees may receive compensatory time off at a rate
37 of not less than one and one-half (1.5) hours for one hour of overtime worked, if such compensatory
38 time is: (1) pursuant to an agreement between the employer and employee reached before overtime
39 work is performed, and (2) authorized by the immediate supervisor.

40 Employees will be allowed to use compensatory time within a reasonable period after requesting such
41 use if the requested use of the compensatory time does not unduly disrupt the operation of the school
42 district. Employees may accrue a maximum of sixty (60) compensatory time hours before they will be
43 provided overtime pay at the rate earned by the employee at the time the employee receives such
44 payment. In addition, upon leaving the school district, an employee must be paid for any unused
45 compensatory time at the rate of not less than the higher of (1) the average regular rate received by the
46 employee during his/her last three (3) years of employment, or (2) the final regular rate received by the
47 employee.

48 Non-exempt employees whose workweek is less than forty (40) hours will be paid at the regular rate of
49 pay for time worked up to forty (40) hours. Such employees shall be provided overtime pay or
50 compensatory time as provided for working more than forty (40) hours in a workweek.

51 This policy shall be included in the employee handbook, however, employees will be provided with a
52 copy of this policy and will be required to sign this policy to acknowledge their understanding of
53 overtime and compensatory time provisions. Such signed policy shall be placed in the employee's
54 personnel file and shall constitute the written agreement outlined in this section.

55 ATTENDANCE EXPECTATIONS

56 All employees are expected to be present during all work hours. Absence without prior approval,
57 chronic absences, habitual tardiness or abuses of designated working hours are all considered neglect
58 of duty and will result in disciplinary action up to and including dismissal.

59 If an employee fails to report to work for three consecutive days without notifying their supervisor or
60 the Human Resources Department, the employee will be considered to have abandoned their position
61 and voluntarily resigned. Employees subject to separation under this part may be considered for
62 reinstatement if the employee can provide a valid explanation and documentation for their absences
63 directly related to exigent circumstances. Reinstatement decisions will be made on a case-by-case
64 basis.

Legal References

1. [TRR/MS 0520-01-02-.31\(5\)](#)
2. [TRR/MS 0520-01-02-.31\(6\)](#); [TCA 49-1-302\(e\)\(2\)](#)
3. [29 CFR § 553.20](#)

Cross References

- School Day 1.801
Curriculum Development 4.200

4. [29 CFR § 541.100—101, 200, 204, 300, 303](#)

Professional Growth and Development 5.113

Agenda Item Title: Approve changes to Board Policy 6.309, Zero Tolerance Offenses, on first reading

Board Meeting Date: June 25, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Public Chapter 882 modifies the current list of zero tolerance offenses in state law. Now, a threat assessment team will determine whether a threat of mass violence is valid before the offense can be classified as zero tolerance. This policy update aligns with this change.

Staff Recommendation

Approve changes to Board Policy 6.309, Zero Tolerance Offenses, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in March	Descriptor Term: Zero Tolerance Offenses	Descriptor Code: 6.309	Revised: 7/25/23 Prior Revised Dates: 04/28/20 04/26/22 04/26/22
		Rescinds: STU 38	Issued: 05/08/11

1 In order to ensure a safe and secure learning environment, the following offenses shall not be
2 tolerated:¹

- 3 1. Unauthorized possession of a firearm on school property;²
- 4
- 5 2. Unlawful possession ~~of any of any drug, including drug, including-~~ any
6 controlled- substance,- controlled- substance analogue, or legend drug on school grounds or at a
7 school-sponsored event;³ and
- 8
- 9 3. Aggravated assault⁴ or assault that results in bodily injury⁵ upon any teacher, principal,
10 administrator, any other employee of the school or school resource officer.
- 11
- 12 4. ~~Threats~~ Valid threats of mass violence on school property or at a school-related activity as
13 determined by a school district threat assessment team.⁶

14 Committing any of these offenses shall result in a student being expelled from regular attendance at
15 school for at least one (1) calendar year, unless modified by the Director of Schools. Modification to
16 the length of time shall be granted on a case-by-case basis.

17 DETERMINATION AND NOTIFICATION

18 The principal or the principal's designee shall be responsible for investigating alleged violations of this
19 policy. If the investigation reveals that a violation of this policy has occurred, the principal shall expel
20 the student for not less than (1) calendar year, subject only to the due process procedures set forth in
21 Board Policy 6.316 and this policy and the authority of the Director of Schools to modify the expulsion
22 requirement on a case-by-case basis.⁷

23 When it is determined that a student has violated this policy, the principal of the school shall notify the
24 student's parent(s)/guardian(s) and the criminal justice or juvenile delinquency system as required by
25 law.⁸

26 APPEAL

27 An appeal of a principal's determination that a student has committed a zero-tolerance offense must
28 be filed in accordance with the procedures set forth in Board Policy 6.316. The review on appeal, by

1 either the Disciplinary Hearing Authority or the School Board, of a principal's determination that a
2 student committed a zero-tolerance offense shall be limited in scope to the question of whether the
3 evidence supports the principal's determination that the student committed the offense.

4 **PUBLICATION OF POLICY**

5 This policy shall be published in the Code of Conduct as set forth in the *Parent Handbook*, and
6 provided annually to all teachers, administrative staff, and parents.

Legal References

1. TCA 49-6-3401(g)
2. 18 USCA § 921(a)(3); 20 USCA § 7961
3. TCA 39-17-454; TCA 53-10-101
4. TCA 39-13-102
5. TCA 39-13-101(a)(1)
6. TCA 39-16-517; ~~Public Acts of 2023, Chapter No. 299~~TCA 49-6-3401(g)(2)(D); Public Acts of 2024, Chapter No. 882
7. TCA 49-6-3401(g)(2); TCA 49-6-3402
8. TCA 49-6-4209; TCA 39-17-1312; 20 USCA § 7961(h)(1)

Cross References

[Threat Assessment Team 3.204](#)
Code of Conduct 6.300
Drug-Free Schools 6.307
Suspension 6.316
Student Disciplinary Hearing Authority 6.317
Alternative Education 6.319
Safe Relocation of Students 6.4081

Agenda Item Title: Schools Budget Amendment for General Purpose Fund 141 & ESP Fund 146

Board Meeting Date: June 25, 2024

Department: Finance Department

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

This amendment is a transfer of previously approved funds within the same major budget categories to balance each account for year-end.

This amendment transfers a total of \$28,275 in General Purpose and \$905 in Extended School to recognize changes in preliminary salary and Trustee's commission budget estimates to projected year-end actuals. Increases include Teacher salaries, clerical personnel, education assistants, and adjustment to supervisor salary. Each increase is sustained through transfers within each category and no major change to the fiscal budget.

Staff Recommendation

Approve the amendment for the General Purpose School Fund 141 and Extended School Program 146.

Fiscal Impact

This will move the FY23-24 budget to actual projections with no new revenues or expenditures, no new positions, and no change to fund balance.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City Schools

INTER-FUND BUDGET TRANSFER/AMENDMENT REQUEST

Budget Fiscal Year 2023-2024 GPS Fund 141 & ESP 146

June 25, 2024

Expenditure Accounts	Description	Increase	Decrease
141 E 71200 116	TEACHERS	18,000	
141 E 71200 163	EDUCATIONAL ASSISTANTS		18,000
Total Special Education		\$ 18,000	\$ 18,000
141 E 72710 162	CLERICAL PERSONNEL	1,700	
141 E 72710 425	GASOLINE		1,700
Total Transportation		\$ 1,700	\$ 1,700
141 E 72310 510	TRUSTEE'S COMMISSION	5,000	
141 E 72310 210	UNEMPLOYMENT COMPENSATION		5,000
Total Support - Board of Education		\$ 5,000	\$ 5,000
141 E 73400 163	EDUCATIONAL ASSISTANTS	3,575	
141 E 73400 116	TEACHERS		2,927
141 E 73400 201	SOCIAL SECURITY		323
141 E 73400 204	RETIREMENT		219
141 E 73400 206	LIFE INSURANC		11
141 E 73400 212	MEDICARE		69
141 E 73400 217	HYBRID RETIREMENT		26
Total Early Childhood Education		\$ 3,575	\$ 3,575
146 E 73300 105	SUPERVISOR/DIRECTOR	905	
146 E 73300 189	OTHER SALARIES AND WAGES		905
Total ESP - Community Services		\$ 905	\$ 905
Total Expenditures		\$ 29,180	\$ 29,180

To transfer \$29,180 in budgeted expenditures within major categories to recognize changes for year end. The General Purpose transfer of \$28,275 will cover teacher salaries, clerical personnel, Ea's, and Trustee's commission. The transfer of \$905 will cover the final expenditure of Supervisor salary in Extended School Program.

There are no new revenues or expenditures, no new positions, and no change to fund balance.

Reviewed by [Signature] Finance Director/Finance Manager

Date 6/19/24

Approved

Declined

[Signature]
Director of Schools

6/20/24
Date

Agenda Item Title: Award of Construction Contract for Reeves-Rogers Administrative Addition to Romach, Inc.

Board Meeting Date: June 25, 2024

Department: Operations

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

The City of Murfreesboro Purchasing Department solicited bids for the administrative addition for Reeves-Rogers Elementary School. There were four bid respondents with Romach, Inc. being the lowest responsive and responsible bidder. Final approval for contract award will be presented to City Council on July 11, 2024.

Staff Recommendation

Approve award of construction contract for Reeves-Rogers Administrative Addition to Romach, Inc.

Fiscal Impact

The bid form price is \$2,795,800.00. The funding source is county shared bonds.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

EXHIBIT A

CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Contractor must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

1. Commercial General Liability Insurance.

1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

1.3 Each general liability policy must be endorsed or written to:

- a. Include the per project aggregate endorsement;
- b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
- c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
- d. Includes a severability of interest clause; and
- e. Waive all rights of recovery against the Additional Insureds.

2. **Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. Auto Liability Insurance

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
 - 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
 - 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.
4. **Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.
5. **Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.
6. **Umbrella Coverage.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$5,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.
7. **Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.
8. **Builder's Risk.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Work, including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.
9. **Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.
10. **Term of Coverage**
 - 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
 - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

12. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;
- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and

12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

13. Certificates and Endorsements

13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;

13.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.

