

# **APPENDIX A**

## **AMENDMENT REQUESTS**

### **AND SUPPORT MATERIALS**

1. SCHOOL SPECIFIC CHANGE IN GRADES AMENDMENT REQUEST FORM
2. AMENDMENT REQUEST DOCUMENTS
  - a. Narrative
  - b. Enrollment Matrix
  - c. Staffing Chart
  - d. Additional Documents
3. SCHOOL LOCATION AMENDMENT REQUEST FORM
4. AMENDMENT REQUEST DOCUMENTS
  - a. Narrative
  - b. Enrollment Matrix
  - c. Staffing Chart
  - d. Additional Documents



Arizona State Board for Charter Schools



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## School Specific Change in Grades Served

### Charterholder Info

#### Charter Holder

**Name:**  
Edkey, Inc. dba Sequoia Choice Schools

**CTDS:**  
07-87-05-000

**Mailing Address:**  
1460 South Horne  
Mesa, AZ 85204

[View detailed info](#)

#### Representative

**Name:**  
Mark Plitzuweit

**Phone Number:**  
4804613200

### Downloads

[Download all files](#)

### Current Grade Levels Served

Precision Learning Center: 9th, 10th, 11th, 12th

### New Grade Levels

#### New Grade Levels Served

- Kindergarten
- 1st Grade
- 2nd Grade
- 3rd Grade
- 4th Grade
- 5th Grade
- 6th Grade
- 7th Grade
- 8th Grade

**Effective Date**  
07/01/2020

### Attachments

#### Board Minutes

[Download File](#) – Governing Body minutes approving grade level change for Precision Learning Center.

**Narrative** – [Download File](#)

**Occupancy Documentation** – [Download File](#)

#### Additional Information

[Download File](#) – Enrollment Matrix

-  [Download File](#) – Staffing Chart
-  [Download File](#) – Signed Agricultural Land Regulation Assurance and Understanding form
-  [Download File](#) – Letter from architect describing the capacity of the facility.
-  [Download File](#) – Blueprint of the facility with square footage.

## Enrollment Cap

Is an Enrollment Cap Increase being added to this request?

No

From:

99999

To:

(No response)

## Signature

Charter Representative Signature

Mark Plitzuweit 01/17/2020

## Precision Learning Center – School Specific Change in Grades Served

### Rationale

Precision Learning Center (PLC) is changing the grade levels it serves from 9-12 to K-8 as part of its relocation from Phoenix to Goodyear. The request is being submitted with a School Location to change the grade levels served at Precision Learning Center from 9-12 to K-8.

The school model is changing to replicate the successful model in place at Sequoia Pathfinder at Eastmark.

No students will be displaced by this change. All current PLC students will be eligible to enroll in Sequoia Choice Arizona Distance Learning (AZDL) to continue their progress toward graduation at the same location and in the online environment they are currently using.

Parents and students will be emailed in early 2020 to notify them that they will be enrolling in classes at AZDL for the 2020-2021 school year. PLC staff will assist students with the transition and enrollment at AZDL.

If a student chooses not to enroll at AZDL, PLC staff will work with the student and their family to identify other educational options and assist them with the enrollment process.

### Staffing Plan

The staffing plan will be comparable to the existing Sequoia Pathfinder Academy at Eastmark to ensure that the successful model implemented there is replicated in Buckeye.

### Recruitment

Edkey is continually developing its talent pipeline. Edkey's Human Resource department supports the recruitment of all Edkey staff. Edkey posts open positions on Indeed.com, with local colleges and universities, Edkey's website, and the Arizona Department of Education website.

All applicants are required to apply via Indeed.com. Resumes are sent to the respective principals/directors for their review and analysis.

Edkey will also leverage the experienced staff at Sequoia Pathfinder at Eastmark and its connections in the STEM community with word of mouth referrals.

### Hiring

Candidates for the school principal position will be interviewed by a panel comprised of members of Edkey's management team.

Teacher candidates that meet the required qualifications for these positions are interviewed by the principal.

### Training

Annually, all Edkey instructional staff attend a 2-day professional development session. In 2018 and 2019 professional development was provided through a partnership with Grand Canyon University. In

2018 the emphasis was on differentiated instruction. The 2019 session focused on the Danielson Framework for Teaching. All newly hired teachers attend an additional 2-day orientation session. All new Edkey teachers are assigned an experienced mentor and is part of our Edkey mentoring program. Site specific professional development and training is determined by school leadership and supported by the Edkey Instructional Support Team.

### Enrollment Targets

The newly built facility will have a maximum enrollment of 500 students. We anticipate enrolling nearly 320 K-8 students in the first year of operation. In the subsequent years enrollment growth will be the greatest in the lower grade levels with slower growth in the upper grade levels. This is expected due to fewer students seeking to change schools in 7<sup>th</sup> and 8<sup>th</sup> grade. Growth in these grade levels will be from the students moving up from the lower grade levels. In year 4 we anticipate being at near capacity.

Edkey has conducted an analysis of population growth and public school options in the area surrounding the new location of Precision Learning Center. Projected grade level enrollment is based on the findings from this analysis.

Based on its population increase from July 1, 2018 to July 1, 2018 Buckeye was identified as the fastest growing city in the country. In July 2018 the population reached 74,370. In May 2019 city officials estimated the population at about 82,600. This rapid growth is projected to continue for the current year based on the number of single-family residential permits that have been issued. Based on US Census data that indicates 28.2% of the Buckeye population is under age 18, the anticipated growth this year includes approximately 2300 school age children in the area. The question is how will local schools be able to accommodate this continued growth of school age students? The schools in the Buckeye, Liberty, and Litchfield Elementary districts will continue to take on students and increase class sizes, but as for choices in the area, soon students will be forced to take spots on waitlists as there are limited charter options in the area.

There are two charter operators in the Buckeye area: Painted Desert Montessori and The Odyssey Preparatory Academy.

Painted Desert Montessori School currently has just over 300 students enrolled and an enrollment cap of 600 students. The school may be able to continue enrolling students, but targets a very specific population due to its education program.

As of November 2019 schools operated by The Odyssey Preparatory Academy have a total enrollment of approximately 3,400. This is 90% of the charter's enrollment cap. This 10% capacity is distributed among their 4 schools. This leaves very little capacity for The Odyssey Preparatory Academy to enroll at a rate that matches the population growth in the area. With room for 400 students and an expected growth in the thousands TOPA will soon be at capacity leaving no school choice option for families moving into the rapidly growing Buckeye community.

Based on the limited capacity of current charter options, the continued growth in the local community, and the demonstrated success of the academic program to be implemented, Edkey feels that the enrollment targets presented in the Enrollment Matrix are realistic and viable targets.

Marketing and enrollment will begin upon approval of the site location change. Edkey, Inc. is contracting with a PR firm and a digital marketing specialist. Across the street from the proposed location is Summit

Community Church. Edkey, Inc. has established a relationship with Summit Community Church and, starting January 2020, will have a booth during the week inside to provide parents with information and begin adding families to an interest list. After the site location change is approved staff at the booth will continue providing information and answering questions, but will now also assist parents with the enrollment process.

Our enrollment goals are:

Date (end of month)	Total Enrollment	% of Total Enrollment Goal
February 2020	32	10%
March 2020	80	25%
April 2020	128	40%
May 2020	207	65%
June 2020	271	85%
July 2020	319	100%

### Concrete Resources

This grade level change is being simultaneously with a school location change. As a results of serving new grade levels at a new location Edkey is aware that all new resources will be needed at this location.

Curriculum – teacher and student resources for all content areas will be purchased for grades K-8. Benchmark Literacy is the core reading program. Zearn Math is used in grades K-5 and Eureka Math in 6<sup>th</sup> grade.

Technology – As a school with a STEM focus technology is an integral component of the schools program of instruction. Chromebooks and tablets are provided for students. Smart board style technology is also a part of every classroom.

Assessment –licenses will be purchased for multiple web-based assessment and instructional resources. Assessment used include DIBELS and Galileo. Instructional resources include Zearn Math and Achieve 3000.

Equipment and Furniture – All new furniture and equipment will be purchased for the new location.

### Displaced Students

Due to the distance of the relocation and change in grade levels, none of the students currently enrolled at Precision Learning Center will be enrolled at the new location. However, we have a plan to ensure that students currently enrolled at Precision Learning Center will be able to continue their education uninterrupted. The classroom currently housing PLC will become a Sequoia Online Learning Center. All Precision Learning Center students will be eligible to enroll into Sequoia Choice – Arizona Distance Learning. AZDL staff will be present at the learning center to provide face-to-face support to all students.



# Arizona State Board for Charter Schools

## Enrollment Matrix

Complete the table to provide the current and target enrollment, indicating the proposed timeline for implementing the request.

Directions\*:

- In each box under the “Number of Students” columns, identify the number of students served per grade for the current and upcoming three fiscal years.
- In the “Total Enrollment” row, provide the total enrollment for each fiscal year.
- Copy and paste the chart for each school operated by the Charter Holder.

School Name:				
Number of Students				
Grade Level	Current - FY	Target - FY	Target - FY	Target - FY
Kindergarten				
1 <sup>st</sup> Grade				
2 <sup>nd</sup> Grade				
3 <sup>rd</sup> Grade				
4 <sup>th</sup> Grade				
5 <sup>th</sup> Grade				
6 <sup>th</sup> Grade				
7 <sup>th</sup> Grade				
8 <sup>th</sup> Grade				
9 <sup>th</sup> Grade				
10 <sup>th</sup> Grade				
11 <sup>th</sup> Grade				
12 <sup>th</sup> Grade				
<b>Total Enrollment</b>				

\*To view an example of a completed Enrollment Matrix, please see The Guide (*Attachment Guidelines*).



# Arizona State Board for Charter Schools

## Staffing Chart

Complete the table to provide the current and anticipated staffing for the school(s) operated by the Charter Holder. Include staff members needed if the request is granted.

Directions\*:

- In each box under the “Number of Staff Members” columns, identify the number of staff members for each position/category for the current and upcoming three fiscal years.
- Copy and paste the chart for each school operated by the Charter Holder.

School Name:				
Number of Staff Members				
Position	Current - FY	Anticipated - FY	Anticipated - FY	Anticipated - FY
Administration				
Teachers/Instructional Staff				
Kindergarten				
1 <sup>st</sup> Grade				
2 <sup>nd</sup> Grade				
3 <sup>rd</sup> Grade				
4 <sup>th</sup> Grade				
5 <sup>th</sup> Grade				
6 <sup>th</sup> Grade				
7 <sup>th</sup> Grade				
8 <sup>th</sup> Grade				
9 <sup>th</sup> Grade				
10 <sup>th</sup> Grade				
11 <sup>th</sup> Grade				
12 <sup>th</sup> Grade				
Specialty Staff (Music, Art, PE, etc.)				
Special Education				
Paraprofessional				
Additional Staff				
List title:				
List title:				
List title:				
<b>Total Number of Staff Members</b>				

Continue on page 2: Leadership Staffing Chart



Minutes  
Of The Governing Board Of  
Edkey, Inc. – Sequoia Choice Schools  
October 23, 2019 at 3:30 PM  
1460 S. Horne Mesa, AZ 85204

- I. Call to Order and Roll Call – **Meeting called to order at 3:30 P.M. Beth Kulish, Alfonso Alva, and Tony Rhineheart were present by phone. Don Flake was absent. A quorum was present. Additional Edkey Inc. employee Steve Sarmento was present.**
- II. Accept Agenda – **The agenda was accepted without objection.**
- III. Call to the Public - This is the time for the public to comment. **No one present from the public.**
- IV. Discussion and possible action to change the grades served at Precision Learning Center from 9 – 12 to K – 8 effective July 1, 2020. **Alfonso Alva made a motion to change the grades served at Precision Learning Center from 9-12 to K-8. Seconded by Tony Rhineheart. Passed by unanimous vote.**
- V. Discussion and possible action to change the location of Precision Learning Center from 1648 S. 16<sup>th</sup> St. Phoenix to a site at N. Verrado Way and Papago Freeway (I-10) Buckeye, AZ. **Tony Rhineheart made a motion to change the location of Precision Learning Center from 1648 S. 16<sup>th</sup> St. Phoenix, AZ to a site at N. Verrado Way and Papago Freeway (I-10) Buckeye, AZ. Seconded by Alfonso Alva. Passed by unanimous vote.**
- VI. Adjournment – **The meeting was adjourned at 3:35 P.M. without objection.**

Minutes submitted by: Marla Ramos

Clear Form



# Arizona State Board for Charter Schools

## Occupancy Compliance Assurance and Understanding

The Arizona State Board for Charter Schools ("Board"), at a meeting held on November 21, 2017, approved a revised policy that requires new and existing charter holders to submit a copy of a valid Certificate of Occupancy and current Fire Marshal's Inspection Report for each location where educational services will be provided prior to the initiation of State equalization payments.

The Board will request that the Arizona Department of Education ("ADE") withhold State equalization assistance payments for 1) new charter schools that have signed a charter contract, 2) new schools under existing charter contracts, 3) schools under existing charter contracts moving from one location to another, and 4) new buildings/structures added to an existing school, until the school has submitted valid copies of the required Certificate of Occupancy and current Fire Marshal's Inspection Report for the new educational facility.

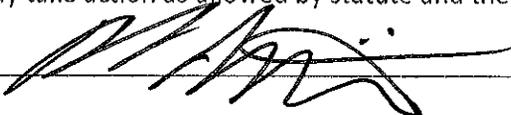
Once Board staff has verified that the appropriate documents for each school location have been received, the Board office will notify the Charter Holder and the ADE School Finance Unit's Charter School Payment Manager that the school is eligible for payment. The ADE School Finance Unit will mark the school eligible for payment and a payment will generate in the next payment cycle if all other requirements of ADE School Finance have been met. Schools eligible for payment by the 20<sup>th</sup> of any month will generate a payment for the next month's payment cycle. Schools marked eligible after the 20<sup>th</sup> of any month will not generate a payment in next month's payment cycle. No off-system payments will be made.

<b>Charter Holder Information</b>	
Name of Charter Holder Entity	Edkey, Inc. dba Sequoia Choice Schools
School Location(s) for which the request applies	Precision Learning Center

**Signature**

By signing below, I understand the Board's policy and that I am required to submit an educational use Certificate of Occupancy and a current Fire Marshal's Inspection Report to the Board office for each school facility operated by the Charter Holder. These documents must be verified by Board staff prior to occupancy of the building and prior to receipt of equalization payments for students enrolled at this school.

I acknowledge that if these documents are not submitted prior to occupancy, the school's opening date may be postponed and/or the Board may take action as allowed by statute and the charter contract.

Charter Representative Signature:  Date: 11/18/19



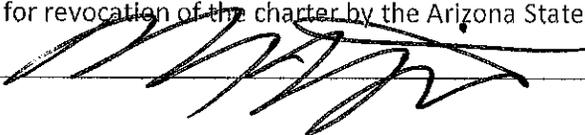
# Arizona State Board for Charter Schools

## Agricultural Land Regulation Assurance and Understanding

Arizona Revised Statute §15-183 (U) states, "Charter schools may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the charter school may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the charter school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement."

<b>Charter Holder Information</b>	
Name of Charter Holder Entity	Edkey, Inc. dba Sequoia Choice Schools
Name of Charter School	Precision Learning Center

<b>Check box below to indicate which statement applies</b>	
<input checked="" type="checkbox"/>	The charter school is not located less than one-fourth mile from agricultural land.
<input type="checkbox"/>	The charter school site is located less than one-fourth mile from agricultural land; the charter school site complies with Arizona law regarding the location of schools on a property that is less than one-fourth mile from agricultural land.

<b>Signature</b>	
By signing below, I understand and affirm that the forgoing information provided by me for the above listed Charter Holder is true and correct. Furthermore, if any part of the information provided proves to be false, I recognize that it shall be just cause for revocation of the charter by the Arizona State Board for Charter Schools.	
Charter Representative Signature: 	Date: 11/18/19

## Greer, Patric

---

**From:** Scott Tyler <Scott.T@spsplusarchitects.com>  
**Sent:** Thursday, December 19, 2019 11:13 AM  
**To:** Greer, Patric  
**Subject:** Edkey Charter School Buckeye

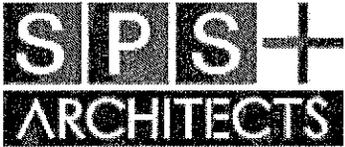
Good Morning Pat.

Our 50% set of plans do not list an official student occupant load at this juncture of the drawings. We will be adding this to the future progress sets as the drawings develop. In the meantime, we did base the classroom sizes accordingly to accommodate a student capacity of 600 students maximum. Toilet facilities and egress are all based upon this occupant load.

I hope this answers your question. Feel free to contact me if you have any other questions.

