

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND MSS
FOR
ON-CALL PROFESSIONAL MECHANICAL, HVAC, FIRE ALARM
SERVICES
TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of 11-15-23 between
The Transylvania County Board of Education (“Owner”) and

MSS Solutions (“HVAC, Fire & Alarm”).

From time to time Owner may request that MSS provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement. To the extent there is conflict between this Agreement and the Task Order, the terms of the Task Order shall prevail.

Owner and MSS agree as follows:

Article 1 – SERVICES OF HVAC, FIRE & ALARM

1.01 *Purpose*

A. The primary purpose of this Agreement is to set forth the terms by which the MSS will provide the Services pursuant to Transylvania County Board of Education policies or as required by law to provide for third-party MSSing review and/or verification of some or all of the applicants’ plans, specifications, construction means and methods, and certification of as-built plans, where the estimate professional fee is less than \$50,000.00 (each a “Specific Project”).

B. Under the terms set forth in this Agreement, the Owner may also engage MSS by Purchase Order for review of other projects, which shall be procured in the same fashion as provided herein for Specific Projects; provided, however, that where MSS estimated fee is in excess of \$50,000 there shall require a project-specific RFQ process.

1.02 *Scope*

A. MSS services will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Schedule of MSS Services."

B. The general format of a Task Order is shown in Attachment 1 to this Agreement.

C. This Agreement is not a commitment by the Owner to MSS to issue any Task Orders.

D. MSS shall not be obligated to perform any prospective Task Order unless and until Owner and MSS agree as to the particulars of the Specific Project, MSS services, MSS compensation, and all other appropriate matters.

1.03

Task

Order Procedure

A. Owner and MSS shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.

B. MSS will commence performance as set forth in the Task Order.

Article 2 – OWNER’S RESPONSIBILITIES

2.01

General

A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Schedule of Owner's Responsibilities," and in each Task Order.

B. Owner shall pay MSS as set forth in Exhibit C, "Payments to MSS for Services and Reimbursable Expenses."

C. Owner shall be responsible for, and MSS may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to MSS pursuant to this Agreement. MSS may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items or as set forth in the Task Order; *provided, however*, that MSS shall promptly inform Owner in the event it becomes aware of any actual or likely material inaccuracy or incompleteness in information provided by Owner, and shall thereafter not use or rely upon such information.

Article 3 – TERM; TIMES FOR RENDERING SERVICES

3.01

Term

A. This Agreement shall be effective and applicable to Task Orders issued hereunder for an initial term of five (5) years from the Effective Date of the Agreement.

B. The Owner shall have the option to extend or renew this Agreement for one additional term of five (5) years under the same terms set out herein, by written instrument establishing the new term.

3.02

Times

for Rendering Services

A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, MSS will perform services and provide deliverables within a reasonable time.

B. If, through no fault of MSS, such periods of time or dates are changed, or the orderly and continuous progress of MSS services is impaired, or MSS services are delayed or suspended, then the time for completion of MSS services, and the rates and amounts of MSS compensation, shall be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of MSS services, and the rates and amounts of MSS compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the MSS performance of its services.
- E. If MSS fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

Article 4 – PAYMENTS TO MSS

4.01

Invoices

A. *Preparation and Submittal of Invoices.* MSS shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. MSS shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02

Payments

A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to MSS and then to principal.

B. *Failure to Pay.* If Owner fails to make any payment due MSS for services and expenses within 60 days after receipt of MSS invoice, then:

1. the compounded amount due MSS will be increased at the rate of 0.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
2. MSS may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against MSS for any such suspension.

C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion. MSS shall continue to perform services as required under the applicable Task Order until such dispute is resolved, and Owner shall continue to pay invoices for work when due, to the extent such are not disputed.

D. *Legislative Actions.* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes taxes, fees, or charges on MSS services or compensation under the Task Order, then MSS may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which MSS is entitled under the terms of Exhibit C and the specific Task Order. Provided, however, that this provision shall not apply after such date (if any) as MSS increases its general schedules of rates in order to recoup said sales or use taxes by means of its rates.

Article 5 – OPINIONS OF COST

5.01

Opinion

s of Probable Construction Cost

A. MSS opinions of probable Construction Cost are to be made on the basis of MSS experience and qualifications and represent MSS best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since MSS has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, MSS cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by MSS. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02

Opinion

s of Total Project Costs

A. The services, if any, of MSS with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. MSS assumes no responsibility for the accuracy of any opinions of Total Project Costs.

Article 6 – GENERAL CONSIDERATIONS

6.01

Standard

ds of Performance

A. The standard of care for all professional engineering and related services performed or furnished by MSS under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. MSS makes no warranties, express or implied, under this Agreement or otherwise, in connection with MSS services.