13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

14. Reduction in Coverage. Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

15. Suppliers and Materialmen Coverages

15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

15.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

16. Condition Precedent to Starting Work

16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with

the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

17. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

18. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

19. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

20. **Performance Bond and Payment Bond.**

20.1 The Contractor shall provide surety bonds as follows:

Type	Penal Sum (\$0.00)
Performance Bond	100% of Contract Sum
Labor and Material Payment Bond	100% of Contract Sum

20.2 Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

20.3 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the Owner, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.

20.4 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.

20.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

DRAFT AIA® Document A101™ - 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the «11» day of «July» in the year «2024»
(In words, indicate day, month and year.)

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

« City of Murfreesboro, Tennessee, » «a municipality organized under the laws of the State of Tennessee »
«111 West Vine Street »
«Murfreesboro, Tennessee 37130»
« »

and the Contractor:
(Name, legal status, address and other information)

«Romach, Inc.» « »
«170 Reynolds Road »
«Franklin, TN 37064 »
« »

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

« »
« »
«Administration Addition at Reeves-Rogers Elementary School
1807 Greenland Dr, Murfreesboro, TN 37130
J+B No. 2204
ITB-36-2024

The Architect:
(Name, legal status, address and other information)

« » « »
« »
« »
«Johnson + Bailey Architects, P.C.
100 East Vine Street
City Center, Suite 700
Murfreesboro, TN 37130

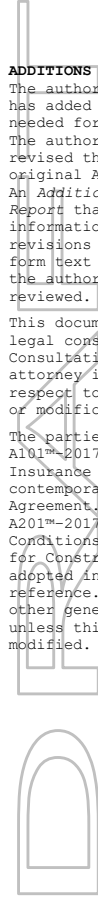
The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be: (Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

Phase 1 – July 15, 2024 and be completed on or before July 2, 2025»

Phase 2 – October 14, 2024 and be completed on or before July 2, 2025»

Phase 3 – May 30, 2025 and be completed on or before July 2, 2025»

~~The date of commencement of the Work shall be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.~~

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work: (Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

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[] By the following date: July 2, 2025

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Million Seven Hundred Ninety-Five Thousand Eight Hundred Dollars (\$ 2,795,800.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
<u>N/A</u>	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<u>N/A</u>		

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
<u>Contingency Allowance</u>	<u>\$50,000.00</u>
<u>Quantity Allowances</u>	<u>10 Cubic Yards for mass excavation and removal from site of unsuitable soil below depths and quantities indicated</u>
	<u>5 Cubic Yards for trench excavation and removal from site of unsuitable soil below depths and quantities indicated</u>
	<u>15 Cubic Yards for shot rock placed where unsuitable soil is removed below depths and quantities indicated</u>

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>Mass excavation and removal from site of unsuitable soil below depths and quantities indicated</u>	<u>Cubic Yards</u>	<u>\$68.00</u>
<u>Trench excavation and removal from site of unsuitable soil below depths and quantities indicated</u>	<u>Cubic Yards</u>	<u>\$315.00</u>

Shot rock placed where unsuitable soil is removed below depth indicated

Cubic Yards

\$131.00

§ 4.5 Liquidated Damages

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fail to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$~~5002,000~~.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« § 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order. »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« Five Percent (5%) »

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 [Intentionally omitted.]

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

« AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures»

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

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« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

«[Craig Tindall, City Manager](#)[Scott Elliott, Project Development Manager](#)»

« 111 West Vine Street »

« Murfreesboro, TN 37130 »

« Tel: (615) [849-2629642-3228](#) »

« Email: ctindall@murfreesborotn.govselliott@murfreesborotn.gov »

« or his designee as indicated in writing from time to time.»

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

«[Nathan Morgan, Vice President](#) »

«[Romach, Inc.](#) »

«[170 Reynolds Drive](#) »

«[Franklin, TN 37064](#) »

« [Phone: 615-794-8224](#) »

«[Email: nmorgan@romachconst.com](mailto:nmorgan@romachconst.com) »

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 8.7 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A, Contractor’s Insurance and Bonds Requirements

.3 AIA Document A201™-2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures

.4 [Intentionally Omitted]

←→

.5 Drawings

Number	Title	Date	Pages
Section 00 01 15	Drawing Index	April 18, 2024	2

.6 Specifications

Section	Title	Date	Pages
Section 00 01 10	Table of Contents	April 18, 2024	1

.7 Addenda, if any:

Number	Date	Pages
1	May 13, 2024	5
2	June 6, 2024	3

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[« »] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

[←→X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Addendum A, Addendum B, and Exhibit B		April 18, 2024	10

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

←→Section 00 11 13, Advertisement for Bids (2 pages)
Section 00 21 13, Instructions to Bidders (8 pages)

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Section 00 41 13, Bid Form (7 pages)
Sub-surface Acknowledgement Form

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

CITY OF MURFREESBORO

ROMACH, INC.

OWNER (Signature)

«Shane McFarland, »«Mayor »
(Printed name and title)

CONTRACTOR (Signature)

«Nathan Morgan »«Vice President »
(Printed name and title)

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney



ADDENDUM A

Contractor's Standard Form Subcontract

[Cover page – See attached]

ADDENDUM B

DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 Contractor and the Owner will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")

- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
 - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
 - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
 - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
 - b. The two arbitrators then each select a third arbitrator.
 - c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.

- 3.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a “Proposed Resolution”).
- a. Each Party’s Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.

4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the Owner will continue to make payment to Contractor in accordance with the Contractor Agreement.

5. **Exceptions**

- 5.1 Neither the Owner nor Contractor are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.
- 5.2 The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.
- 5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Administration Addition at Reeves-Rogers Elementary School
1807 Greenland Dr, Murfreesboro, TN 37130
J+B No. 2204
ITB-36-2024

THE OWNER:

(Name, legal status and address)

« City of Murfreesboro, Tennessee, » «a municipality organized under the laws of the State of Tennessee »
«111 West Vine Street »
«Murfreesboro, TN 37130»

THE ARCHITECT:

(Name, legal status and address)

Johnson + Bailey Architects, P.C.
100 East Vine Street
City Center, Suite 700
Murfreesboro, TN 37130

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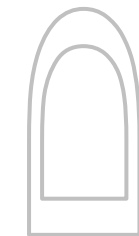
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- 12 UNCOVERING AND CORRECTION OF WORK

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, [except as set forth in Sections 5.3 and 5.4](#), (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms

in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 [Intentionally Deleted]

§ 2.2 Evidence of the Owner's Financial Arrangements

[Intentionally Deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may

require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

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

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

- c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the

municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- .4** the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report

constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor’s compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner’s premises or any tenants or invitees thereof. The Contractor shall, upon the Owner’s request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in

accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

§ 3.13 Use of Site

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

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the

Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the

Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity,

the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A 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. All Construction Change Directives must be on the form designated by Owner.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.14 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the notice to proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

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

insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage ~~facility~~facility.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as

provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

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

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

Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or

- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor

shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

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

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work

within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission

of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegatee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.13 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 persistently refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the sum of the costs of finishing the Work and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2.6 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not

commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by ~~weather or weather-related~~ weather- or weather-related conditions as follows unless properly documented and accepted per the project specifications.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by ~~weather or weather-related~~ weather- or weather-related conditions as follows unless properly documented and accepted per the project specifications.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

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

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation
[Intentionally Omitted]

§ 15.4 Arbitration
All disputes shall be addressed in accordance with Addendum B.

Bid Tabulation Sheet
For
ITB-36-2024 (REEVES ROGERS SCHOOL ADMINISTRATION ADDITIONS)

Contractors	Bid Form Price \$	GC License	Iran Divest./ Israel Non-Boycott	Non-Collusion Affidavit	Affidavit Drug Free Workplace	Subsurface Investigation	References	Signature Sheet	Vendor Info Sheet	Bid Bond
Romach Inc	2,795,800	√	√	√	√	√	√	√	√	√
Stacker Building Group	2,849,675.82	√	√	√	√	√	√	√	√	√
Thrash Construction	2,881,216	√	√	√	√	√	√	√	√	√
WE O'Neil Construction	3,169,337	√	√	√	√	√	√	√	√	√

Recommend Award to: Romach Inc.
 Amount of: \$2,795,800
 Bid Opened by: Marina Rush/ Purchasing Analyst

Agenda Item Title: A resolution to allow Murfreesboro City Schools to participate in Commodity Buying Group

Board Meeting Date: June 25, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

~~**Requires City Council Approval:** Yes No~~

Summary

Federal law allows Murfreesboro City Schools to participate in cooperative purchasing groups to purchase goods for the school nutrition program. This resolution will allow Murfreesboro City Schools to continue to benefit from participating in the Commodity Buying Group for the 2025 fiscal year.

Staff Recommendation

Approve resolution to allow Murfreesboro City Schools to participate in the Commodity Buying Group for fiscal year 2025

Fiscal Impact

Participation in a cooperative purchasing group allows Murfreesboro City Schools to increase its purchasing power for competitively procuring goods for the school nutrition program.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

**A RESOLUTION TO APPROVE PARTICIPATION IN THE
COMMODITY BUYING GROUP FOR THE 2025 FISCAL YEAR**

WHEREAS, 2 CFR 200.318(e) allows school nutrition programs to participate in competitive purchasing groups to competitively procure goods and services;

WHEREAS, Murfreesboro City Schools is seeking to continue to participate in the Commodity Buying Group for purposes of competitively procuring commodities;

WHEREAS, the Lawrence County School Nutrition program serves as the purchasing agent for the Commodity Buying Group, with Murfreesboro City Schools ensuring full and open competition for any purchases made through the cooperative purchasing group in compliance with all regulatory requirements; and,

WHEREAS, Murfreesboro City Schools desires to have the ability to procure commodities for the school nutrition program under the conditions set forth in any cooperative purchasing master agreements executed by the Commodity Buying Group.