Thank you

Scott Tyler, AIA  
Project Manager



[Scott.T@spsplusarchitects.com](mailto:Scott.T@spsplusarchitects.com)

**SPS+ ARCHITECTS, LLP**

8681 East Via de Negocio | Scottsdale, AZ 85258

P (480) 991-0800

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P (520) 428-1180

[www.spsplusarchitects.com](http://www.spsplusarchitects.com)



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**NEW K6 SCHOOL BUILDING**  
ED KEY CHARTER SCHOOL  
BUCKEY PARKWAY CENTER - PARCEL #04  
BUCKEYE, ARIZONA  
OVERALL 1ST FLOOR PLAN

**50% CD**

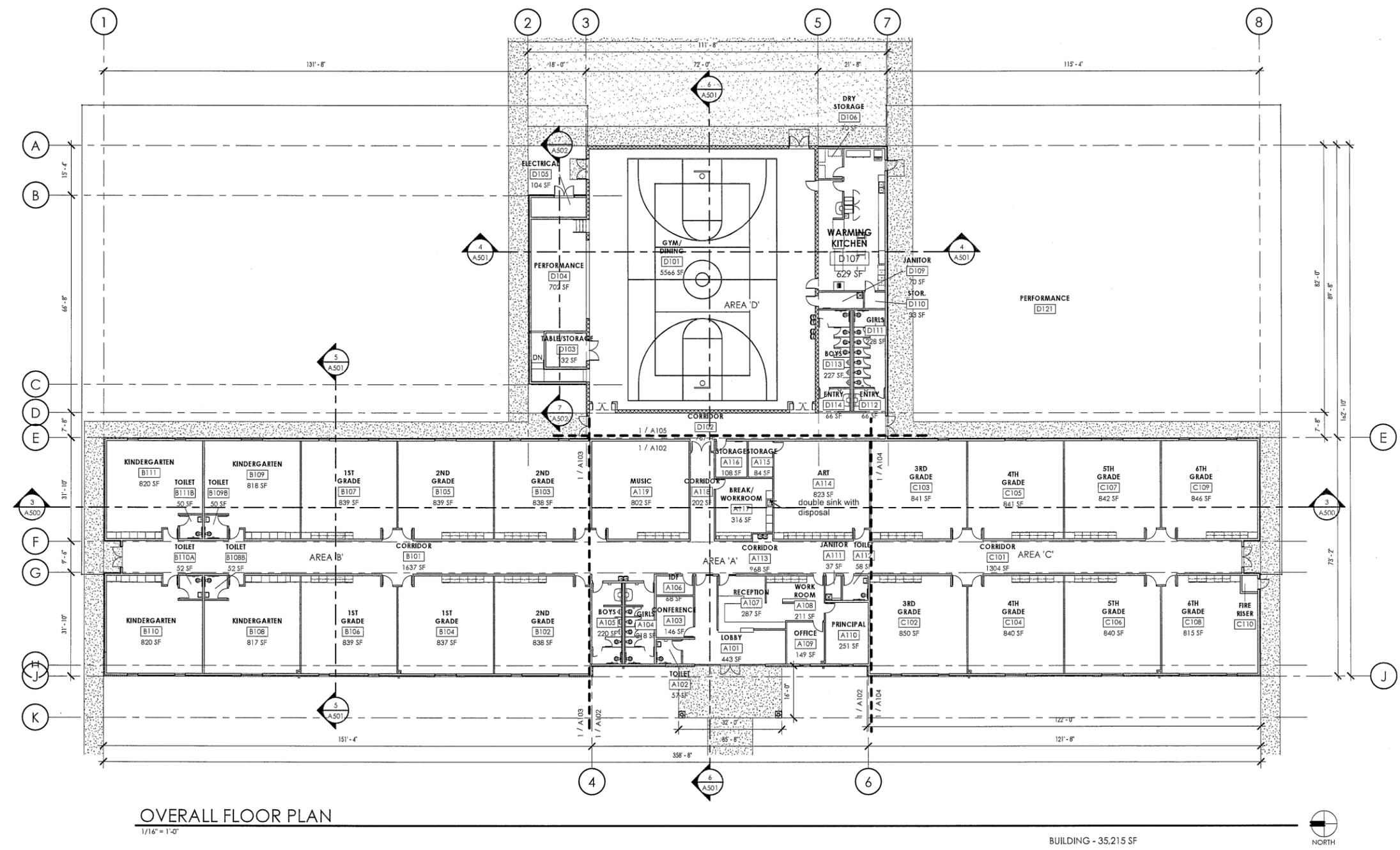
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REVISIONS		
MARK	DATE	DESCRIPTION

REVIEWED BY: Checker  
DRAWN BY: Author

ORIGINAL ISSUE  
DATE: 12-13-2019  
JOB No: 1981  
SHEET:

**A101**





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## School Location Request

### Charterholder Info

#### Charter Holder

**Name:**  
Edkey, Inc. dba Sequoia Choice Schools

**CTDS:**  
07-87-05-000

**Mailing Address:**  
1460 South Horne  
Mesa, AZ 85204

[View detailed info](#)

#### Representative

**Name:**  
Mark Plitzuweit

**Phone Number:**  
4804613200

### Downloads

[Download all files](#)

### Current Address, Phone Number, and Fax Number

**Physical Address**  
1648 South 16th Street  
Phoenix, AZ 85034  
P: 602-453-3661  
F: 602-453-3669  
**Mailing Address**  
1460 South Horne  
Mesa, AZ 85204  
P: 480-461-3200  
F: 480-649-0747

### New Address, Phone Number, and Fax Number

Please check all applicable boxes

Physical Address

**Effective Date of Change**  
07/01/2020

**New Physical Address**  
21100 W Roosevelt St  
Buckeye, AZ 85326

**Physical Phone Number**  
(No response)

**Physical Fax Number**  
(No response)

**New Mailing Address**  
None supplied

**Mailing Phone Number**  
(No response)

**Mailing Fax Number**

(No response)

## Attachments

### Board Minutes

 [Download File](#) – Governing Body minutes approving location change for Precision Learning Center

### Occupancy Documentation (Physical Address changes only)

 [Download File](#) – Signed Occupancy Compliance Assurance and Understanding form

 [Download File](#) – Current Liability Insurance Coverage

 [Download File](#) – Signed Agricultural Land Regulation Assurance

 [Download File](#) – Blueprint documenting square footage of facility.

 [Download File](#) – Letter from architect describing the capacity of the facility

Narrative –  [Download File](#)

### Additional Information

 [Download File](#) – Enrollment Matrix

 [Download File](#) – Staffing Chart

 [Download File](#) – Builder Contract pt 1

 [Download File](#) – Builder Contract pt 2

### Additional Information\*

No documents were uploaded.

## Enrollment Cap

Is an Enrollment Cap Increase being added to this request?

No

From:  
99999

To:  
(No response)

Narrative  
No documents were uploaded.

## Signatures

Charter Representative Signature  
Mark Plitzuweit 12/31/2019

## Precision Learning Center – School Location Amendment

### Rationale

Precision Learning Center is relocating from Central Phoenix to the Buckeye area to provide an educational option for students in an area with limited school choices for students in grades K-8. The request is being submitted with a Grade Level Change Request to change the grade levels served at Precision Learning Center from 9-12 to K-8.

### Enrollment Targets

The newly built facility will have a maximum enrollment of 500 students. We anticipate enrolling nearly 320 K-8 students in the first year of operation. In the subsequent years, enrollment growth will be the greatest in the lower grade levels with slower growth in the upper grade levels. This is expected due to fewer students seeking to change schools in 7<sup>th</sup> and 8<sup>th</sup> grade. Growth in these grade levels will be from the students moving up from the lower grade levels. In year 4 we anticipate being at near capacity.

### Market Analysis

Based on its population increase from July 1, 2018 to July 1, 2019 Buckeye was identified as the fastest growing city in the country. In July 2018 the population reached 74,370. In May 2019 city officials estimated the population at about 82,600. This rapid growth is projected to continue for the current year based on the number of single-family residential permits that have been issued. Based on US Census data that indicates 28.2% of the Buckeye population is under age 18, the anticipated growth this year includes approximately 2300 school age children in the area. The question is how will local schools be able to accommodate this continued growth of school age students? The schools in the Buckeye, Liberty, and Litchfield Elementary districts will continue to take on students and increase class sizes, but as for choices in the area, soon students will be forced to take spots on a waitlists as there are limited charter options in the area.

There are two charter operators in the Buckeye area: Painted Desert Montessori and The Odyssey Preparatory Academy.

Painted Desert Montessori currently has just over 300 students enrolled and an enrollment cap of 600 students. The school may be able to continue enrolling students, but targets a very specific population due to its education program.

As of November 2019 schools operated by The Odyssey Preparatory Academy have a total enrollment of approximately 3,400. This is 90% of the charter's enrollment cap. This 10% capacity is distributed among their 4 schools. This leaves very little capacity for The Odyssey Preparatory Academy to enroll at a rate that matches the population growth in the area. With room for 400 students and an expected growth in the thousands TOPA will soon be at capacity leaving no school choice option for families moving into the rapidly growing Buckeye community.

### Education Options

Currently there are 11 schools serving grades K-8 within a 5 mile radius of the proposed location. 8 of these schools are local district schools. There are few charter options available to students within a 5 mile of the proposed new location for Precision Learning Center. The Odyssey Preparatory Academy

operates two K-5 schools and one 6-12 school within 5 miles of the proposed location. Painted Desert Montessori is a K-8 school within 5 miles of the proposed location.

The target population has limited choices available to them outside of the local district schools.

#### Need for the School/ Factual Data

Precision Learning Center will provide an innovative and effective dual language and STEM program of instruction to families in the area that will not be found at The Odyssey Preparatory Academy or Painted Desert Montessori.

There is one nearby district elementary school that offers a STEM program. For FY18 this school, Freedom Elementary School received a letter grade of “C” and was approximately 4 points away from receiving a D letter grade.

The instructional model to be implemented at Precision Learning Center has proven to be successful at Sequoia Pathfinder at Eastmark. The school received a letter grade of “A” in FY17, and a “B” in FY18.

Due to similarities between the population served at Eastmark and the target population we anticipate comparable educational outcomes for students. We look forward to providing the students and families in Buckeye with a high quality educational program that is currently not available to them.

#### Enrollment Timeline

Marketing and enrollment will begin upon approval of the site location change. Edkey, Inc. is contracting with a PR firm and a digital marketing specialist. Across the street from the proposed location is Summit Community Church. Edkey, Inc. has established a relationship with Summit Community Church and, starting January 2020, will have a booth during the week inside to provide parents with information and begin adding families to an interest list. After the site location change is approved staff at the booth will continue providing information and answering questions, but will now also assist parents with the enrollment process.

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March 2020	80	25%
April 2020	128	40%
May 2020	207	65%
June 2020	271	85%
July 2020	319	100%

#### Impact on Currently Enrolled Students

Due to the distance of the relocation and change in grade levels, none of the students currently enrolled at Precision Learning Center will be enrolled at the new location. However, we have a plan to ensure that students currently enrolled at Precision Learning Center will be able to continue their education uninterrupted. The classroom currently housing PLC will become a Sequoia Online Learning Center. All Precision Learning Center students will be eligible to enroll into Sequoia Choice – Arizona Distance Learning. AZDL staff will be present at the learning center to provide face-to-face support to all students.

## Target Population

Precision Learning Center intends to serve any students in grade K-8. Although the population will be different from the students currently enrolled, Edkey, Inc. is currently serving a similar population at its Sequoia Pathfinder Academy – Eastmark school in Mesa.

Given the rapid growth the area is receiving we anticipate that the majority of students will be drawn from nearby neighborhoods. However, the STEM and dual-language program may also draw families outside the Buckeye community. If the concentration of students outside the local community is significant, Edkey, Inc. will consider providing transportation.

## Demographic Profile

Buckeye is experiencing rapid growth. For this reason providing accurate information is challenging. The U.S Census Bureau QuickFacts website provides estimated demographic data for July 1, 2018. The most notable item is the 46.2% change in population size since April 1, 2010. The community is primarily White and Hispanic. Over 25% of the families report a language other than English is also spoken at home. Based on this we anticipate a slightly higher percentage of EL students than at our Eastmark location.

## Current Levels of Academic Performance

According to the AZ School Report Cards website (<https://azreportcards.azed.gov/>) there are 12 schools serving grades K-8 near the proposed location. 3 of these schools are charter schools. Academic performance data is provided in the table below.

Total Schools	FY18 Letter Grade	Total Charter Schools	# of schools with FY18 State Assessment Data Greater than State Average		
			ELA (>41%)	Math (>41%)	Science (>52%)
2	A	0	2	2	2
5	B	2	4	3	4
3	C	0	0	0	3
2	D	1	0	0	1

Only 50% of schools in the area were above the state average in ELA. 42% of schools in the area were above the state average in Math.

Our Sequoia Pathway at Eastmark school, which the new Precision Learning Center will be modeled after scored better than 75% of these schools in ELA, and better than 58% in Math. It is not only clear that there is need for an additional choice in the area, but that our Eastmark model has demonstrated results that are better than the majority of schools near the proposed location.

## Staffing Plan

The staffing plan will be comparable to the existing Sequoia Pathfinder Academy at Eastmark to ensure that the successful model implemented there is replicated in Buckeye.

## Recruitment

Edkey is continually developing its talent pipeline. Edkey's Human Resource department supports the recruitment of all Edkey staff. Edkey posts open positions on Indeed.com, with local colleges and universities, Edkey's website, and the Arizona Department of Education website.

All applicants are required to apply via Indeed.com. Resumes are sent to the respective principals/directors for their review and analysis.

Edkey will also leverage the experienced staff at Sequoia Pathfinder at Eastmark and its connections in the STEM community with word of mouth referrals.

## Hiring

Candidates for the school principal position will be interviewed by a panel comprised of members of Edkey's management team.

Teacher candidates that meet the required qualifications for these positions are interviewed by the principal.

## Training

Annually, all Edkey instructional staff attend a 2-day professional development session. In 2018 and 2019 professional development was provided through a partnership with Grand Canyon University. In 2018 the emphasis was on differentiated instruction. The 2019 session focused on the Danielson Framework for Teaching. All newly hired teachers attend an additional 2-day orientation session. All new Edkey teachers are assigned an experienced mentor and is part of our Edkey mentoring program. Site specific professional development and training is determined by school leadership and supported by the Edkey Instructional Support Team.

## Concrete Resources

This grade level change is being simultaneously with a school location change. As a results of serving new grade levels at a new location Edkey is aware that all new resources will be needed at this location.

Curriculum – teacher and student resources for all content areas will be purchased for grades K-8. Benchmark Literacy is the core reading program. Zearn Math is used in grades K-5 and Eureka Math in 6<sup>th</sup> grade.

Technology – As a school with a STEM focus technology is an integral component of the schools program of instruction. Chromebooks and tablets are provided for students. Smart board style technology is also a part of every classroom.

Assessment –licenses will be purchased for multiple web-based assessment and instructional resources. Assessment used include DIBELS and Galileo. Instructional resources include Zearn Math and Achieve 3000.

Equipment and Furniture – All new furniture and equipment will be purchased for the new location.



# Arizona State Board for Charter Schools

## Enrollment Matrix

Complete the table to provide the current and target enrollment, indicating the proposed timeline for implementing the request.

Directions\*:

- In each box under the “Number of Students” columns, identify the number of students served per grade for the current and upcoming three fiscal years.
- In the “Total Enrollment” row, provide the total enrollment for each fiscal year.
- Copy and paste the chart for each school operated by the Charter Holder.

School Name:				
Number of Students				
Grade Level	Current - FY	Target - FY	Target - FY	Target - FY
Kindergarten				
1 <sup>st</sup> Grade				
2 <sup>nd</sup> Grade				
3 <sup>rd</sup> Grade				
4 <sup>th</sup> Grade				
5 <sup>th</sup> Grade				
6 <sup>th</sup> Grade				
7 <sup>th</sup> Grade				
8 <sup>th</sup> Grade				
9 <sup>th</sup> Grade				
10 <sup>th</sup> Grade				
11 <sup>th</sup> Grade				
12 <sup>th</sup> Grade				
<b>Total Enrollment</b>				

\*To view an example of a completed Enrollment Matrix, please see The Guide (*Attachment Guidelines*).



# Arizona State Board for Charter Schools

## Staffing Chart

Complete the table to provide the current and anticipated staffing for the school(s) operated by the Charter Holder. Include staff members needed if the request is granted.

Directions\*:

- In each box under the “Number of Staff Members” columns, identify the number of staff members for each position/category for the current and upcoming three fiscal years.
- Copy and paste the chart for each school operated by the Charter Holder.

School Name:				
Number of Staff Members				
Position	Current - FY	Anticipated - FY	Anticipated - FY	Anticipated - FY
Administration				
Teachers/Instructional Staff				
Kindergarten				
1 <sup>st</sup> Grade				
2 <sup>nd</sup> Grade				
3 <sup>rd</sup> Grade				
4 <sup>th</sup> Grade				
5 <sup>th</sup> Grade				
6 <sup>th</sup> Grade				
7 <sup>th</sup> Grade				
8 <sup>th</sup> Grade				
9 <sup>th</sup> Grade				
10 <sup>th</sup> Grade				
11 <sup>th</sup> Grade				
12 <sup>th</sup> Grade				
Specialty Staff (Music, Art, PE, etc.)				
Special Education				
Paraprofessional				
Additional Staff				
List title:				
List title:				
List title:				
<b>Total Number of Staff Members</b>				

Continue on page 2: Leadership Staffing Chart



Minutes  
Of The Governing Board Of  
Edkey, Inc. – Sequoia Choice Schools  
October 23, 2019 at 3:30 PM  
1460 S. Horne Mesa, AZ 85204

- I. Call to Order and Roll Call – **Meeting called to order at 3:30 P.M. Beth Kulish, Alfonso Alva, and Tony Rhineheart were present by phone. Don Flake was absent. A quorum was present. Additional Edkey Inc. employee Steve Sarmento was present.**
- II. Accept Agenda – **The agenda was accepted without objection.**
- III. Call to the Public - This is the time for the public to comment. **No one present from the public.**
- IV. Discussion and possible action to change the grades served at Precision Learning Center from 9 – 12 to K – 8 effective July 1, 2020. **Alfonso Alva made a motion to change the grades served at Precision Learning Center from 9-12 to K-8. Seconded by Tony Rhineheart. Passed by unanimous vote.**
- V. Discussion and possible action to change the location of Precision Learning Center from 1648 S. 16<sup>th</sup> St. Phoenix to a site at N. Verrado Way and Papago Freeway (I-10) Buckeye, AZ. **Tony Rhineheart made a motion to change the location of Precision Learning Center from 1648 S. 16<sup>th</sup> St. Phoenix, AZ to a site at N. Verrado Way and Papago Freeway (I-10) Buckeye, AZ. Seconded by Alfonso Alva. Passed by unanimous vote.**
- VI. Adjournment – **The meeting was adjourned at 3:35 P.M. without objection.**

Minutes submitted by: Marla Ramos

Clear Form



# Arizona State Board for Charter Schools

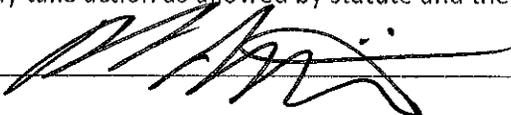
## Occupancy Compliance Assurance and Understanding

The Arizona State Board for Charter Schools ("Board"), at a meeting held on November 21, 2017, approved a revised policy that requires new and existing charter holders to submit a copy of a valid Certificate of Occupancy and current Fire Marshal's Inspection Report for each location where educational services will be provided prior to the initiation of State equalization payments.

The Board will request that the Arizona Department of Education ("ADE") withhold State equalization assistance payments for 1) new charter schools that have signed a charter contract, 2) new schools under existing charter contracts, 3) schools under existing charter contracts moving from one location to another, and 4) new buildings/structures added to an existing school, until the school has submitted valid copies of the required Certificate of Occupancy and current Fire Marshal's Inspection Report for the new educational facility.

Once Board staff has verified that the appropriate documents for each school location have been received, the Board office will notify the Charter Holder and the ADE School Finance Unit's Charter School Payment Manager that the school is eligible for payment. The ADE School Finance Unit will mark the school eligible for payment and a payment will generate in the next payment cycle if all other requirements of ADE School Finance have been met. Schools eligible for payment by the 20<sup>th</sup> of any month will generate a payment for the next month's payment cycle. Schools marked eligible after the 20<sup>th</sup> of any month will not generate a payment in next month's payment cycle. No off-system payments will be made.