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of MSS services. MSS shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. MSS shall serve as Owner's prime professional under each Task Order. MSS may employ such Consultants as MSS deems necessary to assist in the performance or furnishing of the services, subject to advance notice to and approval by Owner. In no event may more than 20% of MSS compensation for a particular Task Order reflect Consultant fees unless specifically agreed in advance and in writing by the Owner.

D. Subject to the standard of care set forth in Paragraph 6.01.A, MSS and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. MSS and Owner shall comply with applicable Laws and Regulations and the Owner-mandated standards that Owner has provided to MSS in writing. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Owner's responsibilities or to MSS scope of services, times of

performance, and compensation. No portion of this Agreement or other representations by MSS, its agents or employees shall be construed or interpreted as a guarantee of approval by any board or agency.

F. MSS shall not be required to sign any documents, no matter by who requested, that would result in MSS having to certify, guarantee, or warrant the existence of conditions whose existence MSS cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with MSS or payment of any amount due to MSS in any way contingent upon MSS signing any such certification.

G. MSS shall not at any time supervise, direct, or have control over a Contractor's work, nor shall MSS have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Contractor, for security or safety at any Site, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work.

H. MSS neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. MSS will reasonably notify Owner of any deficiencies it observes on the part of any Contractor, subcontractor, or other consultant.

I. MSS shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except MSS own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of MSS.

J. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the MSS Joint Contract Documents Committee unless both parties mutually agree in a Task Order to use other General Conditions, of an acceptable format.

6.02

Design

Without Construction Phase Services

A. For each design performed or furnished by MSS, if Owner does not retain MSS, by Task Order or otherwise, for project observation, or review of a Contractor's performance, or any construction phase services, and such services will be provided by Owner or others, then (1) MSS shall have no design or shop drawing review obligations during construction; (2) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary construction phase MSS and professional services; and (3) Owner waives any claims against the MSS that may be in any way connected thereto. In such a case, MSS Services under the applicable Task Order will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiation Phase as outlined in Exhibit A and the Task Order.

6.03

Use of

Documents

A. All Documents are instruments of service in respect to a Specific Project, and MSS and Owner as co-owners shall retain joint ownership and property interest therein (including the copyright and the right of reuse at the discretion of MSS) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by MSS or one of its Consultants. Specific

Project documents are considered to be co-ownership by MSS and Owner. Provided, however, that no representations are made as to ownership of documents prepared by third parties and reviewed by MSS on Owner's behalf.

B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. MSS grants Owner a license to use the Documents on the Specific Project, extensions of the Specific Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by MSS, or for use or reuse by Owner or others on extensions of the Specific Project or on any other project without written verification or adaptation by MSS; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by MSS, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to MSS or its Consultants; (3) the Owner makes no representations as to the accuracy, adequacy, fitness for any particular purpose, or rights, title, or interest in any plans prepared by a third party and reviewed by MSS pursuant to this Agreement; (4) such use by Owner shall not create any rights in third parties against MSS. Specific documents can be reused by the Owner without cost.

F. If MSS at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other project, then Owner shall compensate MSS at rates or in an amount to be agreed upon by Owner and MSS.

6.04

Insuranc

e

A. At all times when any Task Order is under performance, MSS shall procure and maintain insurance as set forth in Exhibit G, "Insurance." MSS shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by MSS which is applicable to a Specific Project.

B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause MSS and its Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to a Specific Project.

C. For Specific Projects constructed by the Owner (i.e., excluding MSS review of projects designed and constructed by third-parties) Owner shall require Contractors to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the Standard General Conditions of the Construction Contract (No. C700, 2007 Edition) of the MSSs Joint Contract Documents Committee, and to cause MSS and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.

D. Upon request, Owner and MSS shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. If requested, such certificates shall be furnished prior to commencement of MSS services under any Task Order and at renewals thereafter during the life of this Agreement or on request by either party.

E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that MSS and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against MSS or its Consultants, or any insureds or additional insureds thereunder.

F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that MSS or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, MSS shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05

Suspensi

on and Termination

A. *Suspension*

1. By Owner: Owner may suspend a Task Order upon seven days written notice to MSS.
2. By MSS: If MSS services are substantially delayed through no fault of MSS, MSS may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination.* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

1. For cause,
 - a. By either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By MSS:
 - 1) upon seven days written notice if Owner demands that MSS furnish or perform services contrary to MSS responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the MSS services under a Task Order are delayed or suspended for more than 90 days for reasons beyond MSS control, or as time is extended. However, in such event, MSS

and Owner shall reasonably cooperate to determine equitable alternatives to termination of services, including additional compensation to account for the delay or suspension of services, implementation of a new rate schedule, and/or modifications to the timing of services under the Task Order.