NOW, THEREFORE, BE IT RESOLVED, pursuant to the allowances of 2 CFR 200.318(e), Murfreesboro City Schools is authorized to participate in the Commodity Buying Group during the 2025 fiscal year. The Board of Education further authorizes the Director of Schools to execute any documentation that may be necessary to facilitate the district's participation in the cooperative purchasing programs.

ADOPTED THIS 25th day of June, 2024.

Butch Campbell, Chairman

Bobby N. Duke III, Director of Schools

Agenda Item Title: Approve Curriculum and Instruction Agreements for 2024-2025 School Year

Board Meeting Date: June 25, 2024

Department: Curriculum and Instruction

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, agreements with Imagine Learning and Zaner-Bloser are presented to the Board for approval. These agreements will provide instructional support and materials for Murfreesboro City Schools for the 2024-2025 school year.

Staff Recommendation

Approve agreements with Imagine Learning and Zaner-Bloser for 2024-2025 School Year

Fiscal Impact

The cost of the Zaner-Bloser agreement is \$52,946.74 and the cost of the Imagine Learning agreement is \$69,500.00. The funding for Imagine Learning is derived from ESSER 3.0 and the funding for Zaner-Bloser is derived from the general purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Price Quote

8860 E. Chaparral Rd
Suite 100
Scottsdale, AZ 85250
877-725-4257

Date 1/30/2024
Quote No. Q-23528
Acct. No. 12217119
Total 69,500.00
Pricing Expires 07/28/2024

Murfreesboro City School District
2552 South Church Street
Murfreesboro TN 37127
United States

Payment Term	Contract Start	Contract End
Net 30	8/1/2024	7/31/2025

Site	Description	End Date	Qty	Per Unit	Amount
Murfreesboro City School District	Imagine Language & Literacy Reusable License	07/31/2025	800	85.00	68,000.00
	PD Webinar Session (CW-SUPP)	07/31/2025	2	750.00	1,500.00

Subtotal 69,500.00
Tax Total 0.00
Total 69,500.00

Imagine Learning will audit enrollment count throughout the year. If more enrollments are found to be in use than purchased, Imagine Learning will invoice the customer for the additional usage.

This quote is subject to Imagine Learning LLC Standard Terms and Conditions . These Terms and Conditions are available at www.imaginelearning.com/standard-terms-and-conditions, may change without notice and are incorporated by this reference. By signing this quote or by submitting a purchase order or form purchasing document, Customer explicitly agrees to these Terms and Conditions resulting in a legally binding agreement. To the fullest extent permitted under applicable law, all pricing information contained in this quote is confidential, and may not be shared with third parties without Imagine Learning's written consent.

Murfreesboro City School District

Signature: _____
Print Name: _____
Title: _____
Date: _____

Imagine Learning Representative

Nancy Smith
Account Executive -
nancy.smith@imaginelearning.com
imaginethefutureoflearning.com

Not valid unless accompanied by a purchase order. Please specify a shipping address if applicable. Please e-mail this quote, the purchase order and order documentation to AR@imaginelearning.com or fax to 480-423-0213.



IMAGINE LEARNING LLC TERMS AND CONDITIONS OF COMPANY SERVICES

This “Agreement” (i.e., these Terms and Conditions and the Price Quote for Services into which these Terms and Conditions are incorporated) is made and entered into as of the date of last signature below (“Effective Date”) between Imagine Learning LLC, its affiliates and subsidiaries (“Company”) and Customer. In consideration of the mutual promises contained herein, the parties hereby agree to the following:

1.1 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer to access the Services.

1.2 “Authorized User” means any third party who is authorized by Customer to access the Services pursuant to Customer’s rights under this Agreement, including any instructors, administrators, other employees, contractors, students authorized by Customer, parents, family members, or other adults associated with a student or parents authorized by Customer.

1.3 “Confidential Information” means all non-public, proprietary or confidential information relating to a “Disclosing Party” that is disclosed or otherwise supplied in confidence to the “Receiving Party” under this Agreement. Company’s Confidential Information includes (without limitation) the Services, its user interface design and layout, and pricing information. Confidential Information does not include any aggregated data or De-Identified Data covered by Section 9.4, or any other information that the Receiving Party can establish: (a) was known to the Receiving Party prior to receiving the same from the Disclosing Party, free of any restrictions; (b) is independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information; (c) is acquired by the Receiving Party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the Receiving Party.

1.4 “Confidential Student Information” means information that personally identifies a student who is enrolled or was previously enrolled at the Customer’s institution. This term includes the student’s name, the name of the student’s parents or family members, the student’s (or student’s family’s) address, telephone number, email address, date of birth, place of birth, mother’s maiden name, grades, financial information, social security number (or other governmental identification number), biometric information, and other information that alone or in combination would reasonably allow a person or entity to identify the student with reasonable certainty. Confidential Student Information does not include any information regarding persons who do not enroll at the Customer’s institution.

1.5 “Customer” means the school or district who is identified in the signature block below or the applicable Price Quote for Services.

1.6 “Customer Content” means any content and information submitted via or in connection with the Services by or on behalf of Customer, an Authorized User, or any other end user of the Services. Customer Content includes student information and records which remain the property of the Customer.

1.7 “De-Identified Data” means any data, including data derived from Confidential Information (and Confidential Student Information) that has had all direct and indirect personal identifiers removed. This includes the removal of any names, identification numbers, dates of birth, address, email address, and telephone number. De-Identified Data does not include any data that alone or in combination would reasonably allow a person or entity to identify a student with reasonable certainty.

1.8 “Documentation” means the technical materials provided by Company to Customer in hard copy or electronic form describing the use and operation of the Services.



Terms and Conditions of Company Services

1.9 **“Instructional Services”** means services provided by Company, including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of improving student outcomes, and other services as stated in the applicable Price Quote for Services. Instructional Services are also subject to the additional terms contained in the attached Addendum.

1.10 **“Price Quote for Services”** or **“Quote”** means the order form signed by Customer which references these Terms and Conditions and details the services to be provided to the Customer under this Agreement.

1.11 **“Products”** means durable, physical or consumable materials such as student or teacher workbooks, textbooks, physical kits or other items provided to correspond with Company courseware, audio, video and other content curriculum, and/or Documentation and software.

1.12 **“Professional Development”** or **“Professional Learning”** means the instructional training, consulting and coaching for all licensed products and services provided by the Company as described in the applicable Price Quote for Services. Professional Development/Professional Learning services are subject to the additional terms contained in the attached Addendum.

1.13 **“Services”** means the services ordered by Customer through the Price Quote for Services and includes the products and services which may include Company courseware, audio, video and other content curriculum, and/or Documentation and software including applets and animations. Services may include Professional Development and/or Instructional Services. Customers’ access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Quote or if the Service is terminated for any reason.

1.14 **“Supported Environment”** means the minimum hardware, software, and connectivity configuration specified from time to time by Company as required for use of the Services. The current requirements (if any) are described in the technical requirements which may be found on Company’s website.

2. PROVISION OF PRODUCTS & SERVICES

2.1 **Access.** Subject to Customer’s payment of the fees outlined in the Price Quote for Services and compliance with the terms of this Agreement, Company will provide Customer with access to the Products and Services. Promptly following the Effective Date, Company shall provide to Customer the necessary security protocols and policies, network links or connections and Access Protocols to allow Customer and its Authorized Users to access the Services in accordance with the Price Quote for Services (or this Agreement).

2.2 **Return Policy.** Unless otherwise specified on the Quote, physical Products will be shipped FOB origin in the US and are deemed accepted by Customer upon receipt. Upon acceptance of such Products, orders are non-refundable, non-returnable, and non-exchangeable, except in the case of defective or missing materials reported to the Company by Customer within thirty (30) days of receipt. Customer must obtain written authorization from Company for the return. Customer may not return Products without Company’s written authorization. For clarity, science lab kits may not be returned.

2.3 **Support Services.** Company will provide Customer with the support services described at <http://help.imaginelearning.com/hc/en-us>.

2.4 **Hosting.** Company shall, at its own expense, provide for the hosting of the Services, provided that nothing herein shall be construed to require Company to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Customer, any Authorized User or any other user to provide access from the Internet to the Services.



3. INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement, Company grants to Customer a non-exclusive, non-sublicensable, non-transferable license during the Term, solely for Customer's internal educational and training purposes and

3.2 in accordance with this Agreement. This Agreement permits only Customer and Customer's Authorized Users to access and use the Services detailed on the Price Quote for Services in accordance with the Documentation. Licenses are available to access Services throughout the Term by Authorized Users not to exceed specific quantities stated on Price Quote for Services. License and Service types are listed below. Only those License and Service types listed on the Price Quote for Services are applicable to this Agreement.

- a) **Concurrent License** - provides access to Services throughout the Term by all Authorized Users based on the number of simultaneous licenses purchased. Total number of users accessing product simultaneously cannot exceed total quantity of licenses purchased.
- b) **Reusable License** - provides access to Services throughout the Term by all Authorized Users based on the number of semester course enrollments purchased. Once a course enrollment is disabled or completed, the enrollment license can be reused for that student or another student throughout the contract period.
- c) **Single User** - available to a single user identified by name and designated as the sole student user of the specific license throughout the Term. Licenses cannot be transferred to another user.
- d) **Site License** - provides access to Services throughout the Term by all Authorized Users located at the specific physical site identified on the Price Quote. Must be a traditional brick and mortar educational institution that provides educational services to students at a common physical location. Not available for virtual schools.
- e) **Virtual School** - Customer that is (a) a private school where students do not regularly meet physically for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the internet with regular assistance or guidance from the teacher of record or (b) a private tutoring provider that makes available personal attention to each student enrolled in a program by faculty or tutoring provider and such services are the primary purpose of enrollment by students; or (c) a public program implemented by a school district where students do not regularly meet physically for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the Internet with regular assistance or guidance from the teacher of record; and (d) with respect to (a), (b), and (c), a Virtual School is not a school that sells licenses or access to educational software on a standalone basis or sells licenses or access to educational software to students not actively enrolled in and participating in learning services provided by the private school or tutoring provider.