<b>Charter Holder Information</b>	
Name of Charter Holder Entity	Edkey, Inc. dba Sequoia Choice Schools
School Location(s) for which the request applies	Precision Learning Center

<b>Signature</b>
<p>By signing below, I understand the Board's policy and that I am required to submit an educational use Certificate of Occupancy and a current Fire Marshal's Inspection Report to the Board office for each school facility operated by the Charter Holder. These documents must be verified by Board staff prior to occupancy of the building and prior to receipt of equalization payments for students enrolled at this school.</p> <p>I acknowledge that if these documents are not submitted prior to occupancy, the school's opening date may be postponed and/or the Board may take action as allowed by statute and the charter contract.</p> <p>Charter Representative Signature:  Date: 11/18/19</p>



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/12/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Lovitt & Touché A Marsh and McLennan Agency, LLC 1050 W Washington Street, Suite 233 Tempe AZ 85281	<b>CONTACT NAME:</b> Tami Lane <b>PHONE (A/C. No. Ext):</b> 602-956-2250 <b>E-MAIL ADDRESS:</b> tlane@lovitt-touche.com		<b>FAX (A/C. No):</b> 602-956-2258													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Citizens Ins Co of America</td> <td>31534</td> </tr> <tr> <td>INSURER B : Allmerica Financial Benefit Ins Co</td> <td>41840</td> </tr> <tr> <td>INSURER C : The Hanover Insurance Company</td> <td>22292</td> </tr> <tr> <td>INSURER D : CopperPoint Indemnity Insurance Company</td> <td>13928</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Citizens Ins Co of America	31534	INSURER B : Allmerica Financial Benefit Ins Co	41840	INSURER C : The Hanover Insurance Company	22292	INSURER D : CopperPoint Indemnity Insurance Company	13928	INSURER E :		INSURER F :
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INSURER F :																
<b>INSURED</b> EdKey, Inc. 1460 S. Horne Mesa AZ 85204	EDKEY00-C1															

**COVERAGES**

CERTIFICATE NUMBER: 1573993934

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		ZB4919695808	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		AW4919671208	7/1/2019	7/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			UH4919790808	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 14,000,000 AGGREGATE \$ 14,000,000 \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	1019800	7/1/2019	7/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A A C	Sexual Abuse & Molestation Educators Legal Liability Crime Including ERISA			ZB4919695808 ZB4919695808 BD4195176113	7/1/2019 7/1/2019 7/1/2019	7/1/2020 7/1/2020 7/1/2020	Each Loss / Aggregate \$1000000/\$1000000 Each Loss / Aggregate \$1000000/\$3000000 Employee Theft \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Certificate Holder is additional insured as respects general liability, automobile liability and excess liability if required in a written contract. Waiver of Subrogation applies to the general liability & workers compensation if required in a written contract. The general liability insurance & auto liability is primary and certificate holder's insurance is non-contributory if required by written contract.  
Evidence of Insurance

**CERTIFICATE HOLDER****CANCELLATION**

Arizona State Board for Charter Schools 1700 W. Washington, Room 164 Phoenix AZ 85007	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
---	---

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

## Schedule

State	Blanket/Schedule/State
AZ	BLANKET

**Blanket Waiver:** Anyone for whom you have agreed to provide this Waiver subject to the terms of this endorsement

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 07/01/2019  
Insured Sequoia Services

Policy No. 1019800

Endorsement No. 7  
Premium \$0.00

Insurance Company CopperPoint Insurance Company

Countersigned by



**WC 00 03 13**  
(Ed. 4-84)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**A. The following is added to SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:**

**Additional Insured if Required by Contract**

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph **A.1.c.** of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1)** The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2)** The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

**B. The following is added to SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:**

**Primary and Non-Contributory**

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under **SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured, subparagraph Additional Insured if Required by Contract** is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1)** For the sole negligence of the additional "insured"; or
- (2)** For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
- (3)** When the additional "insured" is also an additional "insured" under another liability policy.

**C. This endorsement will apply only if the "accident" occurs:**

1. During the policy period;
2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".

**D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.**

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EDUCATIONAL INSTITUTION BUSINESS AUTO COVERAGE BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Summary of Amendments		
1.	<b>Temporary Substitute Auto Physical Damage</b>	Included
2.	<b>Broadened Named Insured</b>	Included
3.	<b>Supplementary Payments - Increased Limits</b>	
	Bail Bonds	\$2,500
	Loss of Earnings	\$500
4.	<b>Employees as Insureds</b>	Included
5.	<b>Expense You Incur to Return a Stolen Auto</b>	\$1,000
	Sign Coverage	\$2,000
6.	<b>Glass Deductible Waiver for Repair</b>	Included
7.	<b>Transportation Expense</b>	
	Per Day	\$50
	Maximum Limit	\$1,500
8.	<b>Hired Auto Physical Damage</b>	\$50,000
	Owner's Actual Loss of Use	\$1,000
9.	<b>Audio, Visual, Data and Global Positioning Electronic Equipment Coverage</b>	\$500
10.	<b>Rental Reimbursement and Material Transfer Expense</b>	
	Number of Days	60
	Limit	\$3,000
11.	<b>Airbag Coverage</b>	Included
12.	<b>Auto Lease or Loan Physical Damage Extension</b>	Included
13.	<b>Towing and Labor</b>	
	Private passenger/light truck	\$50
	Medium Truck	\$150
14.	<b>Personal Effects Coverage</b>	\$600
15.	<b>Duties in the Event of Accident, Claim, Suit or Loss</b>	Included
16.	<b>Unintentional Failure to Disclose Information</b>	Included
17.	<b>Bodily Injury Redefined</b>	Included

### 1. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

The following is added to **SECTION I – COVERED AUTOS**:

If Physical Damage Coverage is provided under the Business Auto Coverage Form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the

permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss" or destruction. The insurance provided by this coverage endorsement is excess over any other valid and collectible insurance

(including deductible or self insured retention) whether primary, excess, contingent, or on any other basis.

## 2. BROADENED NAMED INSURED

The following is added to **SECTION II – LIABILITY COVERAGE, Paragraph A. Coverage, Subparagraph 1. Who Is An Insured:**

The following are also "insureds":

- d. Any organization in which you have a financial interest greater than 50% of the voting stock or otherwise have a controlling interest after the effective date of this policy; and
- e. Any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company, and over which you maintain ownership or majority interest, will qualify as an "insured" if there is no other similar insurance available to that organization. However:

- (1) The coverage provided by this provision is afforded only until expiration or termination of this policy, whichever occurs earlier;
- (2) The coverage provided by this provision does not apply to "bodily injury" or "property damage" arising from an "accident" that occurred prior to your acquiring or forming the organization described in **d.** or **e.**; and
- (3) The coverage provided by this provision does not apply to any organization described in **d.** or **e.** that qualifies as an "insured" under any other automobile liability policy issued to that organization as a named "insured" or if that organization would have been an "insured" except for the exhaustion of the policy limits or the insolvency of the insurer.

## 3. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

**SECTION II – LIABILITY COVERAGE, Paragraph A. Coverage, Subparagraph 2. Coverage Extensions, Items (2) and (4) are replaced by the following:**

- (2) Up to \$2,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

## 4. EMPLOYEES AS INSUREDS

The following is added to **SECTION II – LIABILITY COVERAGE, Paragraph A. Coverage, Subparagraph 1. Who Is An Insured:**

The following are also "insureds":

Your "employee" is an "insured" when using a covered "auto" you do not own, lease, hire, rent or borrow but only while performing duties related to the conduct of your business.

## 5. EXPENSE YOU INCUR TO RETURN A STOLEN AUTO and SIGN COVERAGE

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A. Coverage, Subparagraph 1.:**

### d. Expense of Returning a Stolen Auto

We will pay up to \$1000 for reasonable and necessary costs incurred by you to return a stolen covered "auto" from the place it is recovered to its usual garaging location.

### e. Sign Coverage

We will pay, as part of equipment, for "loss" to signs, murals, paintings or graphics which are displayed on a covered "auto."

The most we will pay for "loss" in any one "accident" is the lesser of:

- (1) The actual cash value of the property as of the time of the "loss";
- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
- (3) \$2,000.

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".

## 6. GLASS DEDUCTIBLE WAIVER FOR REPAIR

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A. COVERAGE, Subparagraph 3. Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles:**

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if such glass is repaired, rather than replaced.

## 7. TRANSPORTATION EXPENSE

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A. COVERAGE, Subparagraph 4. Coverage Extensions, Item a. is replaced by the following:**

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss."

**8. HIRED AUTO PHYSICAL DAMAGE**

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE**, Paragraph **A. Coverage**:

**Hired Auto Physical Damage**

**a.** If you, or your "employee" at your direction, hire an "auto" without a driver for the purpose of conducting your business, we will provide Physical Damage Coverage to such "auto" for a period of up to 30 days from the date of hire, subject to the following:

- (1)** You must have Liability Coverage for hired "autos" on this Coverage Form;
- (2)** You must have Physical Damage Coverage of Comprehensive, Specified Causes of Loss, or Collision for any "auto" you own on this Coverage Form; and
- (3)** The hired "auto" must be of like kind and use as the "autos" you own.

**b.** The most we will pay for "loss" in any one "accident" is the lesser of the following:

- (1)** \$50,000 per "accident", or
- (2)** Actual cash value at the time of the "loss", or
- (3)** The cost of repair or replacement with other property of like kind and quality,

minus the deductible equal to the highest deductible applicable to any owned "auto" for that coverage. Any deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

Subject to the limit and deductible stated above, we will provide coverage equal to the broadest coverage provided to any covered "auto" you own, that is applicable to the "loss".

An adjustment for depreciation and physical condition will be made when determining actual cash value at the time of the "loss".

If the "loss" arises from an "accident" for which you are legally liable, we will cover the lessor's actual financial loss of use of the hired "auto" for a period of up to seven consecutive days from the date of the "accident", subject to a limit of \$1,000 per "accident".

**9. AUDIO, VISUAL, DATA AND GLOBAL POSITIONING ELECTRONIC EQUIPMENT COVERAGE**

**a.** The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE**, Paragraph **A. Coverage**, Subparagraph **4. Coverage Extensions**:

**Audio, Visual, Data and Global Positioning Electronic Equipment Coverage**

We will pay for "loss" to any electronic equipment that receives or transmits audio, visual, data or global positioning signals, equipment designed solely for the reproduction of sound, and accessories used with such equipment. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system in or upon the covered "auto". Permanent installation does not include mounting by a suction bracket.

We will also pay for any other electronic equipment that is:

- (1)** Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
- (2)** An integral part of the same unit housing any sound reproducing equipment described in **(1)** and permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

**b.** For the purpose of coverage under this endorsement, **SECTION III – PHYSICAL DAMAGE COVERAGE**, Paragraph **B. Exclusions**, Subparagraphs **4.c.** and **d.** are deleted.

**c.** For the purpose of coverage under this endorsement, **SECTION III – PHYSICAL DAMAGE COVERAGE**, Paragraph **C. Limit of Insurance** is replaced by the following:

1. The most we will pay for all "loss" to audio, visual, data and global positioning electronic equipment, and any accessories used with this equipment, as a result of any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property at the time of the "loss";
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
  - c. \$500
2. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".
3. Deductibles applicable to **SECTION III - PHYSICAL DAMAGE COVERAGE**, do not apply to this **Audio, Visual, Data and Global Positioning Electronic Equipment Coverage**.

If there is other coverage provided by this policy for audio, visual, data and global positioning electronic equipment, the coverage provided herein is excess. However, you may elect to apply the limit or any portion of coverage provided herein to pay any deductible that is applicable under the provisions of the other coverage.

**10. RENTAL REIMBURSEMENT and MATERIAL TRANSFER EXPENSE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE**, Paragraph A. **Coverage**:

**Rental Reimbursement and Material Transfer Expense**

This coverage provides only those Physical Damage Coverages where a premium is shown in the Declarations. It applies only to a covered "auto" described or designated to which the Physical Damage Coverages apply.

We will pay for "auto" rental expenses and the expenses, incurred by you because of "loss" to a covered "auto," to remove and transfer your materials and equipment from the covered "auto." Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto." No deductibles apply to this coverage.

We will pay only for those "auto" rental expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the

policy's expiration, with the lesser of the following number of days:

1. The number of days reasonably required to repair or replace the covered "auto." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and transport it to a repair shop; or
  2. 60 days.
- Our payment is limited to the lesser of the following amounts:
3. Necessary and actual expenses incurred, including loss of use; or
  4. \$3000.

This "auto" rental expense coverage does not apply while there are spare or reserve "autos" available to you for your operations.

If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the **SECTION III - PHYSICAL DAMAGE COVERAGE**, Paragraph A. **Coverage Subparagraph 4. Coverage Extensions**.

**11. AIRBAG COVERAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE**, Paragraph B. **Exclusions**, Subparagraph 3.:

This exclusion does not apply to the accidental discharge of an airbag.

The insurance provided by this coverage endorsement is excess over any other valid and collectible insurance or warranty (including deductible or self insured retention) whether primary, excess, contingent, or on any other basis.

No deductible applies to this Airbag Coverage.

**12. AUTO LEASE OR LOAN PHYSICAL DAMAGE EXTENSION**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE**, Paragraph C. **Limit of Insurance** is amended to add the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule or Declarations for which a specific premium charge indicates that Auto Loan/Lease GAP Coverage applies, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the **Physical Damage Coverage** section of the policy; and
2. Any:
  - a. Overdue lease/loan payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

### 13. TOWING AND LABOR

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A. Coverage, Subparagraph 2.** is replaced by the following:

#### 2. Towing

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles or "light trucks" we will pay up to \$50 per disablement;
- b. For "medium trucks" we will pay up to \$150 per disablement.

However, the labor must be performed at the place of disablement.

For the purposes of this coverage extension, the following definitions apply:

"Light Truck" means any truck that has a gross vehicle weight of 10,000 pounds or less.

"Medium Truck" means any truck that has a gross vehicle weight of 10,001 to 20,000 pounds.

### 14. PERSONAL EFFECTS COVERAGE

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A. Coverage:**

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen

with the "auto". This coverage is excess of other valid and collectible insurance, regardless whether such other insurance provides primary, excess or contingent coverages or purports to be excess over this insurance or any other valid and collectible insurance.

For the purposes of this coverage extension, the following definition applies:

"Personal Effects" means tangible property that is worn or carried by an "insured". "Personal effects" does not include tools, jewelry, money or securities.

### 15. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to **SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph A. Loss Conditions, Subparagraph 2. Duties In The Event Of Accident, Claim, Suit Or Loss:**

- d. Knowledge of any "accident", claim, "suit" or "loss" will be deemed knowledge by you when notice of such "accident," claim, "suit" or "loss" has been received by:
  - (1) You, if you are an individual;
  - (2) Any partner or insurance manager if you are a partnership, or
  - (3) An executive officer or insurance manager if you are a corporation.

### 16. UNINTENTIONAL FAILURE TO DISCLOSE INFORMATION

The following is added to **SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, Subparagraph 2. Concealment, Misrepresentation or Fraud:**

We will not disclaim coverage under this Coverage Form if you fail to disclose all hazards existing as of the inception date of the policy, provided such failure is not intentional.

### 17. BODILY INJURY REDEFINED

**SECTION V – DEFINITIONS, Paragraph C.** is replaced by the following:

"Bodily injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGES

1.	Additional Insured by Contract, Agreement or Permit	Included
2.	Additional Insured – Primary and Non-Contributory	Included
3.	Blanket Waiver of Subrogation	Included
4.	Bodily Injury Redefined	Included
5.	Broad Form Property Damage – Borrowed Equipment, Customers Goods & Use of Elevators	Included
6.	Knowledge of Occurrence	Included
7.	Liberalization Clause	Included
8.	Medical Payments – Extended Reporting Period	Included
9.	Newly Acquired or Formed Organizations - Covered until end of policy period	Included
10.	Non-owned Watercraft	51 ft.
11.	Supplementary Payments Increased Limits	
	- Bail Bonds	\$2,500
	- Loss of Earnings	\$1000
12.	Unintentional Failure to Disclose Hazards	Included
13.	Unintentional Failure to Notify	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

#### 1. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II – WHO IS AN INSURED:**

##### Additional Insured by Contract, Agreement or Permit

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.
- b. The insurance afforded to such additional insured described above:
- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
  - (4) Will not be broader than coverage provided to any other insured.
  - (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.
- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
  - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
  - (3) To any lessor of equipment:
    - (a) After the equipment lease expires; or
    - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
  - (4) To any:
    - (a) Owners or other interests from. whom land has been leased which takes place after the lease for the land expires; or
    - (b) Managers or lessors of premises if:
      - (i) The occurrence takes place after you cease to be a tenant in that premises; or
      - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
  - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and

advertising injury" involved the rendering of or failure to render any professional services by or for you.

- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract, agreement or permit described in Paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

## 2. Additional Insured – Primary and Non-Contributory

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other insurance**:

### Additional Insured – Primary and Non-Contributory

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – WHO IS AN INSURED**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss covered under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) when b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

(1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;

(c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY.**

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each

insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers

**3. Blanket Waiver of Subrogation**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

**4. Bodily Injury Redefined**

**SECTION V – DEFINITIONS**, Definition **3.** "bodily injury" is replaced by the following:

**3.** "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

**5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators**

**a. SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions** subparagraph **j.** is amended as follows:

Paragraph **(4)** does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraphs **(3)**, **(4)** and **(6)** do not apply to "property damage" to "customers goods" while on your premises nor do they apply to the use of elevators at premises you own, rent, lease or occupy.

**b.** The following is added to **SECTION V – DEFINITIONS**:

**24.** "Customers goods" means property of your customer on your premises for the purpose of being:

- a. worked on; or
- b. used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

**6. Knowledge of Occurrence**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **2. Duties in the Event of Occurrence, Offense, Claim or Suit**:

- e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

**7. Liberalization Clause**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

**Liberalization Clause**

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**8. Medical Payments – Extended Reporting Period**

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph **1. Insuring Agreement**, subparagraph **a.(3)(b)** is replaced by the following:
  - (b) The expenses are incurred and reported to us within three years of the date of the accident; and
- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

**9. Newly Acquired Or Formed Organizations**

**SECTION II – WHO IS AN INSURED**, Paragraph **3.a.** is replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.

**10. Non-Owned Watercraft**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions**, subparagraph **g.(2)** is replaced by the following:

**g. Aircraft, Auto Or Watercraft**

- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

**11. Supplementary Payments Increased Limits**

**SECTION I – SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, Paragraphs **1.b.** and **1.d.** are replaced by the following:

- 1.b.** Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 1.d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1000 a day because of time off from work.

**12. Unintentional Failure to Disclose Hazards**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **6. Representations**:

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

**13. Unintentional Failure to Notify**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **2. Duties in the Event of Occurrence, Offense, Claim or Suit**:

Your rights afforded under this policy shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT – EDUCATIONAL INSTITUTIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGES

1.	Additional Insured – Broad Form Vendors	Included
2.	Additional Insured – Board Members, Trustees, Student Teachers, Safety Patrol and Approved Groups	Included
3.	Aggregate Limit Per Location	Included
4.	Aircraft, Auto or Watercraft Amendments	Included
5.	Broad Form Named Insured	Included
6.	Broadcasting and Publication – Personal and Advertising Injury	Included
7.	Clinic or Hospital Exclusion	Included
8.	Medical Payments – Student Exclusion	Included
9.	Mobile Equipment Redefined	Included
10.	Personal Injury – Broad Form	Included
11.	Personal Injury – Televised or Videotaped Publication	Included
12.	Property Damage Legal Liability – Broad Form - Fire, Lightning, Explosion, Smoke and Leakage from Fire Protective Systems Damage Limit	\$1,000,000
13.	Who Is An Insured Extension – Co-employees and Volunteer Workers	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

#### 1. Additional Insured – Broad Form Vendors

The following is added to **SECTION II – WHO IS AN INSURED**:

##### Additional Insured – Broad Form Vendors

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for “bodily injury” or “property damage” arising out of “your products” which are distributed or sold in the regular course of the vendor’s business.
- b. The insurance afforded to such vendor described above:
  - (1) Only applies to the extent permitted by law;
  - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;

(3) Will not be broader than coverage provided to any other insured; and

(4) Does not apply if the “bodily injury”, “property damage” or “personal and advertising injury” is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto

c. With respect to insurance afforded to such vendors, the following additional exclusions apply:

The insurance afforded to the vendor does not apply to:

(1) “Bodily injury” or “property damage” for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;

- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
  - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
- (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

d. With respect to the insurance afforded to these vendors, the following is added to **SECTION III – LIMITS OF INSURANCE:**

The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract or agreement described in paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

This endorsement shall not increase the applicable Limits

**2. Additional Insured – Board Members, Trustees, Student Teachers, Safety Patrol, and Approved Groups**

a. The following is added to **SECTION II – WHO IS AN INSURED:**

Each of the following is also an insured but only with respect to their duties in connection with the positions described below:

- (1) Any of your trustees or members of your Board of Governors if you are a private charitable or educational institution;
- (2) Any of your board members or commissioners if you are a public board or commission; or
- (3) Any student teacher teaching as part of their educational requirements.