3) MSS shall have no liability to Owner on account of termination under the immediately preceding provisions of this subsection (b).

c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice advises the other of its intention to cure its failure and begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon MSS receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow MSS to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

D. *Payments Upon Termination*

1. In the event of any termination under Paragraph 6.05, MSS will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination, subject to the Owner’s right to withhold disputed amounts and claimed offsets for damages which have resulted from MSS negligence.

2. In the event of termination by Owner for convenience or by MSS for cause, MSS shall be entitled to invoicing for those items identified in Paragraph 6.05.D.1.

6.06
ng Law

Controlli

A. The Parties agree that the Agreement was entered into in the State of North Carolina and that the laws of North Carolina shall govern the Agreement, as to interpretation and performance. It is further agreed that the place of the Agreement, its situs and forum, will be Transylvania County, North Carolina. The Parties agree that the proper venue for any claims brought hereunder is in Transylvania County, North Carolina.

6.07
rs, Assigns, and Beneficiaries

Successo

A. Owner and MSS each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and MSS (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and MSS) are hereby bound to the other party to this Agreement and to the partners, successors, executors,

administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor MSS may assign, sublet, or transfer any rights under or interest (including, but without limitation, money's that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or MSS to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and MSS and not for the benefit of any other party.

3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08
Resolution

Dispute

A. Owner and MSS agree to mediate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under law.

B. If the parties fail to resolve a dispute through mediation under Paragraph 6.08.A, then either may exercise their rights under law.

C. Venue of any dispute between the parties relating to this Agreement shall be exclusively in the state courts having jurisdiction in Macon County, North Carolina.

6.09
mental Condition of Site

Environ

A. With respect to each Task Order, Specific Project, and Site:

1. Owner has disclosed to MSS in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

2. Owner represents to MSS that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to MSS, exist at the Site.

3. If MSS encounters an undisclosed Constituent of Concern, then MSS shall notify (a) Owner and (b) appropriate governmental officials if MSS reasonably concludes that doing so is required by applicable Laws or Regulations.

4. It is acknowledged by both parties that MSS scope of services does not include any services related to Constituents of Concern. If MSS or any other party encounters an undisclosed Constituent of Concern, or if

investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then MSS may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of MSS services under this Agreement, then the MSS shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 day's notice.

6. Owner acknowledges that MSS is performing professional services for Owner and that MSS is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with MSS activities under this Agreement.

7. This section shall not apply to any Specific Projects pursuant to which the MSS is providing third-party MSS review and/or verification of an applicants' plans, specifications, construction means and methods, and certification of as-built plans. In providing services for such Specific Projects, the MSS shall be responsible for determining whether certification as to environmental conditions in each such Specific Project is needed.

6.10

Indemnif

ication and Mutual Waiver

A. *Indemnification by MSS.* To the fullest extent permitted by law, MSS shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of MSSs, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs, including reasonable attorneys' and expert fees incurred in defense of the claim or action) arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of MSS or MSS officers, directors, partners, employees, or Consultants.

B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless MSS, MSS officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Specific Project.

C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless MSS and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs,

losses, and damages (including but not limited to all fees and charges of MSS, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site that is owned, operated or controlled by Owner (i.e., Specific Projects owned by third-parties are excluded from this section), provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, MSS, and all other negligent entities and individuals.

E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and MSS waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Specific Project.

6.11

Miscella

neous Provisions

A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and MSS, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

F. *Applicability to Task Orders.* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

G. *Non-Exclusive Agreement.* Nothing herein shall establish an exclusive relationship between Owner and MSS. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and MSS may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.

H. *Integration & Amendment:* The Agreement is fully integrated and represents the entire understanding between the Parties. The Agreement may be modified or amended only by written instruments signed by both Parties. Unless explicitly stated in the Agreement, nothing contained in the Agreement is intended to benefit any third party. The Agreement shall be deemed to have been drafted by both Parties and any ambiguities in the construction of the Agreement shall not be construed solely against the Owner.

I. *Sovereign Immunity:* Notwithstanding any other term or provision in the Agreement, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to the Owner under applicable law.

J. *Iran Divestment Act:* By acceptance of the Agreement, MSS affirms that it is not listed on the Final Divestment List, which was created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58, Iran Divestment Act.

K. *Jessica Lunsford Act:* Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. MSS agrees to conduct an annual check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all of its employees whose job involves direct interaction with students as part of the job. Owner prohibits any personnel listed on such registries from being on any property owned or operated by the Transylvania County Board of Education and from having any direct interaction with students. As a term of the Agreement, said checks must be performed by the MSS and reported to the Owner's Superintendent or designee, if MSS employees will be working directly with students.