3.3 Restrictions. Customer agrees that it will not, nor will Customer cause or permit any Authorized User or other party to: (a) allow any third party to access the Services or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Services or Documentation; (c) sublicense, lease, rent, sell, resell, loan, distribute, transfer or otherwise allow the use of the Services or Documentation for the benefit of any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except as permitted by law; (e) create derivative works based on the Services or Documentation; (f) use the Services to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (g) interfere with or disrupt the integrity or performance of the Services; or (g) access the Services to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

3.4 Ownership. Except for the licenses granted by Company under this Agreement, as between



Terms and Conditions of Company Services

Company and Customer, Company owns all right, title and interest (including, but not limited to, all copyright, patent, trademark and trade secret rights) in and to the Services and Documentation.

3.5 Open Source Software. Certain items of software used in the Services are subject to “open source” or “free software” licenses (“Open Source Software”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 3.1, 3.2, or 10. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If and to the extent required by any license for particular Open Source Software, Company makes such Open Source Software and Company modifications to that Open Source Software, available by written request at the notice address specified on the Price Quote for Services.

4. FEES. Company shall invoice Customer for fees on the schedule set forth on the Price Quote for Services (“Fees”) and the amounts set forth in such invoices shall be due from Customer net thirty (30) days of receipt. Non-payment or late payment of undisputed fees is a material breach of this Agreement. Company may terminate the Agreement and/or terminate or suspend Customer’s access to Services within ten (10) days after Customer receipt of a notice of non-payment of amounts owed under that Price Quote for Services. Company may change the amount of the Fees for any upcoming Renewal Term, provided that Company provides Customer with written notice of such change at least sixty (60) days prior to the first day of such Renewal Term. All taxes and other governmental charges (except for income taxes), if any, imposed on Customer payments hereunder shall be deemed to be in addition to the Fees charged, and borne solely by Customer except to the extent that Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. FUNDING-OUT CLAUSE. If Customer is a governmental entity receiving federal, state or local funds, Customer’s payment obligation may be conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify Company in writing at least thirty (30) calendar days before termination. Upon termination, Company will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.

6. CUSTOMER CONTENT AND RESPONSIBILITIES

6.1 License; Ownership. Customer hereby grants Company a non-exclusive, worldwide, royalty-free, fully paid and transferable license (a) to use the Customer Content as necessary solely or the purposes of providing the Services under this Agreement; and (b) to use Customer’s trademarks, service marks, and logos as required to provide the Services (but not for use with an audience beyond that of Authorized Users). As between the parties, Customer owns all right, title and interest in the Customer Content.

6.2 Customer Warranty. Customer represents and warrants that (a) prior to using the Services in connection with any Authorized User, Customer shall have obtained any necessary consent to contact such Authorized User via the Services in such form as required to comply with applicable law; (b) that its use of the Services will otherwise comply with all applicable laws; and (c) the Customer Content shall not (i) infringe any copyright, trademark, or patent right; (ii) misappropriate any trade secret; (iii) be deceptive, libelous, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Company’s system or data; or (v) otherwise violate any privacy or other right of any third party.

6.3 Authorized User Access. Customer may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement. Each Authorized user must be granted a unique User ID. User IDs cannot be shared or used by more than one Authorized User at a time. Customer is solely responsible for maintaining the confidentiality of Access Protocols and Company will not be liable for any activities undertaken by anyone using Customer’s Access Protocols. Customer will immediately notify Company of any unauthorized use of its Access Protocols or any other breach of security relating to the Services known to Customer. **Customer Responsibility for Access, Content and Security.** Except to the extent expressly specified on the Price Quote for Services, Company is not obligated to back up any Customer Content; the Customer is solely responsible for creating backup copies of any Customer



Terms and Conditions of Company Services

Content at Customer's sole cost and expense. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Customer must maintain the Supported Environment (if any) described in the Price Quote for Services.

7. WARRANTIES AND DISCLAIMERS

7.1 Limited Warranty. Company warrants that it will make commercially reasonable efforts to maintain the online availability of the Services. CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR COMPANY TO REPAIR THE NON-CONFORMING SERVICE, OR IF COMPANY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN COMPANY MAY TERMINATE ACCESS TO THE SERVICES AND REFUND A PORTION OF THE FEE.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, THE DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS," AND COMPANY MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

8. LIMITATION OF LIABILITY. EXCLUDING EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN IN RESPECT OF THIRD-PARTY CLAIMS, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS PERFORMANCE HEREUNDER AND (B) IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER AS A RESULT OF ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE APPLICABLE SERVICES GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE ACT OR OMISSION GIVING RISE TO SUCH CLAIM. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

9. CONFIDENTIALITY; PRIVACY

9.1 Confidentiality. During the Term, each party ("Disclosing Party") may provide the other party ("Receiving Party") with Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Disclosing Party's Confidential Information to Authorized Users (with respect to Customer as Receiving Party) or to those employees who have a need to know such Confidential Information to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon the expiration or termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

9.2 Privacy. Company will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations ("Applicable Laws") applicable to its performance under this Agreement, including without limitation the Family Educational Rights and Privacy



Terms and Conditions of Company Services

Act and the Children's Online Privacy Protection Act. Company's Privacy Policy (as may be updated by Company from time to time), which is incorporated by reference into these terms and conditions, contains additional terms regarding Company's use of Confidential Student Information. Customers and Authorized Users may view Company's privacy policy at <https://www.imaginelearning.com/privacy> ("Privacy Policy"). Customer is responsible for providing notice of its own privacy policy to parents of its students and is solely responsible for obtaining any necessary parental consents for students to use the Services.

9.3 Data Security. Company agrees that it will store and process Confidential Information, including Confidential Student Information, in accordance with customary industry standards. Company shall implement and maintain commercially reasonable administrative, technical and physical security measures designed to protect Confidential Information from unauthorized access, disclosure and use. Company will conduct periodic risk assessments and remediate identified material security vulnerabilities in a commercially reasonable manner. Company will have a written data breach response plan and will take commercially reasonable steps to notify the Customer once it becomes aware of a data breach known to involve, or likely involving, Customer Confidential Information. Company will cooperate with the Customer to comply with any applicable data breach notification laws.

9.4 Aggregated and De-Identified Data. Company may use aggregated data and De-Identified Data for those purposes allowed under applicable law and for the following purposes: (1) to demonstrate the effectiveness of the services; (2) research and development of the Company's educational sites, services, or applications; and (3) for adaptive learning purpose and for customized student Learning. Company agrees not to attempt to re-identify aggregated or De-identified Data. Company's use of aggregated data and De-identified data shall survive termination of this Agreement or any request by LEA to return or destroy Data.

9.5 Confidential Student Information Return and Destruction. Upon termination or expiration of this Agreement or thereafter, at the Customer's written request, Company shall, in a reasonable period of time, return all Confidential Student Information to Customer or shall destroy such Confidential Student Information that Company knows it possesses to the extent that destruction is reasonably practicable. Customer acknowledges that some data may remain in archive or other files following Company's commercially reasonable attempt to return or destroy Confidential Student Information. Company may transfer Confidential Student Information and De-Identified Data or aggregated data to its successor pursuant to a merger, consolidation or sale of substantially all of its assets pursuant to Section 13 of this Agreement.

10. INDEMNIFICATION

10.1 By COMPANY. Company shall indemnify, defend and hold harmless Customer against any third-party claims that the use of the Services as permitted hereunder infringes any copyright, US patent or other intellectual property right of a third party, and Company shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Company. If any portion of the Services becomes, or in Company's opinion is likely to become, the subject of a claim of infringement, Company may, at Company's option, and as Customer's sole and exclusive remedy therefor: (a) procure for Customer the right to continue using the Services; (b) replace the Services with non-infringing software or services which do not materially impair the functionality of the Services; (c) modify the Services so that the Services become non-infringing; or (d) terminate this Agreement and refund any fees paid by Customer to Company for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Documentation and Services. Notwithstanding the foregoing, Company shall have no obligation under this Section 10.1 or otherwise with respect to any third-party claim based upon (i) any use of the Services not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Services in combination with other products, equipment, software or data not supplied by Company; or (iii) any modification of the Services by any person other than Company or its authorized agents. This Section 10.1 states the sole and exclusive remedy of Customer and the entire liability of Company, and any of the officers, directors, employees, shareholders, contractors or representatives of Company, for claims



Terms and Conditions of Company Services

and actions described in this Section 10.1.

10.2 By Customer. To the maximum extent allowed by applicable law, Customer shall indemnify defend and hold harmless Company against any third-party claims arising out of (a) any failure by Customer or any Authorized User to comply with applicable laws, rules and regulations (including those promulgated by U.S. federal or state regulatory authorities) in connection with its activities hereunder, including without limitation its provision and Company's authorized use of Customer Content (possibly including student information) hereunder or failure to obtain required consent from any Authorized User or other end users, (b) any failure by Customer to adhere to applicable laws, rules and regulations (including school board and district policies) relating to Customer's modified or customized content where permitted within Company provided Products or Services; (c) Customer's unauthorized use of Services hereunder and/or (d) Customer's breach or alleged breach of any of its covenants, representations or warranties hereunder, and Customer shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Customer. This Section 10.2 states the sole and exclusive remedy of Company and the entire liability of Customer, and any of the officers, directors, employees, shareholders, contractors or representatives of Customer, for the claims and actions described in this Section 10.2. Notwithstanding the foregoing, Company shall not be liable for Customer's insertion or use of any self-created or third party content which violates any applicable laws, rule and regulations.

10.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit, provided, however, that failure to give prompt notice will not relieve the indemnifying party of any liability hereunder (except to the extent the indemnifying party has suffered actual material prejudice by such failure); (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall (at the indemnifying party's expense) reasonably cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

11. TERM AND TERMINATION

11.1 Term. This Agreement shall be for the term (the "Initial Term") of any Services purchased pursuant to a Price Quote for Services and shall thereafter renew for one (1) year terms (each a "Renewal Term") upon the mutual written consent of the parties prior to the expiration of the then-current term. The Initial Term and the Renewal Terms (if any) are, collectively, the "Term." Customer only has the right to use the Services during the Term.

11.2 Termination. Either party may terminate this Agreement immediately upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach.