Each of the following is also an insured:

- (4) Any of your elementary, middle, junior high or high school students who are volunteer members of a safety patrol, which you organize or operate, but only for "bodily injury" or "property damage" that occurs while performing duties related to the conduct of such safety patrol.
- (5) Parent Groups, Alumni Groups, and Student Groups and their members, but only if the Group is sanctioned, approved, organized and/or supervised by the Named Insured, and only with respect to activities that are necessary to the sanctioned or approved purpose of the Group.
- (6) Parents or legal guardians of students involved in safety patrol or a Student Group but only because of "bodily injury" or "property damage" arising out of the operation of such safety patrol or Student Group.

b. For the purpose of this coverage only, the following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, b. Excess Insurance:**

The insurance coverage provided under **ADDITIONAL INSURED – BOARD**

**MEMBERS, TRUSTEES, STUDENT TEACHERS, SAFETY PATROL AND APPROVED GROUPS** of this endorsement is excess over any other valid and collectible insurance (including deductible or self-insured retention) or agreement of indemnity available to the insured, whether primary, excess, contingent, or on any other basis. When this insurance is excess, we have the right but not the duty to defend any claim or "suit".

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of an insured to insure against liability arising from activities of an insured and its "employees", whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted.

**c. SECTION V – DEFINITIONS, 19.** "Temporary worker" is replaced by the following:

**19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a substitute teacher.

### **3. Aggregate Limit Per Location**

**a. SECTION III – LIMITS OF INSURANCE,** the General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

**b.** For purpose of this coverage only, the following is added to **SECTION V – DEFINITIONS:**

**1.** "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

### **4. Aircraft, Auto Or Watercraft Amendments**

**SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE**

**LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft** is replaced by the following:

This insurance does not apply to:

#### **g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use, "loading or unloading" or entrustment to others of any aircraft, "auto" or watercraft that is owned, operated or "hired" by, or rented or loaned to any insured.

As used in this exclusion, "hired" includes any contract to furnish transportation of your students to and from schools.

This exclusion applies even if the claim against an insured alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned, operated or "hired" by or rented or loaned to any insured.

This exclusion does not apply to:

- (1)** A watercraft while ashore on premises you own or rent;
- (2)** A watercraft you do not own that is:
  - (a)** Less than 51 feet long; and
  - (b)** Not being used to carry persons or property for a charge;
- (3)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented, "hired" or loaned to you or the insured;
- (4)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5)** "Bodily injury" or "property damage" arising out of:
  - (a)** The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b)** The operation of any of the machinery or equipment listed in paragraphs **f.(2)** or **f.(3)** of the definition of "mobile equipment";

- (6) "Bodily injury" or "property damage" arising out of any non-motorized recreational watercraft used for sailing, rowing or sculling that is owned, used by, or rented to an insured;
- (7) An aircraft that you do not own that is hired, chartered or loaned with a paid crew and not owned by any insured.
- (8) "Bodily injury" or other injury arising out of a sexual misconduct or sexual molestation incident to the extent coverage is provided under an endorsement to this policy providing sexual misconduct or sexual molestation liability coverage.

With respect to the insurance provided under item (2), this provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

With respect to the insurance provided under item (6), **SECTION II – WHO IS AN INSURED** is amended to include as an insured any person or organization legally responsible for the use of any such recreational watercraft used for sailing, rowing or sculling that you own, provided the actual use is with your permission.

The insurance provided under item (7) is excess over any other valid and collectible insurance (including deductible or self-insured retention) or agreement of indemnity available to the insured, whether primary, excess, contingent, or on any other basis. When this insurance is excess, we have the right but no duty to defend any claim or "suit".

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of an insured to insure against liability arising from activities of an insured and its "employees", whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted

## 5. Broad Form Named Insured

If you are designated in the Declarations as anything other than an individual, then any organization:

- a. Over which you maintained a combined ownership interest of more than 50% on the effective date of this policy;
- b. That is not a partnership, joint venture or limited liability company; and
- c. That is not excluded by any endorsement to this policy, will qualify as a Named Insured if there is no other similar insurance available to that organization, or that would be available but for exhaustion of its limits.

Any such organization will cease to qualify as a Named Insured as of the date during the policy period when the combined ownership interest of the Named Insureds in the organization equals or falls below 50%.

## 6. Broadcasting And Publication – Personal And Advertising Injury

- a. The following is added to **SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, j. Insureds In Media And Internet Type Businesses:**

Exclusion **j.(1)** does not apply to "personal and advertising injury" within the scope of your activities as an educational institution.

- b. The following exclusions are added to **SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions:**

This insurance does not apply to:

- a. "Personal and Advertising Injury" arising out of the actual or alleged unauthorized collection, use or dissemination of internet user information through web cookies or other online profiting purposes by or on behalf of the insured or for the unlawful access to or invasion of any computer software, operating system or network electronic mail or voice mail system by or on behalf of the insured.
- b. "Personal and Advertising Injury" arising out of any claim or "suit" made by ASCAP, SESAC, BMI, RIAA or any other music licensing entity on their behalf or for others alleging the insured's failure to procure or maintain requisite licenses or payment of royalties.
- c. "Personal and Advertising Injury" arising out of an investigation or proceeding initiated by an administrative or regulatory agency, including, but not limited to, the

Federal Trade Commission or the Federal Communications Commission.

- c. The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

**Retraction or Correction of Erroneous Matter**

Retraction or correction shall be promptly made of any matter which has been published or broadcast through error or mistake, or which is untrue.

- d. **SECTION V – DEFINITIONS, 1.** "Advertisement" is replaced by the following:

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication, but only with respect to your goods, products or services for the purpose of attracting customers or supporters; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

**7. Clinic Or Hospital Exclusion**

The following is added to **SECTION I – COVERAGES, COVERAGE A – BODILY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** and **SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions**:

**Clinic or Hospital**

If an insured owns or operates a clinic or hospital, this insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" caused by:

- (1) The rendering of or failure to render:
  - (a) Medical, surgical, dental, x-ray or nursing service, treatment, advice or instruction, or the related furnishing of food or beverages;
  - (b) Any health or therapeutic service, treatment, advice or instruction; or
  - (c) Any service, treatment, advice or instruction for the purpose of appearance

or skin enhancement, hair removal or replacement or personal grooming.

- (2) The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or
- (3) The handling or treatment of dead bodies, including autopsies, organ donation or other procedures.

**8. Medical Payments – Student Exclusion**

The following is added to **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS, 2. Exclusions**:

**Students**

We will not pay expenses for "bodily injury" to your student.

**9. Mobile Equipment Redefined**

**SECTION V – DEFINITIONS, 12.** "Mobile equipment", paragraph f.(1) does not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight.

**10. Personal Injury – Broad Form**

a. **SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, e. Contractual Liability** is deleted.

b. **SECTION V – DEFINITIONS, 14.** "Personal and advertising injury", paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION V – DEFINITIONS, 14.** "Personal and advertising injury":

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

- (a) The insured;
- (b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

d. For the purposes of this endorsement only, the following is added to **SECTION V – DEFINITIONS**:

1. "Discrimination" means the unlawful treatment of individuals based upon race,

color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

- e. This coverage does not apply if **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY** is excluded either by the provisions of the Coverage Form or by endorsement.

#### 11. Personal Injury – Televised Or Videotaped Publication

**SECTION V – DEFINITIONS, 14.** "Personal and advertising injury", paragraphs **d.** and **e.** are replaced by the following:

- d. Oral or written publication, in any manner, or televised or videotaped publication, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, or televised or videotaped publication, of material that violates a person's right of privacy;

#### 12. Property Damage Legal Liability – Broad Form

- a. **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, the last paragraph (after the exclusions) is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE.**

- b. **SECTION III – LIMITS OF INSURANCE**, paragraph **6.** is replaced by the following:

**6.** Subject to paragraph **5.** above, The Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises from fire, lightning, explosion, smoke and leakage from fire protective systems to premises, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of:

- a. \$1,000,000; or

- b. The Damage to Premises Rented to You Limit shown in the Declarations.

This limit will apply to all damage caused by the same event, whether such damage results from fire, lightning, explosion, smoke, leakage from fire protective systems or any combination of any of these.

- c. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, b. Excess Insurance**, paragraph **(a)(ii)** is replaced by the following:

**(ii)** That is fire, lightning, explosion, smoke or leakage from fire protective systems insurance for premises rented to you or temporarily occupied by you with permission of the owner; or

- d. **SECTION V – DEFINITIONS, 9.** "Insured contract", paragraph **a.** is replaced by the following:

**a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke or leakage from fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

- e. This coverage does not apply if Damage to Premises Rented to You is excluded either by the provisions of the Coverage Part or by endorsement.

#### 13. Who Is An Insured Extension – Co-employees And Volunteer Workers.

- a. **SECTION II – WHO IS AN INSURED**, paragraph **2.a.** is replaced by the following:

**2.** Each of the following is also an insured:

**a.** Your "volunteer workers" only while performing duties related to the conduct of your business, your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

**(1)** "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- (b)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph **(1)(a)** above;
- (c)** Arising out of his or her providing or failing to provide professional health care services; or
- (d)** Arising out of "employment related practices"

**(2)** "Property damage" to property:

- (a)** Owned, occupied or used by,
- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

For the purpose of this endorsement, "employment-related practices" includes but is not limited to refusal to employ a person, termination of a person's employment, or practices, policies, acts or omissions related to employment, such as coercion, demotion, evaluation, re-assignment, discipline, defamation, harassment, humiliation, or discrimination directed at a person.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



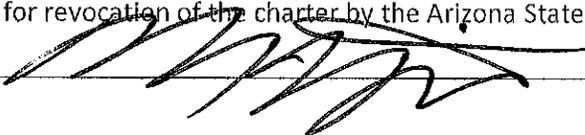
# Arizona State Board for Charter Schools

## Agricultural Land Regulation Assurance and Understanding

Arizona Revised Statute §15-183 (U) states, "Charter schools may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the charter school may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the charter school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement."

<b>Charter Holder Information</b>	
Name of Charter Holder Entity	Edkey, Inc. dba Sequoia Choice Schools
Name of Charter School	Precision Learning Center

<b>Check box below to indicate which statement applies</b>	
<input checked="" type="checkbox"/>	The charter school is not located less than one-fourth mile from agricultural land.
<input type="checkbox"/>	The charter school site is located less than one-fourth mile from agricultural land; the charter school site complies with Arizona law regarding the location of schools on a property that is less than one-fourth mile from agricultural land.

<b>Signature</b>	
By signing below, I understand and affirm that the forgoing information provided by me for the above listed Charter Holder is true and correct. Furthermore, if any part of the information provided proves to be false, I recognize that it shall be just cause for revocation of the charter by the Arizona State Board for Charter Schools.	
Charter Representative Signature: 	Date: 11/18/19

**NEW K6 SCHOOL BUILDING**  
ED KEY CHARTER SCHOOL  
BUCKEY PARKWAY CENTER - PARCEL #04  
BUCKEYE, ARIZONA  
OVERALL 1ST FLOOR PLAN

**50% CD**

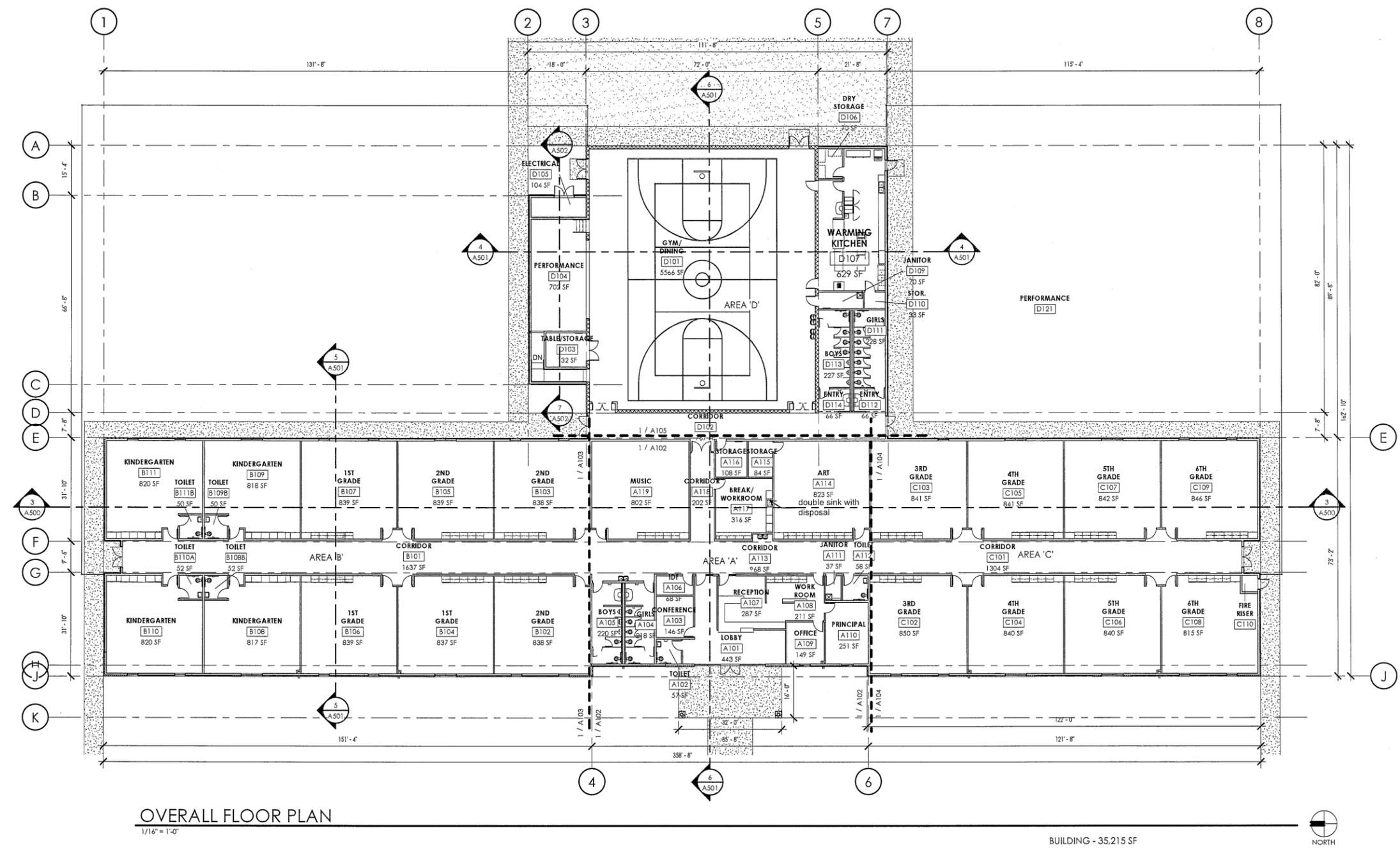
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REVISIONS		
MARK	DATE	DESCRIPTION

REVIEWED BY: Checker  
DRAWN BY: Author

ORIGINAL ISSUE  
DATE: 12-13-2019  
JOB No: 1981  
SHEET:

**A101**



## Greer, Patric

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**From:** Scott Tyler <Scott.T@spsplusarchitects.com>  
**Sent:** Thursday, December 19, 2019 11:13 AM  
**To:** Greer, Patric  
**Subject:** Edkey Charter School Buckeye

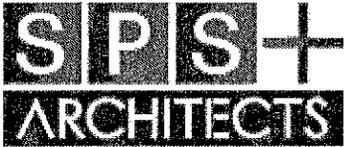
Good Morning Pat.

Our 50% set of plans do not list an official student occupant load at this juncture of the drawings. We will be adding this to the future progress sets as the drawings develop. In the meantime, we did base the classroom sizes accordingly to accommodate a student capacity of 600 students maximum. Toilet facilities and egress are all based upon this occupant load.

I hope this answers your question. Feel free to contact me if you have any other questions.

Thank you

Scott Tyler, AIA  
Project Manager



[Scott.T@spsplusarchitects.com](mailto:Scott.T@spsplusarchitects.com)

**SPS+ ARCHITECTS, LLP**

8681 East Via de Negocio | Scottsdale, AZ 85258

P (480) 991-0800

1790 West Sahuarro Drive | Tucson, AZ 85745

P (520) 428-1180

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# AIA<sup>®</sup> Document A101<sup>™</sup> – 2017

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

**AGREEMENT** made as of the 27th day of November in the year 2019  
(In words, indicate day, month and year.)

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

Edkey, Inc.  
an Arizona nonprofit corporation  
1460 S. Home  
Mesa, AZ 85204  
Telephone Number: 480-461-3200  
Fax Number 480-649-0747

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

Willmeng Construction, Inc.  
2048 North 44<sup>th</sup> St., Suite 200  
Phoenix, AZ 85008  
Telephone Number 480-968-4755  
Fax Number: 480-557-6788  
General Contractor License: B1-082904  
Commercial Engineering License: A-246341

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

35,000 square feet of charter elementary and middle school on the approximately nine acres of partially unimproved land located east of the northeast corner of Roosevelt Street and Verrado Way in Buckeye, Arizona., as further described and set forth herein (collectively, the “**Project.**”

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

SPS+ Architects  
8681 E. Via de Negocio  
Scottsdale, AZ 85258  
Telephone Number 480-991-0800  
Fax Number: 480-991-2623  
Attention: Neil L. Pieratt RA, LEED AP BD+C

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The parties should complete A101<sup>™</sup>-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>-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.

### **TERMS AND CONDITIONS –AGREEMENT**

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(3B9ADA4F)

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Contractor acknowledges that as a material term of this Agreement, the Contract Documents shall be assigned to bond trustee under the Indenture of Trust (the “**Indenture**”) between UMB Bank, N.A. (the “**Bond Trustee**”), and the Industrial Development Authority of the County of Pima, as issuer of the Project Bonds, as a precondition to the Funding.