Article 7 – DEFINITIONS

7.01 Terms

Defined

A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
2. *Additional Services* – Services to be performed for or furnished to Owner by MSS in accordance with a Task Order which are not included in Basic Services for that Task Order.
3. *Agreement* – This "Standard Form of Agreement between Owner and MSS for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
4. *Application for Payment* – The form acceptable to MSS and Owner which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – Specified services to be performed for or furnished to Owner by MSS in accordance with a Task Order.
7. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by MSS, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
11. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract* – The entire and integrated written agreement between Owner and a Contractor concerning the Work.
13. *Construction Cost* – The cost to Owner of those portions of an entire Specific Project designed or specified by MSS. Construction Cost does not include costs of services of MSS or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Consultants* – Individuals or entities having a contract with MSS to furnish services with respect to a Specific Project as MSS independent professional associates, consultants, subcontractors, or vendors. The term MSS includes MSS Consultants.
15. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between Owner and a Contractor, Addenda (which pertain to the Contract Documents), a contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions,

the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and MSS written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

16. *Contract Price* – The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

17. *Contract Times* – The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by MSS written recommendation of final payment.

18. *Contractor* – An individual or entity with whom Owner enters into a Construction Agreement for a Specific Project.

19. *Correction Period* – The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

20. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to MSS recommendation of final payment.

21. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by MSS to Owner pursuant to this Agreement.

22. *Drawings* – That part of the Contract Documents prepared or approved by MSS which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.

23. *Effective Date of the Construction Agreement* – The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

24. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

25. *Effective Date of the Task Order* – The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.

26. *Field Order* – A written order issued by MSS which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

27. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
28. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
33. *Record Drawings* – The Drawings as issued for construction on which MSS, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which MSS considers significant based on record documents furnished by Contractor to MSS and which were annotated by Contractor to show changes made during construction.
34. *Reimbursable Expenses* – The expenses incurred directly by MSS in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay MSS as indicated in Exhibit C.
35. *Resident Project Representative* – The authorized representative, if any, of MSS assigned to assist MSS at the Site of a Specific Project during the Construction Phase. The Resident Project Representative will be MSS agent or employee and under MSS supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative will be as set forth in each Task Order.
36. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to MSS to illustrate some portion of the Work.
38. *Site* – Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
39. *Specifications* – That part of the Contract Documents prepared by MSS consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.

40. *Specific Project* – An undertaking of Owner as set forth in a Task Order for the payment of an estimated professional fee of \$50,000 or less.
41. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of MSS, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
42. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.
43. *Task Order* – A document executed by Owner and MSS, including amendments if any, stating the scope of services, MSS compensation, times for performance of services and other relevant information for a Specific Project.
44. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of MSS or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
45. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.
46. *Work Change Directive* – A written directive to a Contractor signed by Owner upon recommendation of the MSS, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
47. *Written Amendment* – A written amendment of the Contract Documents signed by Owner and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-MSSing or non-technical rather than strictly construction-related aspects of the Contract Documents.

Article 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01

Exhibits

Included? (Yes or No)	Exhibit Letter	Exhibit Title
Yes		Attachment 1 – Task Order Form
Yes	A	Schedule of MSS Services
Yes	B	Schedule of Owner's Responsibilities

Included? (Yes or No)	Exhibit Letter	Exhibit Title
Yes	C	Payments to MSS for Services and Reimbursable Expenses
No	D	Schedule of Duties, Responsibilities and Limitations of Authority of Resident Project Representative
No	E	Notice of Acceptability of Work (Form)
No	F	Construction Cost Limit
Yes	G	Insurance
No	H	Dispute Resolution
No	I	Allocation of Risks
No	J	Reserved
No	K	Amendment to Task Order (Form)

8.02
Agreement

Total

A. This Agreement (consisting of pages 1 to 18 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and MSS and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Amendments to Task Orders shall be in writing.

8.03
Designated Representatives

Designat

A. With the execution of this Agreement, MSS and Owner shall designate specific individuals to act as MSS and Owner's representatives with respect to the services to be performed or furnished by MSS and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER: **TRANSYLVANIA COUNTY BOARD OF EDUCATION**

MSS: MSS Solutions, LLC

By: _____

Name: _____

Title: Board Chair

Date Signed: _____

Approved to Form

Address for giving notices:

225 Rosenwald Lane

Brevard NC 28712

DESIGNATED REPRESENTATIVE

(see Paragraph 8.03.A):

Title: _____

Name: _____

Phone Number: 828-884-6173

Facsimile Number: 828-884-9524

Email _____

By:  _____

Name: Steve McDonald

Title: Vice President

MSS License or Firm's Certificate No. (if required by law) 18961

State of: North Carolina

Date Signed: 12/18/2023 | 1:29 PM EST

Address for giving notices:

11524 wilmar Blvd

Charlotte, NC 28273

DESIGNATED REPRESENTATIVE

(see Paragraph 8.03.A):

Title: HVAC Service Salesperson

Name: Brian O'Rourke

Phone Number: 828-424-1437

Facsimile Number: _____

Email Brian.ORourke@msssolutions.com