11.3 Effect of Termination. Immediately upon termination of this Agreement, (a) the licenses granted to either party shall immediately terminate; and (b) Company shall cease to make available and Customer shall cease to use the Services. Termination shall not relieve Customer's obligation to pay all charges accrued through the effective date of termination. Sections 3.3, 6.4, 7, 8, 9, 10, 11.3, 12 and 13 will survive the expiration or termination of this Agreement.

12. GOVERNING LAW AND VENUE If Customer is a public school or district or other state or municipal governmental agency (a "Public School"), this Agreement and any action related thereto will be governed and interpreted by and under the laws of the state where the Customer resides, excluding any conflict of law principles. Otherwise, this Agreement will be governed by the laws of the state of Arizona. Each party expressly waives any objection that it may have based on improper venue or forum non-conveniens to the conduct of any such suit or action in any state or federal court located in the state where the Customer resides, if Customer is a Public School. If Customer is not a Public School, such venue shall be state or federal court located in Phoenix, Arizona. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Customer shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its use of the Services hereunder.



13. MISCELLANEOUS.

13.1 Press Releases. If requested by Company, Customer agrees to cooperate in good faith with Company on a press release following execution of this Agreement and agrees to allow Company to list (using Customer's name and/or Customer's logo, as determined by Company) Customer as a customer on Company's website or in documentation to be shared electronically or in print.

13.2 Independent Contractors. The parties are independent contractors and nothing in this Agreement shall be deemed to create the relationship of partners, joint venturers, employer-employee, master-servant, or franchisor-franchisee between the parties. Neither party is, or will hold itself out to be, an agent of the other party. Neither party is authorized to enter into any contractual commitment on behalf of the other party.

13.3 No Additional Terms and Order of Precedence. These Terms and Conditions, together with the attached Price Quote for Services(s), contain the entire agreement of the parties and supersedes any prior or present understanding or communications regarding its subject matter, and may only be amended in a writing signed by both parties. In the event of a conflict between the terms in the Price Quote for Services and the Agreement, the terms contained in this Agreement shall control unless otherwise expressly stated in the Price Quote for Services.

13.4 Severability. In the event any provision of this Agreement is held by a court of law or other governmental agency to be void or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions shall remain in full force and effect.

13.5 Assignment. Neither party shall assign this Agreement without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to its successor pursuant to a merger, consolidation or sale of substantially all of its business or assets related to this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

13.6 Force Majeure. Neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance (other than payment of Fees due hereunder) caused by reasons beyond its reasonable control, including, but not limited to, acts of God, pandemics, epidemics, war, terrorism, strikes, failure of suppliers, fires, floods or earthquakes.

13.7 Export. The use of the Services is subject to U.S. export control laws and may be subject to similar regulations in other countries. Customer agrees to comply with all such laws.

13.8 Notice. Any notice given under this Agreement shall be in writing and shall be sent via priority mail by a nationally recognized express delivery service addressed to the address and the signatory set forth in the Price Quote for Services set forth above. Such notice shall also be sent via email to the email address set forth in the Price Quote for Services set forth above.

13.9 No Third Party Beneficiary. There are no third-party beneficiaries to this Agreement.

13.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall be taken together and deemed one instrument.



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IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective Date.

CUSTOMER:	IMAGINE LEARNING LLC
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: 100 S. Mill Avenue, Ste. 1700 Tempe, AZ 85251



Addendum for Instructional Services and Professional Development

1. **APPLICABILITY.** These additional terms and conditions apply if the Quote includes the purchase of Instructional Services or Professional Development Services from Imagine Learning LLC and its affiliates and subsidiaries (“Company”). In the event of a conflict between these additional terms and the Company’s Terms and Conditions of Company Services, these additional terms shall control, but solely with respect to the provision of Instructional and/or Professional Development Services. Capitalized terms used, but not defined, in this addendum have the meanings set forth in the Term and Conditions of Company Services.
2. **CUSTOMER LIAISON.** Customer will designate an individual to serve as its primary liaison to Company for all communications related to the provision of Instructional and Professional Development Services, setting up access for End Users, and use of the Services.
3. **HOURS OF AVAILABILITY.** Company Instructional and Professional Development Services will be available during the business hours specified by Company, or if Customer requires Instructional Services for certain times or additional hours, such requirements must be specified in the Quote prior to the beginning of the term of Customer’s purchase of Services. Requests for access to Instructional or Professional Development Services not already provided for in the Quote must be made or approved by the Customer Liaison, and may result in additional charges.
4. **NO GUARANTY OF OUTCOMES.** Company cannot make any guarantees, representations or warranties as to any student, teacher, or other End User outcomes or results from the Instructional or Professional Development Services.
5. **INSTRUCTIONAL SERVICES.** If specified in the Quote, Company will provide virtual access to teachers or coaches (or both) (“Company Instructors”) who are hired, trained, supervised, and paid by Company, and who will assist in the virtual delivery of the Licensed Material to students and their use of the Services (the “Virtual Programs”). Customer is responsible for (a) providing secure internet access for End Users to use the Virtual Programs; (b) all day-to-day management of the Virtual Programs, subject in all cases to compliance with Applicable Law and Customer policies; (c) obtaining all necessary consents for the provision of Instructional Services where they will involve direct contact between Company Instructors and students and parents; (d) determining appropriate student courses and verifying student schedules; (e) monitoring student attendance and ensuring compliance with applicable state requirements; and (f) assisting students not making adequate progress.
 - a. **Instructor Requirements.** Customer shall be responsible for advising Company of any special certification, training, background checks, insurance, fingerprinting or similar requirements for the Company Instructors as may be imposed by Applicable Law (“Instructor Requirements”). Company shall be solely responsible for all decisions regarding hiring, supervision, discipline, and dismissal of Company Instructors, and for ensuring that all Company Instructors meet and comply with Instructor Requirements.
 - b. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the “Local Educational Agency,” or LEA, as that term is defined by Applicable Law, and Customer is solely responsible for the provision of any special education services. Company’s services do not include (i) providing special education services; (ii) creating, implementing or providing Individualized Education Programs (“IEP”); (iii) providing reasonable accommodations or any services to insure compliance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or any other Applicable Law. Notwithstanding the foregoing, Company will discuss, formulate and make reasonable adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, provided that Customer provides necessary IEPs and section 504 documentation to Company. Customer shall be solely responsible for the costs of any required adjustments or accommodations.



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- c. State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing by End Users. Customer is also responsible for receiving, distributing, administering, proctoring and returning all state mandated standardized tests under applicable state law, policies and procedures.
 - d. Reporting and Withdrawal of Students/End Users.** Where reporting of student results is required by Applicable Law, Customer shall be responsible for ensuring the accuracy and completeness of student information used, relied upon, or reported by Company in providing the Instructional Services, and shall promptly notify Company if any student information needs to be corrected or updated. Upon notice to Customer, Company reserves the right to withdraw End User access for students who fail to take required tests or maintain adequate progress.
- 6. PROFESSIONAL DEVELOPMENT / PROFESSIONAL LEARNING SERVICES.** If included in the Quote, Company may also provide Professional Development / Professional Learning Services which may include training and instruction to Customer's instructors and administrators on the implementation and use of the Services, curriculum workshops, use of student information to monitor progress, and other related topics as may be specified in the Quote. Customer shall be solely responsible for providing necessary equipment and secure internet access to facilitate these Services, and for scheduling these Services at least two (2) weeks in advance.
- a. Charges for Professional Development/Professional Learning Services.** Before delivering Professional Development/Professional Learning Services, Company must receive a signed Quote specifying the number of hours included and the cost of the services provided, and all necessary setup and implementation services required to demonstrate and use the Services must be completed. Professional Development/Professional Learning Services will be available for use by Customer only during the Term of the Subscription.
 - b. Use of Customer's Facilities.** If Company will be providing any Professional Development/Professional Learning Services at Customer's premises, Customer shall advise Company in advance of any Instructor Requirements for Company personnel, and Company will be responsible for insuring that all Professional Development/Professional Learning personnel meet and comply with all such requirements.
 - c. Forfeiture & Cancellation of PD Services.** Professional Development / Professional Learning Services purchased but not scheduled and delivered within the first year of the Term may be forfeited without notice. Customer agrees to reimburse Company for travel and other out-of-pocket expenses incurred if Professional Development/Professional Learning Services are changed or cancelled less than forty-eight (48) hours prior to the scheduled delivery date. Company reserves time exclusively for the Customer once Professional Development/Professional Learning Services have been scheduled. If Customer is a no-show or cancels scheduled Professional Development/Professional Learning Services in less than 48 hours before the scheduled delivery date, Customer may be charged for the scheduled services. The Parties must document in writing and sign any and all grace periods or extension of time for delivery of Professional Development/Professional Learning Services.
 - d. Service Provision.** In some cases, Company may use subcontractors to provide Professional Learning services for core curriculum implementations.
- 7. NO UNAUTHORIZED RECORDING OR REPRODUCTION.** All content delivered by Company as part of Instructional or Professional Development/Professional Learning Services are the property of Company, and customer may not record, reproduce or copy such content without Company's express written authorization.



QUOTE SUMMARY FOR

Murfreesboro City School Dist

Murfreesboro, TN

Rhonda Gore

(615) 893-2313

rhonda.gore@cityschool.net



Quote # 00055334

Issued on June 6, 2024

Expires on July 30, 2024

PREPARED BY

Mark Prince

Sales Consultant - Supplemental

(800) 248-2568

mark.prince@zaner-bloser.com

THE MATERIALS ON THIS FORM HAVE NOT BEEN ORDERED.

To place your order, complete the Order Information page and scan/email it with this quote to our Customer Experience department at CustomerExperience@zaner-bloser.com. If you have questions, please call our Customer Experience department at 800.421.3018.

June 6, 2024

Murfreesboro City School Dist • Murfreesboro, TN

Dear Rhonda:

Thank you for all you do to inspire "aha" moments—moments of discovery, accomplishment, pride, surprise, and delight—in your classrooms and for considering Zaner-Bloser as your partner in helping students build foundational skills.