**Contractor further acknowledges that as a material term of this Agreement, Owner may, without consent of Contractor, assign any or all of Owner’s rights under this Agreement, including without limitation, all of each of Contractor’s covenants, representations and warranties, and warranties of the Work to: (i) any successor, affiliate, or subsidiary of Owner; (ii) any institutional lender providing construction financing; or (iii) the Bond Trustee. Contractor further acknowledges that Owner’s assignment on a non-exclusive basis to its successors and/or assigns of the all of the representations and warranties provided by Contractor. Contractor may not assign this Agreement without the written consent of Owner, which consent shall not be unreasonably withheld or delayed. Contractor agrees to execute all consents reasonably required to facilitate any assignment by Owner, if necessary. If either party makes an assignment as permitted herein, that party shall remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.**

Contractor further acknowledges that Owner is a party to that certain Construction Administration and Disbursement Agreement dated on or about December 1, 2019 (the “**Administration Agreement**”) by and among Owner, UMB Bank, NA as trustee, and Reynolds Project Management, LLC, an Arizona limited liability company (“**Construction Administrator**”), the form of which is attached hereto, and which is incorporated by reference into the Contract Documents. Notwithstanding anything set forth herein to the contrary, in the event that there is any conflict between the terms of the Administration Agreement and the terms of this Agreement, the terms of the Administration Agreement shall govern and control.

Init. 

**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 **Exhibits in Article 9**, 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:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

Contractor will commence the Work within ten (10) days after receipt of the necessary building permits and notice to proceed prepared by the Owner.

*(Paragraph Deleted)*

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

**§ 3.3 Substantial Completion**

**§ 3.3.1 Notwithstanding anything in the Contract Documents to the contrary, the date of Substantial Completion shall be deemed to have been achieved upon the occurrence of the earliest of the following events:**

Init.

*DM*  
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(1) issuance of a Certificate of Occupancy from the local governmental agency having jurisdiction over the Project for all or part of the Construction, (2) issuance of written final acceptance from the local government agency having jurisdiction over the Project, or (3) the stage in the progress of the Construction when the Construction or designated portion thereof is sufficiently complete so that the Owner can occupy or utilize the Construction for its intended use.

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 one-hundred fifty ( 150 ) calendar days from the date of commencement of the Work.

By the following date:

§ 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
Classrooms suitable for installation of Owner's FF&E & "fit-up" by owner.	July 1, 2020 (based on Commencement Date of Jan 23, 2020.

§ 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 Six Million Six Hundred Forty-Nine Thousand One Hundred Eighty-One Dollars and No Cents (\$6,649,181.00), subject to additions and deductions as provided in the Contract Documents.

The \$6,641,181.00 Contract Sum is conditioned on the Owner's architect's preparation of construction documents that are in substantial conformance with the attached Exhibits C, D, and E. Should the construction documents prepared by the architect not be in substantial conformance with Exhibits C, D, and E the Owner shall require the architect to amend the construction documents so they come into substantial conformance or the Owner shall issue a Change Order to Contractor for the additional cost of the work that is beyond the scope of Exhibits C, D, and E.

**§ 4.2 Alternates**

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

Item	Price
NOT APPLICABLE	

§ 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
NOT APPLICABLE		

§ 4.3 Allowances, if any, included in the Contract Sum:

*(Identify each allowance.)*

Item	Price
See Exhibit B	

§ 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.)*

Init. *[Signature]*

Item	Units and Limitations	Price per Unit (\$0.00)
NOT APPLICABLE		

§ 4.5 Liquidated damages, if any:  
*(Insert terms and conditions for liquidated damages, if any.)*

\$3,000.00 (three thousand dollars) per calendar day.

General: Contractor and Owner acknowledge that in the event that Contractor fails to achieve Substantial Completion of the Work by the Substantial Completion Date, subject to adjustment of the Contract Time as provided in the Contract Documents, Owner will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that Owner would incur as a result of late Substantial Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of Owner for late completion of the Project, and Owner hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

Amount of Liquidated Damages: If Contractor fails to achieve Substantial Completion of the Work on or before the Substantial Completion Date, subject to adjustments of the Contract Time as provided in the Contract Documents, Contractor shall pay to Owner liquidated damages in the amount of \$3,000.00 (three thousand dollars) for each calendar day that the date of Substantial Completion is delayed beyond the Substantial Completion Date.

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

NOT APPLICABLE

**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 and in accordance with the Arizona Prompt Payment Act, codified at Ariz. Rev. Stat. 32-1129 et seq. (the "Act").

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 14th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than twenty-one ( 21 ) days after the Architect receives the Application for Payment.  
*(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.

Init.



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

35,000 square feet of charter elementary and middle school on the approximately nine acres of partially unimproved land located east of the northeast corner of Roosevelt Street and Verrado Way in Buckeye, Arizona., as further described and set forth herein (collectively, the "Project."

### THE OWNER:

*(Name, legal status and address)*

Edkey, Inc.  
an Arizona nonprofit corporation  
1460 S. Home  
Mesa, AZ 85204  
Telephone Number: 480-461-3200  
Fax Number 480-649-0747

### THE ARCHITECT:

*(Name, legal status and address)*

SPS+ Architects  
8681 E. Via de Negocio  
Scottsdale, AZ 85258  
Telephone Number 480-991-0800  
Fax Number: 480-991-2623  
Attention: Neil L. Pieratt RA, LEED AP BD+C

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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, the AIA A201-2017 General Conditions, as modified, 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, 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, (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, as more fully described in Exhibit A, which is attached to the Agreement, 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

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### § 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, unless specifically excluded, assumed, or clarified in the Contract Documents. 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.

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§ 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.

§ 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.

### § 1.3 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

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.

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 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 copyright notice, if any, shown on the Instruments of Service. 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.

§ 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, by courier providing proof of delivery, or by electronic transmission, such as email.

### § 1.7 Digital Data Use and Transmission

*(Paragraph deleted)*

**[intentionally deleted]**

### § 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.

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*[Signature]*

## 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" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, 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 in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 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 permits, fees, 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.

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**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness; provided that, the information or service is furnished within three (3) business days after being requested by the Contractor. 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, in no event longer than three (3) business days, after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### **§ 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 a ten-day period 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 assert a Claim pursuant to Article 15.

### **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.

**§ 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

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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 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.

**§ 3.2.3** 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.

**§ 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.

### § 3.5 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; provided that, such nonconformance is not caused, in whole or part, by someone other than the Contractor or its subcontractors. 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, 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.

### § 3.6 Taxes

Unless excluded in the Contract Documents, 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 Unless otherwise provided in the Contract Documents, the Contractor shall pick-up the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to 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 mutually agreed upon by the Owner and Contractor.

§ 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, unless expressly excluded elsewhere in the Contract Documents.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness, in no event more than five (5) business days after requested by the Contractor.

### § 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. Except as otherwise provided in the Contract Documents, 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 The Contractor, promptly after being awarded the Contract, 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, including (1) the date of commencement of the Work, interim schedule milestone dates, if any, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. 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.

§ 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.

### § 3.11 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.

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**§ 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. 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.

**§ 3.12.6** 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.

**§ 3.12.7** 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, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. 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.

### **§ 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.

### **§ 3.14 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.

**§ 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, only after given Contractor written notice and a reasonable opportunity to clean up, and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 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, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and

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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), 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.

#### **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.

**§ 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, Contractor, 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 the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 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, in accordance with the requirements of the Arizona Prompt Payment Act, codified at Ariz. Rev. Stat. 32-1129 et al (the "Act").

§ 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 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 [intentionally deleted]

§ 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.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect 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 (three (3) business days) 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** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity 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.

**§ 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**

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. 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.

**§ 5.4 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** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from 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

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Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **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 substantially similar terms and conditions as provided for in the Contract Documents, including those terms and conditions concerning insurance and waiver of subrogation. Contractor shall be named as an additional insured on the Separate Contractor's insurance policies to the same extent as the Owner. The Owner shall also require the Separate Contractor to indemnify and hold the Contractor harmless from any claim, loss, injury, or damage arising out of the work performed by the Separate Contractor.

**§ 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.

### **§ 6.2 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. The Separate Contractor and Owner shall assume the risk of loss, damage, theft, or vandalism with respect to any material or equipment stored within the Contractor's construction area.

**§ 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; but only to the extent such delays, improperly timed activities, or defective construction are the direct cause of the loss and with respect to delay claims such delay was not concurrent or excused. 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, but only to the extent such delays, improperly timed activities, or defective construction are the direct cause of the loss and with respect to delay claims such delay was not concurrent or excused.

**§ 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 and Contractor. A Construction Change Directive may be ordered by the Owner 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 alone.

**§ 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.

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument signed by the Owner, Contractor, and Administrator, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order given by the Owner, 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.

**§ 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 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 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 Owner and Contractor shall attempt, in good faith, to negotiate the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. 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 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 and other general condition costs directly attributable to the change, including the adjustment of the Contract Time.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, and Contract Sum, 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.

§ 7.3.7 [intentionally deleted].

§ 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 Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines. The Owner'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 the adjustments in the Contract Sum and Contract Time, 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.

#### § 7.4 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 Agreement.

§ 8.1.3 The date of Substantial Completion is the date provided for in the Agreement, as modified from time-to-time, by the construction schedule approved by Owner and Contractor.

§ 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, then the Contract Time shall be extended for such reasonable time as the Owner and Contractor agree and the Contract Sum or GMP shall be equitably adjusted.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## 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

Where the Contract is based on a stipulated sum, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, 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, reasonably 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 reasonably require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 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 reasonably 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.

**§ 9.3.2** 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.

**§ 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.

#### **§ 9.4 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.

#### **§ 9.5 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 and only as permitted by applicable law, 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.

§ 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.

### § 9.6 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 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.

§ 9.6.5 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.

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### § 9.7 Failure of Payment

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 three additional days' notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

§ 9.8.1 The term "Substantial Completion" is defined in the Agreement.

§ 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 (the "Punch List"). 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 additional items of the Work shall be added to the Punch List. The Contractor shall complete or correct such item included on the Punch List. In such case, the Contractor shall then submit a request for another inspection by the Architect.

§ 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.

### § 9.9 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

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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.

**§ 9.10.2** 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, as provided for in the Contract Documents 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 and are in accordance with applicable law. 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.

**§ 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; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 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.

## **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.

### **§ 10.2 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.

§ 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.

§ 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. The Owner or Architect shall not enter those areas where construction is underway without the consent of the Contractor. The Owner, Architect, or their representatives shall check in at the Contractor's jobsite trailer before accessing the construction site.

**§ 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.

**§ 10.3 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 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.

**§ 10.3.3** To the fullest extent permitted by law, 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 shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The Contractor will procure and maintain the following insurance coverage with the following minimum limits of coverage:

##### **11.1.1.1 Workers' Compensation:**

Coverage A. Statutory Benefits –	minimum amount required by State law.
Coverage B. Employer's Liability –	\$1,000,000.00

##### **11.1.1.2 Commercial General Liability:**

Each Occurrence Limit -	\$1,000,000.00
Personal Injury/Advertising Injury -	\$1,000,000.00
Products/Completed Operations Aggregate Limit -	\$2,000,000.00
General Aggregate Limit - (including Products/Completed Operations)	\$2,000,000.00

##### **11.1.1.3 Automobile Liability**

Combined Single Limit	\$1,000,000
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§ 11.1.2 Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 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

§ 11.2.1 The Owner 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 Owner 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.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

#### § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive

claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. 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.

**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, and the cost of uncovering and replacement, shall be at the Contractor's expense.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years 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. 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 and to make a claim for breach of warranty. 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.

§ 12.2.2.2 The two-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.

§ 12.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 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 two-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, 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.

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

### § 13.3 Rights and Remedies

§ 13.3.1 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, which cost and expense thereof shall be borne by the Owner. 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.

§ 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.

## 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 30 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;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

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- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 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 repeatedly 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 repeatedly 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 repeatedly 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 unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 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.

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§ 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 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in 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 8 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 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.

§ 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.

##### § 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.

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

**§ 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.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 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 subject to good faith negotiation by the Owner and Contractor.

**§ 15.2.2 [intentionally deleted].**  
*(Paragraph deleted)*

**§ 15.2.3 [intentionally deleted].**

**§ 15.2.4 [intentionally deleted].**

**§ 15.2.5 [intentionally deleted].**

**§ 15.2.6** Either party may file for mediation if good faith negotiations do not result in a resolution of the Claim.

**§ 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,

**§ 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.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, shall be subject to mediation as a condition precedent to litigation.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order..

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*

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§ 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.)*

10%

§ 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.)*

Upon Substantial Completion of the Work, retention will be released to Contractor in accordance with Section 5.1.7.3 below.

§ 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.)*

Upon Substantial Completion of the Work, the Owner shall release the retention previously withheld, less an amount equal to 150% of the value of the punch list work to be completed. The balance of any retention withheld after Substantial Completion shall be released to the Contractor with final payment.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 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.

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**§ 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; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 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:

in accordance with the Act.

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

One and one-half percent (1.5%) per month

**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)*

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.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

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All costs and expenses incurred by Contractor as of the date of the termination together with Contractor's overhead and profit thereon.

§ 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)

Patric R Greer, CFO  
Edkey, Inc.  
1460 S. Home  
Mesa, AZ 85204  
Tele: 480-461-3200 ext. 10635  
PGreer@edkay.org

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

Keith Sabia, Principal in Charge  
Willmeng Construction, Inc.  
2048 N. 44<sup>th</sup> Street  
Suite 200  
Phoenix, AZ 85008  
Tele: 480-968-4755 ext. 29  
ksabia@willmeng.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 Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

#### § 8.5.2.

§ 8.6 Notice in electronic format, may be given 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.)

All notices shall be given in writing by U.S. Mail or electronically by email and addressed to the Owner or its representative (as provided in Section 8.2 above) or the Contractor or its representative (as provided in Section 8.3 above). Notice shall be deemed received by the other party five (5) working days after the postmarked date on the envelope or the next business day if sent electronically by e-mail.

§ 8.7 Other provisions:

8.7.1 Notwithstanding anything herein to the contrary, Contractor and Owner hereby agree to mutually waive and discharge any liability to each other for any consequential damages or losses, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, rent, profits, or financing.

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8.7.2 The Contractor is not accountable for any delays that, through no fault of the Contractor, are caused by the utility company including, but not limited to: no meter set, no CT set, or not having power that is required to complete the project per the city. Activities that are required to complete the project (C of O, Temporary C of O, or C of C) ten (10) working days prior to the C of O date to allow for final electrical commissioning, testing of fire alarms as applicable, testing and balancing mechanical equipment, final mechanical inspections, and final electrical inspections.

8.7.3 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner or other causes beyond the control of the Contractor, and not resulting from an act or neglect of the Contractor or its subcontractors, the Contract Time shall be extended and the Construction Sum shall be equitably adjusted.

8.7.4 The Owner shall retain the services of an Architect to prepare the plans and specifications for the project and shall be solely responsible for compensating the Architect. Owner acknowledges and understands that the Contractor is not a licensed design professional or responsible for the accuracy or correctness of the design set forth in the plans or specifications.

**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 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 [Intentionally deleted]

*(Paragraph Deleted)*

- .5 Drawings – see Exhibit E

Number	Title	Date
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- .6 Specifications

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

- .7 Addenda, if any:

Number	Date	Pages
--------	------	-------

NONE

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.)*

*(Paragraphs Deleted)*

**EXHIBIT A – INSURANCE AND BONDS**

**EXHIBIT B – COST ESTIMATE**

**EXHIBIT C – ASSUMPTIONS, CLARIFICATIONS, AND EXCLUSIONS**

*(Paragraph Deleted)*

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**EXHIBIT D – SCOPE OF WORK SUMMARY**  
**EXHIBIT E – DRAWING**

(Table Deleted)

(Paragraph Deleted)

(Table Deleted)

**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.)*

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



**OWNER** (Signature)

Patric R. Greer, CFO  
(Printed name and title)



**CONTRACTOR** (Signature)

Michael J. Mongelli, Partner/COO  
(Printed name and title)

Digitally signed by Mike Mongelli  
Date: 2019.12.04  
08:54:20-07'00'

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# AIA<sup>®</sup> Document A101<sup>™</sup> – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 27th day of November in the year 2019.  
*(In words, indicate day, month and year.)*

for the following **PROJECT**:  
*(Name and location or address)*

35,000 square feet of charter elementary and middle school on the approximately nine acres of partially unimproved land located east of the northeast corner of Roosevelt Street and Verrado Way in Buckeye, Arizona., as further described and set forth herein (collectively, the **“Project.”**)

**THE OWNER:**  
*(Name, legal status and address)*

Edkey, Inc.  
an Arizona nonprofit corporation  
1460 S. Home  
Mesa, AZ 85204  
Telephone Number: 480-461-3200  
Fax Number 480-649-0747

**THE CONTRACTOR:**  
*(Name, legal status and address)*

Willmeng Construction, Inc.  
2048 North 44<sup>th</sup> St., Suite 200  
Phoenix, AZ 85008  
Telephone Number 480-968-4755  
Fax Number: 480-557-6788  
Attention: Keith Sabia  
General Contractor License: B1-082904  
Commercial Engineering License: A-246341

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### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction. Article 11 of A201<sup>™</sup>-2017 contains additional insurance provisions.

**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

**ARTICLE A.2 OWNER'S INSURANCE**

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ A.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Causes of Loss	Sub-Limit
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**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
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**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the

Init.

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Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

**§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

**§ A.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage

Limits

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner and its Lender (if any), as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and its Lender (if any) as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:  
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

NOT APPLICABLE

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than **\$1,000,000** each occurrence, **\$2,000,000** general aggregate, and **\$2,000,000** aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than **\$1,000,000** per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ A.3.2.5** Workers' Compensation at statutory limits.

**§ A.3.2.6** Employers' Liability with policy limits not less than **\$1,000,000** each accident **\$1,000,000** each employee, and **\$1,000,000** policy limit.