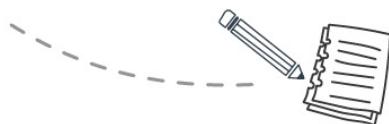
When you teach with *Zaner-Bloser Handwriting*, you're teaching all students to shine, with proven, research-based instruction that has helped generations of students to excel. Our efficient, effective method can be implemented through direct instruction and across disciplines in just 15 minutes per day.

The enclosed quote includes an Order Information page, which should be filled out completely and returned with your order. **If information is missing on this page, processing your order may be delayed.** Be sure to fill out parts A, B, and C of the Digital Product Information section if online access is included with your order.

We look forward to providing you with the best research- and evidence-based resources, meaningful professional development opportunities, and top-notch customer service possible.

Thank you,

Mark Prince
Sales Consultant - Supplemental



Murfreesboro City School Dist • Murfreesboro, TN

PROGRAM	GRADE	COST
<i>Zaner-Bloser Handwriting</i>	Kindergarten	\$24,066.70
<i>Zaner-Bloser Handwriting</i>	Grade 1	\$24,066.70
	SUBTOTAL COST	\$48,133.40
	SHIPPING/PROCESSING (10%)	\$4,813.34
AMOUNT TO BE INVOICED		\$52,946.74

Includes materials, shipping, and processing. May not include applicable local and state taxes.

Zaner-Bloser Handwriting: Kindergarten

ISBN	DESCRIPTION	ITEM PRICE	QTY	TOTAL COST
9781453119273	Handwriting 2020 Grade K Student Edition	\$14.05	1377	\$19,346.85
9781453119273	Handwriting 2020 Grade K Student Edition	\$14.05	100	\$1,405.00
9781453119358	Handwriting 2020 Grade K Teacher Edition	\$100.45	33	\$3,314.85
SUBTOTAL COST				\$24,066.70

Zaner-Bloser Handwriting: Grade 1

ISBN	DESCRIPTION	ITEM PRICE	QTY	TOTAL COST
9781453119280	Handwriting 2020 Grade 1 Student Edition	\$14.05	100	\$1,405.00
9781453119280	Handwriting 2020 Grade 1 Student Edition	\$14.05	1377	\$19,346.85
9781453119365	Handwriting 2020 Grade 1 Teacher Edition	\$100.45	33	\$3,314.85
SUBTOTAL COST				\$24,066.70

AMOUNT TO BE INVOICED (including shipping)* \$52,946.74
* Add state and local taxes to the total amount of your order, if applicable. If tax exempt, please include your tax exemption number or a copy of your tax exemption certificate to qualify for zero sales tax.

IMPORTANT Please fill out this page completely. Missing information may result in delayed order processing.

Invoice - P.O. # Check # Make Checks Payable to: Zaner-Bloser

Authorized Signature: Phone:

Please do not submit credit card information with this form. To prepay with a credit card, call our Customer Experience dept at 800.421.3018, Mon-Fri, 8:00 am-6:00 pm ET.

SCHOOL INFORMATION

For use in school year: 20 to 20 First day of school: Summer phone number:

Institution Type: District School

DIGITAL PRODUCT INFORMATION Complete parts A, B, and C of the Digital Product Information section to ensure online access to digital product(s).

A. Online access is controlled by a school or district Digital Administrator. This individual is responsible for adding and removing users throughout the school year. Additionally, this user can access important information such as parent contact information and student assessment data. Please provide the name and email of your school- or district-selected Digital Administrator below.

Name: Email:

B. If this order is being submitted by a school district, diocese, or third-party ordering service, please provide a list of the school(s) that require online access. By default, your school- or district-selected Digital Administrator will manage all schools listed below. (If you have more than six schools, please attach a complete list to your order.)

Blank lines for listing schools requiring online access.

C. Online access is assigned annually. Please enter the start date of the school year you will begin using the digital product.

BILL TO School/District Name: Murfreesboro City School Dist

Contact Name: Rhonda Gore Contact Email:

Street Address: 2552 S CHURCH ST STE 100 City: Murfreesboro State: TN Zip: 371277135

DELIVERY INSTRUCTIONS - IMPORTANT All available materials will ship at the time the order is processed unless otherwise specified. Do Not Deliver Dates: No Delivery Date Restrictions

SHIP TO Same as BILL TO School/District Name: Murfreesboro City School Dist

Contact Name: Contact Email:

Street Address: City: State: Zip:

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Contact our Customer Experience Department to place your order. Mailing Address: Zaner-Bloser, PO Box 16764, Columbus, OH 43216-6764 Email: CustomerExperience@zaner-bloser.com Phone: 800.421.3018 Fax: 800.992.6087

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A Highlights Company

Agenda Item Title: Approve services agreement with Genesis Learning Centers for 2024-2025 School Year

Board Meeting Date: June 25, 2024

Department: Special Education

Presented by: Trey Duke

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, an agreement for special education services to be provided by Genesis Learning Centers is submitted to the Board for approval. Genesis Learning Centers provides a therapeutic day treatment program for our special education students who have been placed in this setting by their IEP team.

Staff Recommendation

Approve services agreement with Genesis Learning Centers for 2024-2025 School Year

Fiscal Impact

The total cost of the agreement will be determined by the number of students enrolled in the program. The established daily instructional rate is \$250.00 per day per student. MCS will also be responsible for direct contracting costs associated with providing related services. All funding will be provided by Special Education general purpose funds.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



**2024-2025 SCHOOL YEAR
GENESIS LEARNING CENTERS
AND
Murfreesboro City Schools**

This contract agreement between Murfreesboro City Schools Board of Education at 2552 South Church Street, Murfreesboro, TN 37127, herein termed “The District”, and Genesis Learning Centers (GLC) with its primary office at 430 Allied Drive, Nashville, TN 37211, DBA as “The Academy”, is made effective on July 1, 2024, and shall continue until June 30, 2025.

This agreement is for the provision of educational and therapeutic day school services for students with disabilities requiring exceptionally specialized and individualized intervention to meet the social, emotional, behavioral, communication, and academic needs.

This agreement shall be deemed to have been made, executed, and delivered in the State of Tennessee and shall be construed in accordance with the laws of the State of Tennessee. The Chancery Court and/or the Circuit Court of Davidson County shall have exclusive and concurrent jurisdiction of any disputes that may arise.

WITNESSETH

- Whereas, in accordance with Tennessee Annotated Code (TCA) 49-10-102, 103, 107, 305, 701 and Tennessee State Board Rule 0520-01-09 provides that, The District may enter into contractual agreements with a nonpublic school for the provision of specialized education services for students with disabilities whose Individualized Education Program (IEP) team determines the student requires the most restrictive placement along the educational continuum in a separate educational setting as his/her Least Restrictive Environment;
- Whereas, The District, to provide the comprehensive continuum of special education and related services, finds it necessary to acquire the services of an appropriately licensed nonpublic school;
- Whereas The Academy is a nonpublic school approved by the Tennessee Department of Education and can provide the required educational and clinical services using the appropriate programs and with the necessary capacity and competence for implementation of the special education and related services outlined in the IEP for students placed by The District; and
- Therefore, The District and The Academy agree to full execution of this contractual agreement to provide the services outlined below.

SCOPE OF SERVICES

Purpose

1. This contractual agreement is established for the provision of therapeutic day treatment services to provide educational and clinical services to eligible special education students with social, emotional, behavioral, communication, and academic needs through placement in a separate educational setting.
2. The goal of the therapeutic day school is to provide individualized services that will assist students in meeting established IEP goals and benchmarks.

Placement

1. Student placement shall not be initiated, changed, terminated, or continued from one school year to the next without an IEP meeting for the student that includes his/her parent(s)/guardian(s) and designated representatives of The District and The Academy.

Program Requirements

1. The Academy will be approved by the Tennessee Department of Education as a Category 1 Nonpublic School pursuant to the requirements of the Tennessee State Board Rule 0520-07-02.
2. The Academy's calendar shall reflect a school year comprised of one hundred eight days (180).
 - a. The student's IEP may outline a modified schedule reflecting a reduced number of days for required attendance.
 - b. This must be the result of an IEP Team meeting, including participation by representatives from The District and The Academy.
3. The Academy's school day will consist of a minimum of seven (7) hours per day.
 - a. The student's IEP may outline a modified schedule reflecting a reduced number of hours for required attendance each day/week.
 - b. This must be the result of an IEP Team meeting, including participation by representatives from The District and The Academy.
 - c. The hours of service provided shall not exceed the time allowed in the student's IEP without the written approval by The District.
4. The Academy will provide the special education and related services required by the IEP for each student enrolled. The physical learning environment will be considered appropriate and conducive for learning. The staff, equipment, instructional materials and supplies necessary for implementation of the IEP will be provided by GLC.
5. The educational curriculum will meet the Tennessee Department of Education requirements.
6. The Academy will provide a nutritious breakfast and lunch for each student each day.
7. GLC will provide Extended School Year (ESY) services for students if his/her IEP indicates it is required.
8. The programs and services provided by The Academy shall comply with all relevant Federal and State laws and regulations, including those identified by the Tennessee Department of Education.
9. Representatives of The District may inspect the facility, observe the program, confer with The Academy staff to ensure compliance with Federal and State rules and regulations.
 - a. Inspections and observations must be scheduled in advance and occur at a time reasonable to both parties.

IEP Development

1. The District and The Academy will work together to develop an IEP in compliance with the requirements of Federal and State Law and designed to meet the unique needs of each student enrolled in the school.
2. Procedural Safeguards
 - The District and The Academy shall ensure that the rights and privileges shall be available to students with disabilities enrolled at The Academy, including due process procedures, protection in evaluation procedures, least restrictive environment, and confidentiality of information.
3. At each annual IEP meeting, the team will evaluate the student's progress and discuss goals and benchmarks that may help facilitate transition to a less restrictive setting, when determined to be the appropriate next step for the student.
4. No components of the student's program or the IEP may be changed or terminated without agreement by the members of the IEP Team and within the context of an IEP meeting to include The District and The Academy.
5. The IEP and any associated compliance documentation required by the Tennessee Department of Education will be developed by The Academy on the software program maintained by the district. The District will be responsible for providing the Academy staff members with electronic access to the software program for students enrolled with GLC.
6. A draft IEP will be made available to the district and parent/guardian for review at least 48 hours prior to the meeting. The IEP will include the following information:
 - a. Statement of present level of academic achievement and functional performance for each core deficit area, including how the student's disability adversely impacts involvement and progress in the general education curriculum;
 - b. Statement of measurable annual goals and benchmarks describing the educational performance to be achieved by the end of the IEP;
 - c. Statement of special education and related services and supplementary aids and services provided to or on behalf of the student;
 - d. Statement of program modifications or supports for school personnel provided for the student to:
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and progress in the general curriculum and participate in extracurricular and nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled peers in education and nonacademic activities;
 - e. Consideration of any special factors and needs, including a statement regarding the extent, if any, to which the student will participate with non-disabled peers in the general curriculum, extracurricular, and nonacademic activities;
 - f. Description of the individualized accommodations and modifications;

- g. Statement outlining the assessment details, including any required accommodations and the type of assessment required for administration of any State or district-wide assessments of student achievement. If the IEP team determines the student will not participate in the standardized State or district-wide assessment, the IEP must indicate:
 - Why the assessment is not appropriate for the student; and
 - How the student will be alternately assessed;
 - h. Projected date for beginning services identified by the IEP;
 - i. Statement describing the special education, related services, and supplementary aids provided to the student or on behalf of the student, including the frequency, location, and duration of the educational and related services;
 - j. Identification of individuals or service providers responsible for providing each specific service;
 - k. Statement of how the student's progress toward the annual goals will be measured;
 - l. Statement of how the student's parents will be regularly informed of the child's progress toward the annual goals and the extent to which the progress is sufficient to enable the child to achieve the goals by the end of the IEP period;
 - m. Functional behavior assessment and behavior intervention plan;
 - n. Data related to ESY services;
 - o. Transportation services;
 - p. Post-secondary transition services for students turning 14 ½ during the life of the IEP.
7. The Academy will provide a progress report at minimum on a quarterly basis, unless otherwise requested by the district. The report will detail the student's progress towards attaining the short-term objectives and annual goals and be submitted to both the district and the parent/guardian for review.

RECORDS, REPORTING, AND CONFIDENTIALITY

Student Records

1. The District shall make available to The Academy all relevant records and information for each student enrolled, as determined to be necessary for the provision of services.
2. All student records provided to The Academy and GLC will remain property of The District.

Reporting

1. The Academy shall report to The District any concerns related to implementation of the IEP, interfering and disruptive behaviors not listed or not adequately addressed in the current BIP, or lack of progress towards academic and/or behavioral goals and benchmarks.
2. Together, The District and The Academy will develop a plan to resolve the identified concerns.
3. The Academy will send reports specifying the services provided and the progress of each student towards achieving goals and benchmarks.
 - a. The reports will be submitted during every report card period in which the student receives services.
 - b. Should The District require more frequent reports, The Academy and GLC require advance notification and the information should be integrated into the established contract.

4. Weekly attendance for each student enrolled at The Academy shall be sent to The District's identified designee.
 - a. After the 5th day of absence in a school year, The Academy must notify The District so the appropriate truancy procedures may be initiated.
 - b. The District's attendance and truancy policies and procedures apply to each student enrolled at The Academy.
5. GLC will submit an attendance report at the end of each month for each student enrolled at The Academy listing the days the services were delivered.
6. The Academy will report each use of restraint or isolation to the district and comply with the parental notification requirements.
 - a. The Academy must notify The District within 24 hours following occurrence of any incident of restraint, isolation, injury, etc.
 - b. The Academy must notify the student's parent/guardian of the occurrence of any restraint, isolation, injury, etc., the same day of the incident.

Confidentiality

1. Both parties shall maintain complete confidentiality of all information which relates to or identifies a particular student, including but not limited to name, address, medical treatment or condition, financial status, and/or any other personal information to comply with the applicable state and federal laws.
2. The Academy and GLC will notify all employees, contractors, and other relevant representatives of this requirement.

Transportation Services – Bus Aides GLC shall provide bus aides for the purpose of assisting in the transportation of children to and from GLC, at the times and along specific bus route(s) as assigned. Bus aides will provide supervision on the provided transportation.

1. Each bus aide shall undergo a criminal history check as required by Tennessee Code Annotated 49-5-413. At least one (1) bus aide shall be present on the bus when children are being transported to or from GLC.
2. Each bus aide shall assist the driver in maintaining safety, order, and discipline on the school bus. All bus aides will participate in any mandatory training activities offered prior to the start of and throughout the school year.
3. GLC shall provide bus aide as assigned to routes for a period of one hundred eighty (180) days. If GLC does not provide a school bus aide for any school day, there shall be deducted from the billing invoice.
4. The District may request the suspension or termination of any bus aide for violation of any federal, state, or local law, rule, regulation of any District policy regarding the health, safety, or welfare of children. GLC will complete an investigation and determine whether discipline is necessary and appropriate. All relevant stakeholders and authorities will be notified of the investigation and outcome.

TERMS

Business Functions

1. Neither party may assign any of its rights under the contract without the prior written consent of the other party.
2. In the event The Academy is transferred to another entity, the contract shall be binding for a continuation of the provision of services to the subsequent successor, legal representative, or assignment after GLC.
3. All written and oral materials, documents, pamphlets, handouts, forms, and other information provided by either organization shall be the sole and exclusive property of the party providing the item, whether copyrighted or not.
 - a. Items shall not be used or reproduced without prior written approval of the party with whom the materials originated.
 - b. No audio or video recording shall take place without the consent of both parties.

Default on Services

1. If GLC fails to fulfil its obligations in a timely and proper manner or if GLC violates any of the terms of the contractual agreement, the District has the right to immediately terminate the agreement and withhold payment in excess of fair compensation for the work completed.
2. If any component of this contractual agreement is deemed invalid or unenforceable to any extent, the remainder of the agreement shall not be affected and is enforceable to the greatest extent permitted by law.

Agreements and Amendments

1. This contractual agreement between parties supersedes all prior contracts, either oral or written, with respect to the provision of therapeutic day school services.
2. No amendment or variation of the contract is considered valid unless written and signed by all parties.

Federal Discrimination Laws

1. In compliance with federal law, including Title IX of the Education Amendments, Sections 503 and 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and Title VI of the Civil Rights Act, each party agrees that it will not discriminate based on race, sexual orientation, gender, religion, color, national origin, age, disability status, or military status in its administration of its policies, including admission policies, employment, programs, or activities.
2. Any employee advertisement shall state that all qualified applicants will receive consideration for employment without regard to their race, sexual orientation, gender, religion, color, national origin, age, disability status, or military status.

Force Majeure

1. If any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control and/or if the party unable to carry out its obligation gives the other party prompt written notice of such event, then the obligations of the party invoking the provision shall be suspended to the extent necessary.
2. This shall include, without limitation, acts of God, natural disaster, fire, flood, explosion, vandalism, storm, or other similar occurrences including, declarations of outbreak, pandemic, or epidemic, and orders or acts of military or civil authority, or by national emergencies, act of terrorism, riots, wars, strikes, lockouts, and/or work stoppages.
3. The excused party shall use all reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

Indemnification

1. To the fullest extent possible and as allowed by state law, GLC and the District's Board of Education agree to indemnify, defend, and hold harmless one another, its employees, or agents, from any loss or liability associated with this agreement, from all suits, claims, actions or damages, and demands, including costs, litigation expenses, counsel fees, and/or liabilities incurred arising out of any injury or death of a person, damage to property of any kind, unless caused by negligent acts, errors, or omissions caused by either party, its employees, or any person directly or indirectly employed by said party while engaged in performance of the services as established by the terms and conditions of the contractual agreement.
2. The contractual agreement shall be governed by the law.

Insurance

1. GLC agrees to obtain and maintain general liability insurance and professional liability insurance and/or professional negligence insurance with policy limits of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate, providing coverage for any and all damages, costs, or expenses arising out of death, physical or mental injury, sickness, disease, or injury to or destruction of property resulting from GLC's performance and implementation of this contractual agreement.
2. Upon request and prior to renewal of the contract, GLC will provide proof of insurance to the District's Director of Special Education Services.
3. All premiums will be pre-paid and maintained in full force and effect throughout the duration of this contract, including any extensions or renewals.
4. GLC will provide Worker's Compensation insurance coverage for all its employees, as required by law.
5. GLC will provide transportation liability insurance, as required by law.

Termination of Services

1. If either party fails to fulfill the obligations outlined within the contract in the time and manner provided, herein, the other party may immediately terminate the contract. The District's Board of Education will provide just and equitable compensation to GLC for any work completed prior to the termination date. Written notice outlining the cause or causes of termination shall be sent to the other party via email.
2. Either party may terminate the contract at any time and for any reason with thirty (30) day written notice issued via email prior to the effective date of termination.
3. Early termination of the contract will not relieve the terminating party of any liability for payment of services rendered prior to the effective date of termination.
4. The terminating party may be held liable for any damages sustained if there is breach of contract.
5. If the needs of the District change, resulting in an insufficient number of students in attendance at the Academy, the District has the discretion to terminate the contract.

Independent Contractor

1. GLC and the District acknowledge each party is hereto independent of the other and shall, under no circumstances be construed as an agent or representative of the other and shall have no liability for the acts or omissions of the other party.
2. GLC is acting as an independent contractor and is retained by the District's Board of Education solely for the provision of the professional services described in the contractual agreement.
3. Neither party, nor any of its employees, agents, or subcontractors shall be deemed to be employees or agents of the party, and therefore not entitled to unemployment compensation, workers compensation, or employee benefits by virtue of this contract. Nor should either party be responsible for income tax or other withholding for the other party, its employees or agents.

Media

1. GLC and the District agree each party will not use the other's name, likeness, or logo in any advertising material, press release, publication, or public announcement, including social media without prior written consent and approval.

Telephone

1. GLC will maintain an active telephone number to be used as a primary point of contact. The number will be made available to the District and its designers at all times, including off-hours. The number will be utilized for school closings, emergency notification, discussion of routine problems, contract discussion, and/or any other business, as deemed necessary.
2. A member of GLC's administrative team will be always available through this number.