*(Paragraph Deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

Duration of  
the express warranty period (not to exceed 2 years from the date of Substantial Completion)

**§ A.3.4 Performance Bond and Payment Bond**

*(Paragraph Deleted)*

*(Paragraph Deleted)*

*(Table Deleted)*

*(Paragraph Deleted)*

**The Contractor shall provide surety bonds from a company or companies authorized to issue surety bonds in the jurisdiction where the project is being located, as follows, from a company that meets the standards in the Administration Agreement:**

**Payment Bond      Penal Sum of \$6,649,181.00**

**Performance Bond    Penal Sum of**

**\$6,649,181.00**

*(Table Deleted)*

| *(Paragraph Deleted)*

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Not Applicable



**EXHIBIT B - COST ESTIMATE**

Project: **Buckeye Elementary**  
 Location: **Buckeye, AZ**  
 Architect: **SPS+ Architect**  
 Est. Date: **8-Oct-19**  
 Revision #1: **18-Oct-19**  
 Revision #2: **28-Nov-19**

**Gross Area: 35,000 sf**

Layout of Bldg. based upon Overall Floor Plan dated 11/05/19  
 Façade materials is based upon % allowance of: masonry veneer, Hardi-riding, EIFS and glass.  
 Classrooms, kitchen & ancillary areas = 18' top parapet, 15' top roof, 10' ceilings  
 Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I	Description	Bid	Div. Subtotal	\$/SF of Gross Area:	Notes
<b>1 Design &amp; Engineering</b>			<b>Division - Total: 1,500.00</b>		<b>0.04</b>	
	1310.00	Design & Engineering	By Owner			Architectural, Interior, Civil, SWPP, Landscape, Structural, Mechanical, Plumbing & Electrical Design/Engineering
	1452.30	Site Plan Review Fees, Special Inspection, Alluvial Survey, Soils Rpt. & Phase I Environmental	By Owner			
	1002.50	Reimbursables, Plans/Specs.	1,500.00		0.04	
<b>1 Permits/Develop. Fees/Utility Company Charges</b>			<b>Division - Total: N/A</b>			
	1215.20	Plan Review & Permit Fees	By Owner			
	1216.00	Electric, Phone, Internet, Gas Company Charges, Costs & Fees	By Owner			
<b>1 Construction Cleanup</b>			<b>Division - Total: 29,952.50</b>		<b>0.86</b>	
	1741.30	General Clean-Up	18,402.50		0.53	Maintain clean and safe construction site
	1744.30	Construction Rough And Final Clean	11,550.00		0.33	Final clean project area at completion
<b>2 Site Construction</b>			<b>Division - Total: 719,889.67</b>		<b>20.57</b>	
	2210.00	Construction Field Staking	31,250.00		0.89	Control points, pad elevation, stake building corners, curbs, hardscape, utilities.
	2320.00	Materials Testing	12,250.00		0.35	Allowance for materials testing: soils, ABC, concrete, pavement.
	1571.30	Dust & Erosion Control - Allowance	42,300.00		1.21	SWPP Implementation, maintenance, inspections; dust control permit and site watering, street sweeping.
	31100.10	Earthwork	86,691.67		2.48	Scarify 12" at existing building pad, recompact and recertify pad including cleanup. Cut a portion of the building pad for installation of drop off and rear delivery drive. Finish grading of pad at sidewalk, landscape and playground areas. EXCLUDES: hard dig, rock excavation, unsuitable soils, lime stabilization and re-grading of above ground detention basins.
	31310.00	Termite Pretreat	4,200.00		0.12	
	32120.00	Paving	282,732.00		8.08	Assumed 3" AC on 6" ABC at proposed drop off lane & rear delivery drive. Assumed 3" AC on 6" ABC at missing areas along rear of pad and drive entrances. Assumed 1" top coat pavement with tack at all existing paving areas previous paved up to the base coat. We assume existing paving meets requirements for fire truck traffic. Additional coring to determine thickness of paving will be required to verify. EXCLUDES: crack seal and/or repairs to existing pavement.
	32170.00	Striping, Symbols & Signs	12,896.00		0.37	
	32800.00	Landscape & Irrigation	228,020.00		6.54	Allowance cost for trees, shrubs, decomposed granite for landscape areas within the pad, existing parking islands and above ground basin adjacent to building pad. Irrigation controller and piping.
	32800.10	Turf Field	18,750.00		0.54	Allowance cost for a 100'x150' grass play field, assumed to be hydro seeded. EXCLUDES: artificial turf.



**EXHIBIT B - COST ESTIMATE**

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 Location: **Buckeye, AZ**  
 Architect: **SPS+ Architect**  
 Est. Date: **8-Oct-19**  
 Revision #1: **18-Oct-19**  
 Revision #2: **26-Nov-19**

Gross Area: **35,000 sf**

Layout of Bldg. based upon Overall Floor Plan dated 11/05/19  
 Façade materials is based upon % allowance of: masonry veneer, Hardi-riding, EIFS and glass.  
 Classrooms, kitchen & ancillary areas = 18' top parapet, 15' top roof, 10' ceilings  
 Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I	Description	Bld	Div. Subtotal	\$/SF of Gross Area:	Notes
<b>2 Utilities</b>			<b>Division - Total:</b>		<b>84,525.00</b>	<b>2.42</b>
	33100.10	Sanitary Sewer	9,025.00		0.28	Tie into existing on site sewer service and extend assumed 6" PVC service to new building (250'f).
	33100.20	Domestic Water Line	19,000.00		0.54	Tie into existing capped services, extend assumed 2" domestic service to building (250'f), provide 1" landscape meter and backflow preventer. EXCLUDES: water meter/pit and backflow preventer.
	33100.30	Fireline	35,625.00		1.02	Tie into existing capped service and extend assumed 6" service to building (250'f) and fire riser at building. EXCLUDES: water meter/pit, backflow preventer and gate valve.
	33100.40	Roof Drain Piping	20,875.00		0.60	Assumed 4" PVC piping to pickup building roof drains and scuppers and tie into existing storm drain piping (300'f) with grade cleanouts.
	33200.00	Storm / Drywalls / Basins	Excluded			We assume this parcel will be granted use of existing on site above/below ground basins and existing drywells and that they met the runoff requirements. We have not figured any additional basins, drywells and inspection/service/repair to existing drywells in this proposal.
<b>2 Site Concrete</b>			<b>Division - Total:</b>		<b>144,232.50</b>	<b>4.12</b>
	32130.00	Vertical Curb & Gutter, Single Curb	36,540.00		1.04	Single vertical curb around building pad and queue drop off/pick up lane.
	32130.10	Sidewalks / Handicap Ramps / Stage Ramp	83,655.00		2.39	3,362'f of 6' wide standard grey sidewalk, (12) ADA Ramps and exterior poured ramp to Gym stage area. EXCLUDES: modification of existing parking islands.
	32130.20	Offsite Concrete & Drive Entrances	Existing			
	32130.30	Misc. Site Concrete	8,850.00		0.25	Double trash enclosure pad, set and fill (6) bollards at trash enclosure and SES pad.
	32130.40	Basketball Court	15,187.50		0.43	45'x75' single basketball court
<b>3 Concrete</b>			<b>Division - Total:</b>		<b>319,602.67</b>	<b>9.13</b>
	3001.00	Building Concrete	319,602.67		9.13	Concrete perimeter spread footings, stem wells, column footings, 4" slab on grade on 4" ABC unreinforced with 15mil vapor barrier and stage platform with structural backfill and stairs.
<b>4 Masonry</b>			<b>Division - Total:</b>		<b>323,771.86</b>	<b>9.25</b>
	32312.10	Site Masonry	5,000.00		0.14	6' tall x 8" thick split face integral color double trash enclosure. EXCLUDES: site screen walls.
	4001.00	Building Masonry	231,648.00		6.62	12" standard gray masonry solid grouted walls (32' tall) at gym / stage area
	4400.00	Masonry Veneer	87,123.86		2.49	Allowance cost of (17%) overall façade for masonry veneer finish based upon \$19/sf
<b>5 Metals</b>			<b>Division - Total:</b>		<b>36,853.50</b>	<b>1.05</b>
	5100.00	Structural - Columns/Beams, Misc.	20,288.50		0.58	Structural steel columns, beams at exterior entry canopy and interior student union area. Misc lintels and ledgers at Gym and stage area
	5400.00	Misc Metals	15,455.00		0.44	Roof ladders (2ea) and stage ramp railings
	5500.20	Bollards	1,110.00		0.03	(6) pipe bollards at trash enclosure

**EXHIBIT B - COST ESTIMATE**

Project: **Buckeye Elementary**  
Location: **Buckeye, AZ**  
Architect: **SPS+ Architect**  
Est. Date: **8-Oct-19**  
Revision #1: **18-Oct-19**  
Revision #2: **26-Nov-19**

**Gross Area: 35,000 sf**

Layout of Bldg, based upon Overall Floor Plan dated 11/05/19  
Façade materials is based upon % allowance of: masonry veneer, Hardi-siding, EIFS and glass.  
Classrooms, kitchen & ancillary areas = 18' top parapet, 15' top roof, 10' ceilings  
Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I	Description	Bid	Div. Subtotal	\$/SF of Gross Area:	Notes
<b>6 Woods, Plastics &amp; Composites</b>			<b>Division - Total:</b>		<b>646,720.68</b>	<b>18.48</b>
	6052.30	Panelized Wood Roof Structure	78,331.93		2.24	Panelized hybrid wood / steel roof structure over Gym & stage
	6100.00	Rough Carpentry	401,951.25		11.48	Wood framed structure at Classrooms, Offices, Kitchen and Mechanical rooms 18' tall; wood trusses/plywood sheathing, wood framed mansard roofs, interior / exterior walls, bearing and non-bearing, shear walls with plywood sheathing
	6400.00	Cabinets/Casework	156,057.50		4.46	Plastic laminate millwork: upper/lower cabinets, plam tops in breakroom / classrooms, plam lower/upper cabinets with plam top in work room and plam countertop with supports at reception
	6722.00	FRP	10,380.00		0.30	Full height FRP at Kitchen and Dry Storage walls.
<b>7 Thermal &amp; Moisture Protection</b>			<b>Division - Total:</b>		<b>367,427.88</b>	<b>10.50</b>
	7210.00	Insulation	69,700.00		1.99	R-38 batt insulation vinyl face at underside of roof deck, R-19 and 3-1/2" sound batts at interior partitions. EXCLUDES: sound batt insulation above ceilings
	7310.00	Built up Roofing	168,000.00		4.80	4-ply built up roof system over plywood deck
	7400.00	Hardi Siding	39,227.88		1.12	Allowance cost of (10%) overall façade for siding finish based upon \$14.75/sf
	7500.00	Roof Flashings	32,800.00		0.94	Flashing (10) roof/overflow drains, (19) RTU/exhaust fans and (9) plumbing and electrical penetrations
	7700.20	Scuppers & Downspouts	9,000.00		0.26	(6) thru wall scuppers with downspouts at Gym
	7700.30	Cap Flashing & Parapet Walls	33,350.00		0.95	Parapet coping and counter flashings
	7700.10	Roof Hatch	3,100.00		0.09	(2) roof hatches with safety ladder up
	7920.00	Caulking	12,250.00		0.35	Site joint sealants and misc. caulking
<b>8 Openings</b>			<b>Division - Total:</b>		<b>135,072.50</b>	<b>3.86</b>
	8110.00	Doors, Frames & Hardware	75,875.00		2.17	(8) Single, (7) pairs double hollow metal doors and frames, (42) single, (1) pair double solid core wood doors - factory finished in knock down frames, (1) interior hollow metal sidelight frame, \$5,800 allowance for electrified hardware. EXCLUDES: access control system and card reader devices.
	8400.00	Exterior Windows	31,000.00		0.89	Exterior aluminum windows nail fin, fixed dual pane with low e coating.
	8800.00	Interior Glazing	4,222.50		0.12	1/4" clear tempered glass in door lite kits and at interior hollow metal sidelight frame
	8800.10	Exterior Storefront	19,300.00		0.55	Allowance cost for (3) pairs of 6'x7' and (1) pair 3'x7' aluminum storefront entry/Vestibule doors with 245sf of aluminum storefront system (clear anodized) with 1" insulated, solarban 60 tinted glass.
	8870.00	Window Films	Excluded			
<b>9 Finishes</b>			<b>Division - Total:</b>		<b>305,443.93</b>	<b>8.73</b>
	9200.00	Drywall	133,832.00		3.82	5/8" Drywall over wood framed partitions, cement board at tile walls, hard lid ceilings in hallways/restrooms
	9240.00	EIFS System	101,100.63		2.89	Allowance cost of (40%) overall façade for EIFS finish based upon \$9/sf. EXCLUDES: Gym and stage portion of building.
	9500.00	Acoustical Ceiling	70,511.30		2.01	2'x4' square edge lay-in acoustic ceiling tiles in 15/16" grid and 2'x4' vinyl faced ceiling tiles in 15/16" grid at kitchen / dry storage

**EXHIBIT B - COST ESTIMATE**

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Layout of Bldg. based upon Overall Floor Plan dated 11/05/19  
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 Classrooms, kitchen & ancillary areas = 18' top parapet, 15' top roof, 10' ceilings  
 Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I	Description	Bid	Div. Subtotal	\$/SF of Gross Area:	Notes
<b>9</b>	<b>Flooring/Ceramic</b>		<b>Division - Total:</b>	<b>176,320.92</b>	<b>5.04</b>	
	9300.00	Ceramic / Quarry Tile	50,124.00		1.43	Allowance cost of \$10/sf for floor tile, \$12/sf for wall tile at 'wet walls' only and \$12/lf for base tile at restrooms. Allowance cost of \$20/sf for quarry tile and \$12/lf with base at Kitchen / Dry Storage
	9660.00	Polish / Sealed Concrete	16,361.25		0.47	Single coat rolled applied 'clear' sealer at Mechanical rooms and polish concrete at all interior corridor hallways
	9680.00	Carpeting	65,065.67		1.88	Allowance cost of \$32/sy for carpet tile at Classrooms and back of house office areas
	9680.20	LVT Flooring	38,115.00		1.09	Allowance cost of \$5.50/sf for LVT flooring at Gym / Stage area
	9680.30	Base	6,654.00		0.19	4" vinyl cove base and transition strips
<b>9</b>	<b>Painting</b>		<b>Division - Total:</b>	<b>74,326.00</b>	<b>2.12</b>	
	9900.00	Interior Painting	59,548.60		1.70	Paint interior partitions, interior of CMU walls, hard lids and soffits, metal doors/frames, hollow metal window frames, and roof ladder(s)
	9900.10	Exterior Painting	14,777.40		0.42	Paint exterior masonry walls at Gym and Stage, metal doors/frames, trash enclosure gates, bollards, Hardi sliding, ramp railings, etc
<b>10</b>	<b>Specialties</b>		<b>Division - Total:</b>	<b>117,200.00</b>	<b>3.35</b>	
	10110.00	White / Tack Boards	41,000.00		1.17	(40) - 4'x8' white boards and (20) - 4'x8' tack boards at Classrooms. EXCLUDES: Smart Boards
	10140.00	Interior & Exterior Signage	4,080.00		0.12	ADA Braille room signage. EXCLUDES: exterior logo and school name signs
	10140.01	Monument Sign	20,000.00		0.57	Allowance cost of \$20,000 for exterior monument sign
	10210.00	Partitions & Accessories	33,020.00		0.94	Baked enamel toilet partitions / urinal screens and stainless steel restroom accessories
	10440.00	Fire Extinguishers	7,500.00		0.21	(25ea) - 8lb fire extinguishers in stainless steel in semi-recessed cabinets
	10440.10	Knox Box	1,100.00		0.03	(2) building fire department knox boxes
	10750.00	Flagpoles	10,500.00		0.30	(3) - 30' SS flagpoles. EXCLUDES: flags
<b>11</b>	<b>Equipment</b>		<b>Division - Total:</b>	<b>239,325.00</b>	<b>6.84</b>	
	11120.00	Fence & Gates	114,825.00		3.28	(2 pairs) - 12'-0" x 6'tall tube frame gates with sheet metal at trash enclosure, (1,075lf) of 6' wrought iron fence around school perimeter, (330'lf) of 6' wrought iron fence around Kinder play area, (2 pairs) - double gates and (4 ea) - single gates
	11400.20	Gym Equipment	19,500.00		0.56	(2) basketball goals with rims/nets and scoreboard
	11680.00	Playground Equipment & Play Surface Allowance	100,000.00		2.86	Allowance cost for Kinder playground equipment & play surface and Upper grade playground equipment & play surface
	11690.00	Outdoor Basketball Equipment	5,000.00		0.14	(2) basketball goals with rims/nets at exterior basketball court
<b>12</b>	<b>Furnishings</b>		<b>Division - Total:</b>	<b>44,800.00</b>	<b>1.28</b>	
	12200.00	Window Treatments	10,500.00		0.30	Allowance cost for manually operated window blinds
	12300.00	Seating, Booths & Tables	by Owner			
	12600.20	Stage Curtains	10,000.00		0.29	Allowance cost for stage curtains
	12500.30	Acoustic Wall Panel - Allowance	24,300.00		0.69	Allowance cost for fabric wall panels based upon (30%) of Gym wall coverage
	12590.00	Systems Furniture & FF&E	by Owner			



**EXHIBIT B - COST ESTIMATE**

Project: **Buckeye Elementary**  
 Location: **Buckeye, AZ**  
 Architect: **SPS+ Architect**  
 Est. Date: **8-Oct-19**  
 Revision #1: **18-Oct-19**  
 Revision #2: **26-Nov-19**

Gross Area: **35,000 sf**

Layout of Bldg. based upon Overall Floor Plan dated 11/05/19  
 Façade materials is based upon % allowance of: masonry veneer, Hardi-boarding, EIFS and glass.  
 Classrooms, kitchen & ancillary areas = 18' top parapet, 15' top roof, 10' ceilings  
 Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I	Description	Bid	Div. Subtotal	\$/SF of Gross Area:	Notes	
<b>21</b>	<b>Fire Suppression</b>	<b>Division - Total:</b>			<b>87,500.00</b>	<b>2.50</b>	
	21100.00	Fire Protection System	87,500.00		2.50	Fire riser, main and branch lines, sprinkler drops and uprights as required to meet NFPA and local codes.	
<b>22</b>	<b>Plumbing</b>	<b>Division - Total:</b>			<b>294,200.00</b>	<b>8.41</b>	
	22100.00	Plumbing System	294,200.00		8.41	Sewer main, Domestic water stub, hose bib. PVC roof drains and overflow drains. Waste, vent, and domestic water piping for plumbing fixtures; water closets, urinals, restroom faucets, mop sinks, water heaters, drinking fountains, floor drains/sinks. Standard commercial grade plumbing fixtures. EXCLUDES: auto-operating fixtures	
<b>23</b>	<b>HVAC</b>	<b>Division - Total:</b>			<b>384,132.50</b>	<b>10.98</b>	
	23050.00	HVAC System	337,732.50		9.65	Roof top package units: (19) - 3.5-ton units and (1) - 7.5-ton unit at classrooms, (6) - 5-ton units and (1) - 7.5-ton unit at hallways/kitchen/offices, (3) - 10 - ton and (1) - 6 ton units at gym, restroom exhaust fans. Duct distribution, T-stats, condensate drains, duct smoke detectors. Condensates for HVAC equipment. EXCLUDES: building management system	
	23050.20	Controls	19,200.00		0.55	(32) standard programmable thermostats	
	23080.00	Test & Balance	27,200.00		0.78		
<b>26</b>	<b>Electrical</b>	<b>Division - Total:</b>			<b>698,740.00</b>	<b>19.96</b>	
	26050.00	Electrical Panels, Feeders, Distribution & Fixtures	549,190.00		15.69	New SES, transformer, feeders, conduit stubs from SES into building. Standard building light fixture package, canopy lights. Circuit breaker panels and transformers, power distribution, circuit/connect mechanical equipment, floor boxes. Power to owner provided equipment. Telco/data conduit rough-in. EXCLUDES: startup and commissioning of Owner installed equipment.	
	26050.10	Site Lighting	61,900.00		1.77	Site lite poles (13) double head and (8) single head (assumed 23'tall standard 'shoe box' type fixtures). The pole bases are existing in which we assume to reuse along with the conduits/pull strings and intercept the conduits with a pull boxes to redirect the conduits to the new building. NOTE: There is an excess amount of existing pole bases for this site not typical for parking lighting in which we are only installing to meet typical parking coverage amount. EXCLUDES: additional site light poles at all existing pole bases, site light conduits decorative site light poles, lighting at turf field.	
	27200.00	Interior Telephone & Data Conduits	5,250.00		0.15	Conduit rough-in to accessible ceiling. Cabling and devices by Owner.	
	27200.50	Sites - Secondary, Telco & Data Conduits	30,000.00		0.86	Allowance cost to extend existing secondary and telco/data conduit to new building. Primary and telco/data conduit assumed existing to building pad existing transformer pad location. EXCLUDES: transformer pad, utility company design engineering, installation fees, additional/new conduit outside building pad area to meet current utility co standards.	
	28310.00	Fire Life Safety Systems	52,500.00		1.50	Code required fire alarm system, remote dialer, fire riser flow and tamper switch, external bell.	
<b>Subtotal COST BREAKDOWN:</b>				<b>5,231,537.11</b>	<b>149.47</b>		
<b>1</b>	<b>General Conditions/Supervision</b>	<b>Division - Total:</b>			<b>329,936.33</b>	<b>9.43</b>	
	1000.01	General Conditions	103,672.18		2.96	Assumed 2/1/2020 construction start with substantial completion by 7/24/2020.	
	1311.05	Supervision/Project Management	226,264.15		6.46		