Notification of Claims

1. Both parties agree to notify the other party as soon as possible in writing of any incident, occurrence, or claim arising out of or in connection with the services to be provided pursuant to the contract.
2. If the incident warrants outside investigation by an external stakeholder, GLC agrees to notify the appropriate entity (e.g., Law Enforcement, Department of Children's Services, etc.)

3. Members of the GLC Executive and/or Human Resources team will complete an internal investigation, which includes interviews, observations, video/audio reviews (if applicable), and document reviews.
4. The notified party has the right to investigate the incident or occurrence and the notifying party will fully be cooperative in the investigation.

PERSONNEL

Legal Obligations

1. GLC will comply with all applicable employee laws and regulations.
2. GLC is responsible for all employees, including but not limited to responsibility for recruitment, employment, promotion, retention, payment of wages, pension benefits, health insurance, layoffs, disciplinary action, including termination.
3. GLC is responsible for preparing and processing payroll for all employees and shall withhold all applicable federal, state, and local employment taxes and payroll insurances, including but not limited to income, social security, unemployment taxes, and workers compensation costs and charges.

Employee Screening

1. All applicants considered for employment are required to supply a fingerprint sample and submit to a criminal history records review. Further, returning employees must agree to additional criminal history records review every five (5) years. Conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation, GLC must receive, review, and approve the results prior to an employee having contact with any students.
2. Any employee convicted of a criminal offense or classified as a sexual offense or the employee was convicted as a violent sexual offender, as defined in Tennessee Code 40-39-202 may not have direct contact with any student enrolled in the program or enter the Academy's grounds when any students are present.

Licensing

1. GLC requires any certified staff to have a current license with all relevant approvals provided by the appropriate agency in the State of Tennessee.
2. GLC will maintain and make available to the District, all necessary approvals, licenses, permits, authority to deliver the services set forth within the contractual agreement. Any service provider assigned to fulfill the duties a licensed professional will possess and maintain the required and current licensure and certification in the State of Tennessee, as required by the profession or discipline, including:
 - a. GLC staff assigned to serve as a Teacher/Lead Teacher must have a current Tennessee licensure pursuant to Tennessee State Board Rule 0520-02-03.
 - b. Social/emotional and counseling services will be provided by individuals licensed by the Tennessee Board of Healing Arts licensure or the Tennessee State Board of Education as a School Social Worker or with an endorsement in a counseling-related area (e.g., school counselor, school psychologist, etc.).

- c. Behavioral support services will be provided by a Licensed Behavior Analyst with a current license issued by the Tennessee Department of Health's Applied Behavior Analyst Licensing Committee.

Training

1. The Academy and GLC will certify that all staff have received training in the appropriate use of restraint and isolation.

FEE SCHEDULE

Description of Services

1. The Academy will provide educational and clinical services, as agreed upon during the IEP meeting and in collaboration with the District. The District's Board of Education will pay GLC to serve as an outside, nonpublic school placement that provides intervention and treatment within a therapeutic day school setting established to meet the exceptional needs of the student(s) placed at The Academy.

Rates

1. All rates will be evaluated annually and adjusted, as needed, accounting for any economic fluctuation associated with increasing inflation, changing costs required for service delivery, and building administrative/overhead capacity to support programs. GLC will distribute new contracts for the upcoming school year on or before April 30. Contracts will outline changes related to programming, rates, and rules and regulations.
2. The established daily instructional rate is \$250.00 per day per student.
3. The District's Board of Education will pay GLC the direct contracting costs associated with providing related services identified as a required component of the IEP but not included as part of the school's overall programming (e.g., occupational or physical therapy, nursing services, etc.). In lieu of this, the District may provide the appropriate clinician from District to provide the related services. Or the District shall pursue and secure a contract between the District and a vendor deemed appropriate and qualified to provide the related services outlined by the IEP.
4. When determined by the IEP team that a student requires a one-to-one educational assistant, the District Board of Education will pay GLC at the rate of \$350 per day per student in addition to the daily instructional rate.
5. The District shall pay for any bus aides assigned to routes at the rate of \$50.00 per day.
6. When determined by the IEP team that a student requires Extended School Year (ESY) services, the District's Board of Education will pay GLC at the rate of \$200.00 per half day per student.

Invoicing Procedures

1. GLC will prepare and email an invoice, monthly, for any services provided by The Academy to the attention of the Special Education Director for the District's Board of Education.
2. Invoices will include the itemization of services by activity, type, and student. Each invoice must provide the total number, name, and grade of students served each month.

3. GLC will invoice the District's Board of Education for all services, including the provision of one-on-one support, per student per day, for closure due to widespread illness, inclement weather and/or District-initiated closings.
4. GLC will invoice the District's Board of Education for all services, including the provision of one-on-one support, per student per day for professional learning, teacher and/or administrative work, parent-teacher conference, and stockpiled days in which educational staff are required to attend. Given the unique and individualized social, emotional, behavioral, communication, and academic needs of the students served at The Academy, the term "educational staff" extends beyond the certified teachers and includes clinicians, assistant teachers, educational assistants, etc. Participation in the various days identified above are at the discretion of the school's principal, GLC's Assistant Executive Director, and/or GLC's Executive Director.
5. GLC will invoice the District's Board of Education for ten consecutive days for individual student absences, whether excused or unexcused.
 - a. Justification to bill the district for any students acquiring more than ten consecutive absences within a given month requires mutual agreement.
 - b. Any student with more than ten absences and for whom Genesis Learning Centers is unable to bill will be dropped from enrollment at the end of the billing cycle. Re-enrollment is possible, assuming the school has space available.
6. All invoices will be delivered via email by the 15th of the month following the last date of service provided in each month.
7. It is the mutual responsibility of GLC and the District's Board of Education to review the document to ensure the appropriateness and accuracy of services, all invoice requirements are included, and the GLC-assigned contract number is listed.
8. In the event the District disputes the services documented, the Special Education Director for the District's Board of Education should submit any identified concerns in writing within ten (10) days following issuance of the invoice. Failure to notify GLC within the established time frame will result in the invoice becoming final and should be paid as such.
9. Final invoices for all services provided during the regular school year or during ESY will be submitted to the District's Board of Education by June 30.

Payment

1. Payment is due to GLC within 30 days from the date the invoice is emailed to the attention of the Special Education Director for the District.
2. Beginning July 1, 2024, GLC requires all District payments be remitted via Automated Clearing House (ACH).
3. Please be advised, a payment is considered "late" if it is received after the 30th day from initial issuance via email. Late payments may be subjected to a fee of 1.5% of the total month's invoice per day after the 30th day and will be added as a line item on the following month's invoice.
4. Payment for "disputed" services **is required** within 30 days via ACH, regardless of the status.
 - a. Together with the District, GLC will review the identified concern(s).
 - b. GLC will either provide data to substantiate the invoice, overturning the disputed claim. Or GLC will confirm the District's disputed claim and list as a line item a credit on the following month's invoice.

I witness thereof, both parties agree to execute the above-written contract on the date and year listed below but be effective as of the dates written above.

For the Board of Education

Director of Murfreesboro City Schools

Date

Approved as to From

Assistant Murfreesboro City School Attorney

Date

For Genesis Learning Centers

Cassie Wells

Executive Director

May 10, 2024
Date

Agenda Item Title: A resolution to allow Murfreesboro City Schools to utilize cooperative purchasing agreements

Board Meeting Date: June 25, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

~~**Requires City Council Approval:** Yes No~~

Summary

State law allows Murfreesboro City Schools to enter into master cooperative purchasing agreements through cooperative purchasing programs with the approval and consent of the local legislative body. This resolution will allow Murfreesboro City Schools to continue to benefit from purchasing from national programs to include the BuyBoard National Purchasing Cooperative, Omnia Partners, The Interlocal Purchasing System, and Sourcewell for the 2025 fiscal year.

Staff Recommendation

Approve resolution to allow Murfreesboro City Schools to utilize cooperative purchasing organizations for competitive purchases, where appropriate

Fiscal Impact

By leveraging the collective buying power of multiple institutions, these programs enable us to secure substantial discounts on essential goods and services. In addition to the direct financial savings, cooperative purchasing programs offer a considerable reduction in administrative burden on our staff.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

**A RESOLUTION TO APPROVE PURCHASING COOPERATIVE
OPTIONS UNDER THE MURFREESBORO CITY SCHOOLS BOARD OF
EDUCATION PURCHASING POLICY FOR THE 2025 FISCAL YEAR**

WHEREAS, Tennessee Code Annotated § 12-3-1205 allows for a governmental entity to enter into master cooperative purchasing agreements upon the approval and consent of the local legislative body;

WHEREAS, cooperative purchasing agreements allow local governments to purchase goods and services from other local, state, and national cooperative purchasing programs that were competitively bid under the same circumstances required by law of the governmental entity;

WHEREAS, the Murfreesboro City Schools Board of Education has adopted a purchasing policy allowing the school district to enter into agreements with other governmental entities and cooperative purchasing programs for the joint exercise of purchasing authority as a means of meeting statutory competitive bidding requirements; and,

WHEREAS, Murfreesboro City Schools desires to have the ability to procure goods and services through various cooperative purchasing programs and under the conditions set forth in any cooperative purchasing master agreements.

NOW, THEREFORE, BE IT RESOLVED, pursuant to the powers granted by Tennessee Code Annotated § 12-3-1205, Murfreesboro City Schools is authorized to procure goods and services during the 2025 fiscal year pursuant to and in accordance with the terms and conditions of cooperative purchasing master agreements made available to public agencies through the following cooperative purchasing organizations: BuyBoard National Purchasing Cooperative; Omnia Partners, Public Sector; The Interlocal Purchasing System (TIPS); and Sourcewell. The Board of Education further authorizes the Director of Schools to execute any documentation that may be necessary to facilitate the district's participation in the cooperative purchasing programs.

ADOPTED THIS 25th day of June, 2024.

Butch Campbell, Chairman

Bobby N. Duke III, Director of Schools