**EXHIBIT B - COST ESTIMATE**

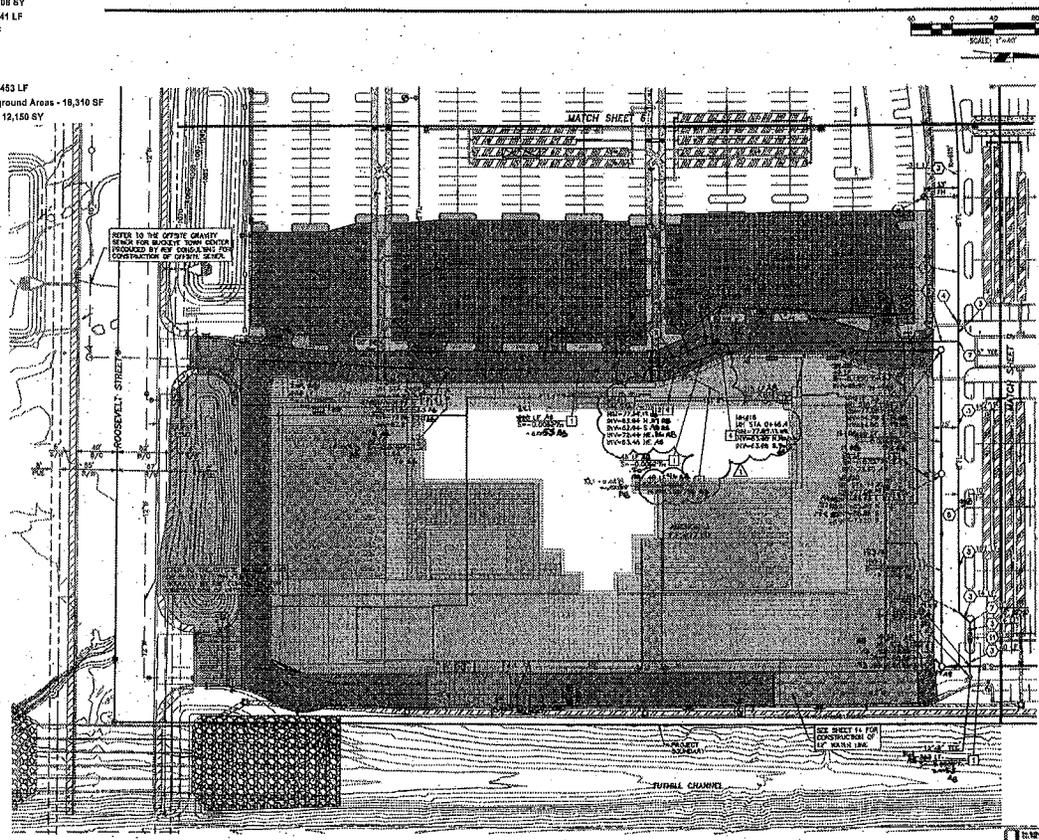
Project: **Buckeye Elementary**  
 Location: **Buckeye, AZ**  
 Architect: **SPS+ Architect**  
 Est. Date: **8-Oct-19**  
 Revision #1: **18-Oct-19**  
 Revision #2: **28-Nov-19**

Gross Area: **35,000 sf**

Layout of Bldg, based upon Overall Floor Plan dated 11/05/19  
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 Gym / Stage = 30' top parapet, 22'-6" clear height

Division	C.S.I.	Description	Bid	Div. Subtotal	\$/SF of Gross Area:	Notes
1211.70		CONTRACTOR'S CONTINGENCY (4.5%)		250,266.30	7.16	
0120.00		GENERAL LIABILITY INSURANCE		63,225.18	1.81	
0110.00		BUILDERS RISK INSURANCE - WOOD FRAME		19,222.89	0.55	
0190.00		PAYMENT & PERFORMANCE BOND		44,293.40	1.27	
0160.00		SALES TAX (BUCKEYE, AZ - 6.045%)		379,030.60	10.83	
0140.00		CONTRACTOR'S OVERHEAD & PROFIT		331,669.37	9.48	
<b>PreCD BUDGET - TOTAL:</b>				<b>\$6,649,181.18</b>	<b>\$189.98</b>	

- 4 - Perimeter Fence - 1,062 LF
- 8 - Curb - 2,606 LF
- 9 - Landscaping - 114,409 SF
- 02 - 3" A.C. on 6" ABC - 2,208 SF
- 126 - Bldg Site Layout - 1,141 LF
- 127 - Kinder Fence - 331 LF
- 128 - Ball Court - 74 LF
- 130 - Turf Field - 148 LF
- 134 - Sidewalk - 3,318 LF
- 136 - Fire Lane Striping - 1,453 LF
- 138 - Artificial Turf @ Playground Areas - 18,310 SF
- 139 - 2" Top Coat w/ Tack - 12,150 SY



**WATER CONSTRUCTION NOTES**

- 1. INSTALL 8" 2000 CLASS 200 PVC WATER LINE, MIN COVER 36" MIN. 4' OF COVER IF AS SHOWN.
- 2. INSTALL 8" WQAD MAG STD DET 581-1, TYPE C.
- 3. INSTALL 8" 2000 CLASS 200 PVC WATER LINE, MIN COVER 36" MIN. 4' OF COVER IF AS SHOWN.
- 4. INSTALL 8" WQAD MAG STD DET 581-1, TYPE C.
- 5. INSTALL 1/2" VIBRATED 1/2" D.I.P. CLASS 500 WATER LINE.
- 6. WATER TRACES WITH MINIMUM 4" COVER. 1/2" PER PLAN.
- 7. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 8. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 9. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 10. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 11. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 12. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 13. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 14. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 15. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 16. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 17. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 18. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 19. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.
- 20. INSTALL 1/2" WATER VALVE, BOX AND COVER PER MAG STD DET 581-1, TYPE C.

**SEWER CONSTRUCTION NOTES**

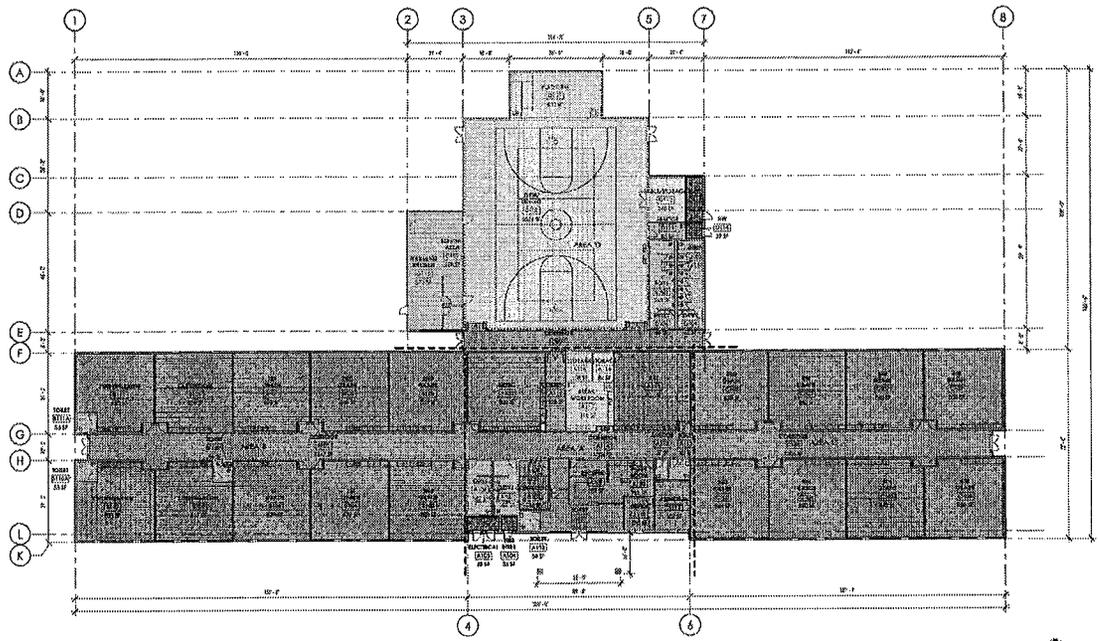
- 1. INSTALL 8" PVC (SD 35) 48" AND 36" PER PLAN.
- 2. MINIMUM COVER PER MAG STD DET 400.
- 3. INSTALL 8" PVC (SD 35) PER MAG STD DET 400.
- 4. PER PLAN SLOPE + GROUND (FLAT) UNLESS NOTED OTHERWISE. VERIFY SLOPE IS AT BUILDING CONNECTION.
- 5. INSTALL 8" PVC (SD 35) PER MAG STD DET 400.
- 6. PER PLAN SLOPE + GROUND (FLAT) UNLESS NOTED OTHERWISE. VERIFY SLOPE IS AT BUILDING CONNECTION.
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- 20. PER PLAN SLOPE + GROUND (FLAT) UNLESS NOTED OTHERWISE. VERIFY SLOPE IS AT BUILDING CONNECTION.

**BUCKEYE PARKWAY CENTER**  
**WATER & SEWER PLANS**

DATE	DESCRIPTION
MAY 2007	1" & 4" PER PLAN
PROJECT NUMBER	45102588
SHEET NO.	8
TOTAL SHEETS	11

DESIGNED BY: [Signature]  
 CHECKED BY: [Signature]  
 APPROVED BY: [Signature]

- 110 - Quarry Floor Tile - 206 SF
- 111 - Ceramic Floor Tile - 1,419 SF
- 112 - 1" x 1" - 4,831 SF
- 113 - Sealed Concrete - 349 SF
- 114 - Polish Hallways - 1,349 SF
- 115 - Carpet - 16,326 SF



**OVERALL FLOOR PLAN**  
1/16/19

1/16/19 - 05:43:37  
NORTH

**S+P+S ARCHITECTS**  
 S+P+S ARCHITECTS, LLP  
 2001 W. WALDO ROAD  
 TUCSON, AZ 85708  
 TEL: 480.791.0825  
 FAX: 480.791.0200  
 www.spsarchitects.com

**NEW KEY CHARTER SCHOOL**  
 ED KEY CHARTER SCHOOL  
 STREET ADDRESS  
 BUCKEYE, ARIZONA  
 OVERALL 1ST FLOOR PLAN

**SD SET**  
 THIS DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE USER OF THIS DRAWING SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REGULATORY APPROVALS.

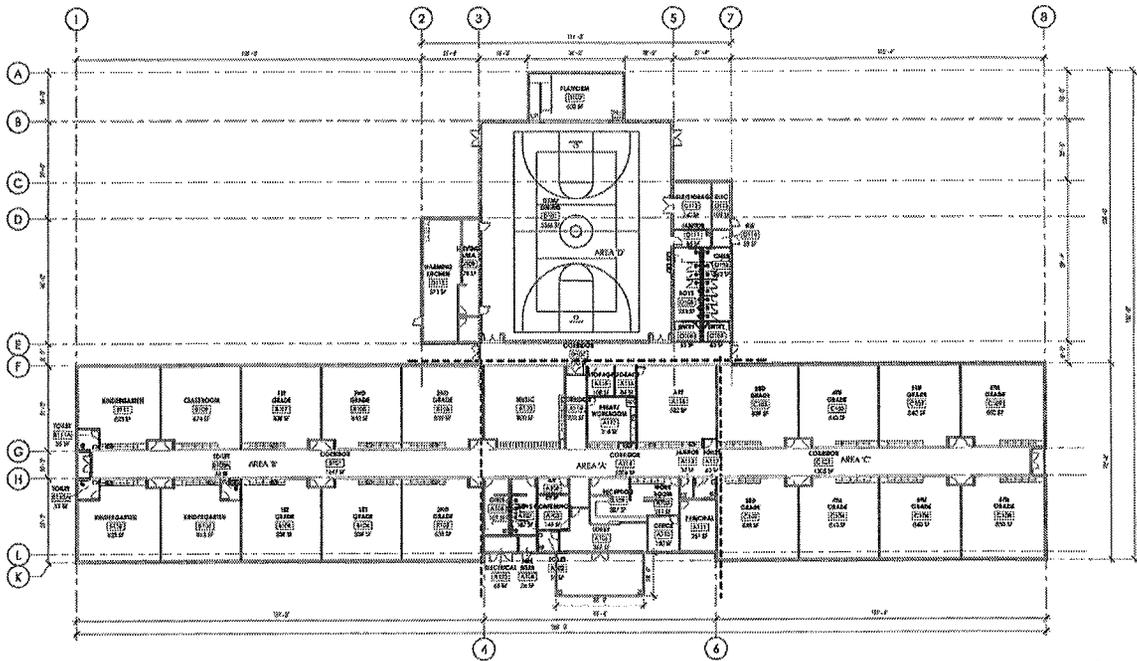
REVISIONS BY: [Signature]  
 DRAWN BY: [Signature]

ORIGINAL ISSUE  
 DATE: 11-05-19  
 JOB NO: 1901  
 SHEET: A101

C:\Users\jgarcia\Documents\Projects\1901\1901\_School\1901\_School\_01.dwg  
 11/12/2019 11:16 AM



- 100 - Exit Walk 246 - 101 - 100 LF
- 101 - Exit Walk 246 - 102 - 101 LF
- 102 - Exit Walk 246 - 103 - 102 LF
- 103 - Exit Walk 246 - 104 - 103 LF
- 104 - Exit Walk 246 - 105 - 104 LF
- 105 - Exit Walk 246 - 106 - 105 LF
- 106 - Exit Walk 246 - 107 - 106 LF
- 107 - Exit Walk 246 - 108 - 107 LF
- 108 - Exit Walk 246 - 109 - 108 LF
- 109 - Exit Walk 246 - 110 - 109 LF



**OVERALL FLOOR PLAN**  
DATE: 06-24-15

BUCKEYING - 35142.BP

**S P S +**  
**ARCHITECTS**  
 3777 N. HIGHLAND  
 UNIT E, VALDREHOGG  
 SCOTTSDALE, AZ 85258  
 TEL: 480.970.0000  
 FAX: 480.970.0000  
 sbs@spstarch.com

**NEW K-2 SCHOOL**  
**ED KEY CHARTER SCHOOL**  
 STREET ADDRESS  
**BUCKEYE, ARIZONA**  
**OVERALL 1ST FLOOR PLAN**

**SD SET**  
THIS DOCUMENT IS THE PROPERTY OF SPS+ ARCHITECTS AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF SPS+ ARCHITECTS.

REVIEWED BY: *[Signature]*  
 DRAWN BY: *[Signature]*

ORIGINAL ISSUE  
 DATE: 11.8.2019  
 JOB NO: 1901  
 SHEET:

**A101**

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## Exhibit C

### Assumptions, Clarifications and Exclusions

#### Assumptions, Clarifications & Exclusions

- The Willmeng cost estimate is based on "Overall 1<sup>st</sup> Floor Plan" provided by SPS+ Architects, LLP dated November 05, 2019.
- It is assumed that where final design deviates from the scope of work provided in Exhibit D the Owner will direct the architect to modify the design and/or specification, or will issue a change order to the contract.
- No soils report has been provided – it is assumed that any soils stabilization or mitigation such as over-excavation & re-compaction, lime stabilization, or imported engineered fill has been completed as part of the pad ready build out.
- All FF & Es are to be provided by the Owner and not included in this GMP.
- All Franchise Utility Company Fees and agreements are by Owner.
- Willmeng will not be performing any major scope in regards to "self-performing".
- Payment/Performance Bonds are included.
- Materials Testing is included for this scope of work.
- Buckeye Sales Tax is included.
- No alternates were taken in this GMP.
- Low voltage cabling, telephone system, paging system, wireless network, or CCTV is assumed to be by Owner. Rough-in (conduits and boxes with pull string only) for special systems is included in electrical cost by Willmeng.
- Punch list work will be complete no later than thirty (30) days after the Substantial Completion Date. The punch list will be mutually agreed on by the Owner and Willmeng.
- See Exhibit D – "Scope of Work Summary" for additional allowances, inclusions and exclusions.
- Willmeng will purchase and maintain Builder's Risk insurance for the project which will be considered a cost of the work.
- Willmeng will not be Responsible for Delays due to: (i) acts of God; (ii) acts of terrorism; (iii) shortages of materials beyond Willmeng's control; (iv) Government imposed stop orders (Willmeng will be responsible for construction Inspections and approvals); (v) design errors and omissions; (vi) Owner-imposed increases in Scope of Work; or (vii) causes beyond Willmeng's control.
- We include a certified test and report for duct detector shutdown if applicable. Plus full test and balance report of entire HVAC system and comfort balance (per plan requirements).
- Cost estimate is based on notice to proceed date of January 23<sup>rd</sup>, 2020 and an estimated construction duration of six months including punch list work.

#### Standard Willmeng Exclusions

#### Design Costs

- Design & Engineering Fees; Architectural, Interior Design, Structural, Mechanical, Plumbing, Electrical, Civil, SWPPP, Landscaping.



Edkey – Verrado Elementary School

## Exhibit C

### Assumptions, Clarifications and Exclusions

#### Standard Willmeng Exclusions (Continued)

- Plan Review Fees, Building/Site/Offsite Permit Fees, Development Fees, Water Tap & Meter Costs, other such or Special Fees or Bonds – unless specifically listed as included & outline in this GMP.
- The cost of Special Inspections; Structural, Plumbing, Mechanical, Electrical or Other. Coordinated by Willmeng.
- Power Company, Phone Company, Gas Company and Internet Company deposits for service or other utility fees and utility work.
- Costs resulting from changes to the plans or Scope of Work made by Owner, Architect, Engineers, Consultants or any City, State or governmental agency.
- Preparation of As-built drawings in any form of AutoCAD.
- Design & Engineering coordination between the Soils Report and the final Engineered Architectural, Civil and Landscape drawings and/or any error, omissions, inconsistencies or conflicts in or between these documents.

#### Contract Provisions

- Cost of Performance Bonds or other bonds for Subcontractors.
- Cost increases in Sales Tax rates; such cost increases shall be borne by the Owner.

#### Construction Specific Provisions:

- Extension of any utilities to project site, offsite improvements in general, unless specifically identified in Exhibit D and specifically listed as included & outlined in this estimate.
- Costs of security monitoring for the project during construction.
- Relocation, replacement or any damage or extra work caused by concealed conditions on the Project; building, onsite and offsite, including but not limited to utilities, Special crossover (i.e. High Pressure Gas Line, Encased Utilities not identified) any existing underground work or surface conditions, unless specifically identified and clearly required per the Contract Documents.
- Discovery, Inspection, surveys, abatement or removal of any hazardous material, including, but not limited to Asbestos, Mold, PCB, Radon or Petroleum Hydrocarbon or any other such types of materials or conditions.
- Repair or Replacement of any Existing Code Violation work; concealed or not concealed, unless specifically noted on the Contract Documents to be repaired or replaced.

#### Project Specific Provisions

- Furniture or equipment packing, rigging, or moving.

## Exhibit C

### Assumptions, Clarifications and Exclusions

#### Project Specific Exclusions (Continued)

- Bead blasting or acid etching of floor slab.
- Any colored concrete (site or building)
- X-Ray of slab, walls or other.
- Sandblasting as a form of cleaning for steel or other metals
- Rigid insulation board and tapered insulation board over plywood roof deck
- Keying or Re-Keying of locksets. Keying Meeting will take place to produce key cores that will be handed to Owner upon completion/turn-over.
- Seismic Bracing, Lateral Bracing, 45 degree Splay wires, Compression post.
- Any required stamp from the Design Engineer is excluded.
- Audio-Video Systems, Monitors/TV's, Sound, Sound masking systems.
- Baguettes / Bench Seats, File Rm. Shelving, Tables.
- Pre-Action or FM200 Types Systems.
- Building energy management system.
- Play field lighting
- Modifications to or replacement of electrical primary and/or secondary conduit, or telecommunications conduit rough-in to comply with current utility company requirements.
- Trees/Plant sizes per caliper size.
- Automatic gates and/or gate operators.
- Walk-in cooler and/or freezer – assumed to be part of Owner provided and installed FF&E
- Kitchen equipment; warming ovens, stainless steel serving tables, three compartment sink, etc – assumed to be part of Owner provided and installed FF&E

## Exhibit D

### Scope of Work

#### 01 – General Requirements

- It is assumed this project will be completed in (1) phase totaling (6) month construction duration. Scope of work to be as follows:
  - o **School Building**
    - Construct new School building, exterior playground areas, turf field and remaining site work.
    - Pricing is based upon 1-page layout plan dated 11/05/19.
    - We based the scale of this building for the classrooms, kitchen and ancillary areas as 18' to top of parapet and 15' to roof structure; gymnasium / stage area as 30' to top of parapet and 22' clear height.
    - Façade finishes are based upon a percentage of the overall façade envelope and noted herein.
  - o **Site work**
    - Scarify, re-compact and re-certify existing building pad.
    - Create new fire / drop off lane to north of building.
    - Create new delivery drive from existing rear drive lane to building.
    - Infill pave areas where pavement was not originally installed on east drive.
    - Clean existing pavement, apply tack coat and 1" asphalt over existing pavement, and provide striping and signage as code requires.
    - Extend existing on-site storm, sewer, domestic and fire services to building.
    - New electrical utility secondary conduit rough-in from existing transformer pad and extend to new building SES.
    - New telephone and data conduits from existing on-site location to new building area.

#### 02 – Existing Conditions & Site Construction

- Provide temporary SWPPP requirements including; 2,000 l.f. of wattle, inlet protection at (20) locations, SWPPP and Maricopa County Dust signs, bi-weekly inspections.
- Demo 72 l.f. of existing curb for new fire / drop off lane and rear delivery drive.
- Scarify 12" of existing building pad, re compact and certify pad.
- All earthwork assumes a balanced site (no import/export)
- Fine grading for new landscape and hardscape areas
- Site layout and staking; building corners, pad elevation, rough grade, asphalt blue tops (at new drives only), new curb, utility as-builts.
- Materials testing; soils compaction at building pad, ABC, concrete, grout
- Excludes: special inspections, geotechnical report, hard dig, rock excavation, unsuitable soils, lime stabilization of pad, demo of existing light pole bases with wiring (bases that will not be reused) and re-grading of above ground detention basins.

## Exhibit D

### Scope of Work

#### 02 – Paving

- Infill missing paved areas, Fire / drop off lane including rear delivery drive – 2.5" AC on 6" ABC (see quantity take off in Exhibit C).
- Assumed 1" top coat at existing asphalt areas. EXCLUDES: crack chase or fabric over existing cracks.
- Stripe parking stalls, handicap stalls, crosshatch, fire lane curb including traffic signage to meet minimum code requirements for charter schools.

#### 02 – Landscaping

- Provide low maintenance desert landscaping to match surrounding site areas (114,410sf); ¾" minus decomposed granite ground cover, shrubs, and 36" box trees max. Include (15,000) s.f. hydro seed turf grass field. Tie into existing 12" main water line, tap off for new irrigation on-site, provide 1" reduced pressure backflow preventer and meter assembly, and provide programmable controllers as required.
- Excludes: landscaping at existing above ground retention basins, all off-site landscaping

#### 02 – Utilities

- Existing storm piping, structures and drywells to remain. We assume this parcel will be granted use of existing on site above/below ground basins and drywells and that they met the runoff requirements. We have not included any additional basins, drywells and inspection/service/repair to existing drywells.
- Provide new roof drain piping (300'lf) with cleanouts (6ea) to be tied into existing storm piping.
- Extend existing 6" fire line (725'lf) in fire lane south of building (assumed there is an existing line stubbed on-site with existing back flow preventer and shut off valve). Bring into building and provide (1) fire riser.
- Fire hydrants are existing and assumed to provide adequate coverage
- Extend existing 2" PVC domestic water (250'lf) in fire lane south of building (assumed there is an existing line stubbed on-site).
  - o Provide 1-1/2" meter assembly and reduced pressure backflow assembly
  - o Extend 2" main to new building
- New 6" PVC sewer (25'lf) tie into existing main in front building access drive lane.

#### 02 – Site Concrete

- 4" concrete sidewalks (16,590sf) and handicap ramps (12ea).
- Standard vertical curb (2,610sf).
- 6" concrete double trash enclosure.
- 4" - 45'x75' basketball court slab.
- Misc. site concrete: housekeeping slabs, set and fill (6ea) pipe bollards.
- Excludes: offsite work, light pole bases.

## Exhibit D

### Scope of Work

#### 03 – Building Concrete

- Concrete slab; 4" concrete unreinforced with 15 mil vapor barrier on 4" ABC, continuous perimeter footings, concrete stem walls, interior column footings (4ea – 3'-6"x3'-6"x1'd) and exterior column footings (2ea – 3'-6"x3'-6"x1'd).
- Poured elevated stage platform with ramp and stairs including structural backfill.

#### 04 – Masonry

- Gymnasium 12" masonry walls (standard grey) 30' top of wall – block fill and paint.
- Gymnasium 8" interior masonry walls (standard grey) at alcove entries 30' top of wall – block fill and paint.
- Masonry brick veneer at façade based upon 17% of the overall façade; up to \$19/sf installed.
- 8" masonry (standard grey) trash enclosure walls.
- Excludes: CMU site and/or parking screen walls.

#### 05 – Steel

- Structural tube steel columns (6ea) and beams (5ea) at exterior front entry building overhang and front of stage wall opening support.
- Misc. steel – (6ea) – 6" bollards at trash enclosure, (1ea) – 14' roof ladder, (1ea) – 27' roof ladder and interior ramp/stair two line pipe railings up to stage platform.

#### 06 – Woods & Plastics

- Misc. rough carpentry, blocking, etc.
- Exterior wood walls – 2x6 material, OSB sheathing with Tyvek weather barrier.
- Interior wood walls – 2x4 and 2x6 material including bearing walls.
- Interior 2x6 wood half wall at reception desk and serving line.
- Prefab wood roof trusses over entire building except gymnasium, sloped to perimeter walls.
- Wood framed roof crickets.
- Hybrid metal joist and panelized wood roof structure at Gymnasium / Stage area.
- Framing and OSB sheathing at veneer and siding façade locations based upon (7,245sf).
- Classroom millwork typical: (10lf) plastic laminate uppers, lowers, countertops and (4'lf) plastic laminate storage cabinets.
- Kindergarten millwork typical: (12lf) plastic laminate upper, lowers, countertops and (4lf) plastic laminate storage cabinets.
- Art Room: (22lf) plastic laminate upper, lowers, countertops and (10lf) plastic laminate storage cabinets and (23lf) plastic laminate cubbies.
- Music Room: (10lf) plastic laminate upper, lowers, countertops and (3lf) plastic laminate storage cabinets and (23lf) plastic laminate cubbies.
- Breakroom: (15'lf) plastic laminate upper, lowers and countertops.
- Workroom: (20lf) plastic laminate upper, lowers and countertops, (13lf) plastic laminate upper/lowers and (55lf) plastic laminate countertops.

## Exhibit D

### Scope of Work

- Restroom countertops are excluded – sinks to be wall mounted hand sinks based on Sequoia campus restrooms.
- (1) 4'x8' fire rated telephone mounting board.
- FRP standard white pebbled wall panels from cove base to 6" above ceiling in Kitchen / Serving / Dry Storage areas.

#### 07 – Thermal

- R-38 insulation wired w/ vinyl scrim at underside of roof structure.
- R-19 wall insulation at exterior walls.
- Sound batt wall insulation at interior walls.
- 4-ply built up roof system; granulated precoated capsheet, 2 plies asphalt applied type VI sheet, nailed base sheet over wood deck, 15 year manufacturer's warranty
- 6" prefinished downspouts with scuppers at gymnasium roof.
- Prefinished kynar 500 standard colors, 24 ga metal cap flashings, scuppers, and downspouts.
- Prefinished siding at façade based upon 10% of the overall façade; up to \$14.75/sf installed.
- Building caulking; dissimilar materials.
- Site caulking; sidewalk joints.

#### 08 – Doors & Glass

- Hollow metal exterior doors, 18 ga insulated; frames, 16 ga hot-dip galvanized
- Prep for card readers at 8 entry doors – card readers and access control system to be provided by Owner.
- Hollow metal interior doors, 20 ga uninsulated; frames, 16 ga at mechanical / electrical rooms.
- Solid core factory finished interior flush wood doors, 5 ply bonded core, plain sliced birch veneer; knock down frames, 18 ga steel with T-23 aluminum clear anodized casing at classrooms / offices.
  - o 6"x27" vision lites in classroom doors
  - o 18" sidelites at offices
- Exterior and Interior medium stile aluminum storefront entry doors (3) Pairs & (1) single.
- Aluminum storefront window system (160sf); 2"x4-1/2" aluminum frame non-thermally broken, 1" insulated glazing with low-e coating, clear anodized finish.
- Exterior windows; aluminum clad fixed windows, 1" insulated with low-e coating, 3'-4"x5'-4" at classroom/office building (39ea), 3'-0"x2'-0" at Gymnasium clearstory (10ea).
- Interior storefront window system; framing to match exterior, 1/4" glazing (44sf) from Lobby to Corridor A114.
- Interior 1/4" tempered glass in wood doors and sidelites.

## Exhibit D

### Scope of Work

#### 09 – Finishes

- EIFS system at façade based upon 40% of the overall façade up to \$9.00/sf installed; 1.5" EPS insulation board, liquid applied weather barrier, basecoat and standard weight netting (high impact mesh to 6' AFF at playground areas), fine sand finish with integral color.
- 5/8" drywall over wood framing finished to Level 4 smooth finish throughout.
- Cement board over wood framing at ceramic tile 'wet wall' locations.
- Drywall hard lid ceilings at restrooms and classroom entry alcoves from corridors.
- Acoustic ceilings; Armstrong 2x4 fine fissured tile in 15/16 grid throughout building and Armstrong 2x4 Kitchen VL ceiling tile in 15/16 grid at Kitchen / Serving line.
- Ceramic floor tile at Restrooms up to \$10/sf installed, wall tile at 'wet walls' up to \$12/sf installed and tile base up to \$12/lf installed.
- Quarry floor tile at Kitchen / Serving line up to \$20/sf and base up to \$12/lf installed.
- Carpet at Classrooms / Offices up to \$32/sy installed.
- LVT at Gymnasium, Stage and Table Storage up to \$5.50/sf installed.
- 4" vinyl cove base and transitions at carpet, LVT, VCT and sealed concrete.
- Sealed concrete floor; 1-coat application to concrete at Mechanical room
- Grind and Polish Corridor floors; light salt-and-pepper finish with medium gloss.
- Paint drywall partitions / ceilings, masonry walls, roof ladders, railings and hollow metal doors / frames.
- Paint exterior Gymnasium masonry walls, hollow metal doors / frames, bollards, trash enclosure walls / gates.

#### 10 – Specialties

- (2) ea. – fire department Knox boxes.
- Interior ADA room ID signage.
- Exterior monument sign up to \$20,000.00.
- (2) ea. Whiteboards and (1) ea. Tack boards per classroom.
- (25) ea. Fire extinguishers 5lb. in steel semi recessed cabinets.
- Toilet partitions; baked enamel steel partitions.
- Stainless steel restroom accessories.
- Glass mirrors on plywood backing – non-illuminated.
- (3) ea. – 30' tall flagpoles.

#### 11 – Fences and Gates

- (1) Pair – 12'x6't; tube frame with 20-gauge sheet metal dumpster gates.
- (1,075'lf) - Wrought iron fence – 6' tall at perimeter from building corner to building corner.
- (330'lf) – Wrought iron fence – 6' tall at Kinder Play area.
- (2) Pairs – Wrought iron double gates.
- (4) ea. – 3'x6'tall – Wrought iron pedestrian gates.

## Exhibit D

### Scope of Work

#### 11 – Equipment

- (2) ea. Gymnasium basketball goals & backboards swing away style (manually operated) up to \$12,000.00.
- Kinder play and Upper grade playground equipment up to \$100,000.00 which includes the equipment, shade canopy, and rubber mulch play surface.
- (2) ea. Outdoor basketball goals & backboards.
- (1) ea. Gymnasium scoreboard up to \$7,500.00.

#### 12 – Furnishings

- (2) Stage curtains up to \$5,000.00/each.
- Acoustic wall panels at gymnasium based upon 30% of wall surface; up to \$10/sf installed.
- 1" aluminum mini-blinds at exterior windows.

#### 21 – Fire Sprinklers

- (1) Building fire riser.
- Normal hazard, quick response fire sprinkler system to meet NFPA and local codes.
- Provide sprinkler mains with uprights in exposed ceilings and pendant heads in finished ceilings.

#### 22 – Plumbing

- PVC under and above ground sanitary and vent piping.
- PVC roof drains and overflows at classroom building roof.
- Copper domestic water piping.
- Building plumbing including; pressure assisted tank type water closets, urinals, wall hung lavatories, hand wash sink, kindergarten classroom sinks, mop sink, electric drinking fountain, hose bibs, 80-gallon & 120-gallon electric water heater and 750-gallon grease interceptor.

#### 23 – HVAC

- Rooftop package units; (19ea) – 3.5 ton and (1ea) – 5 ton units at Classrooms, (6ea) – 5ton and (1ea) – 7.5 ton units at Hallways/Corridors/Offices, (3ea) – 10 ton and (1ea) – 5 ton units at Gymnasium / Support and (1ea) – 2 ton mini split unit at IDF room.
- Exhaust fans – rooftop units (3ea) and in line units (5ea).
- Duct distribution with devices in all hard / lay-in ceilings.
- Duct sock distribution with devices in Gymnasium.
- Programmable thermostats to equipment.
- Excludes: BAS / EMS building management system.

## Exhibit D

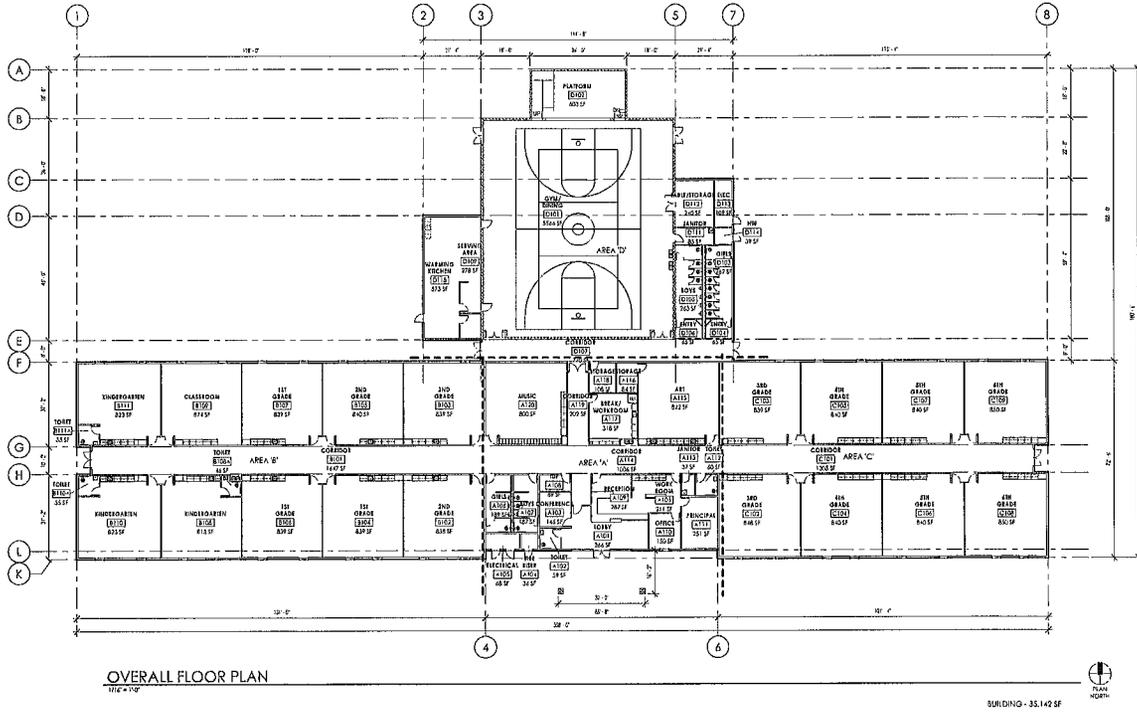
### Scope of Work

#### 26 – Electrical

- SES based upon 1,200amp – 277/480v service.
- (6ea) – 200amp – 120/208v, (2ea) – 400amp – 277/480v panelboards with feeders.
- Lighting package based upon up to \$7.75/s.f. which includes lighting controls to meet IECC requirements.
- MEP equipment connections including monument sign.
- Site light poles using existing pole bases; (13ea) – double head and (8ea) - 15' tall single head fixtures, includes up to \$15,000 to trace out existing conduits, break, add pull boxes to isolate poles for Edkey property only.
- Rough-in for telephone / data conduits with pull strings; (2) data locations per classroom plus conduit stub up for connection to projector, (1) per office, (2) per workroom/breakroom.
- Site secondary, telephone and data conduits from existing transformer pad location to building up to \$30,000.00.

#### 27 – Fire Alarm

- Standalone fire alarm system with devices per NFPA .



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NEW K-2 SCHOOL  
 ED KEY CHARTER SCHOOL  
 STREET ADDRESS  
 BUCKEYE, ARIZONA  
 OVERALL 1ST FLOOR PLAN

**SD SET**

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EXHIBIT E - DRAWING